

Consultation Paper on the Establishment of an Electoral Commission in Ireland



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

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Introduction and Background

The Programme for Government contains the following commitment:

Our open government legislation will also establish an Electoral Commission to subsume the functions of existing bodies and the Department of the Environment
(Dept. of the Taoiseach, 2011, p.19).

The July 2014 Statement of Government Priorities confirms this commitment in the following terms:

Preparatory work for the establishment of an Electoral Commission is being advanced with a view to bringing forward legislation for the establishment of such a Commission in early 2015.
(Dept. of the Taoiseach, 2014, p.9)

Setting up an electoral commission is a significant undertaking, and gives rise to a range of policy and organisational issues that will need to be addressed. These were summarised by the Minister for the Environment, Community and Local Government:

This will involve detailed and considered work. Issues for consideration will include international best practice, the Commission's structure and functions, who it reports to, its relationship with other bodies currently involved in electoral administration, and the approach to be followed in relation to the extensive legislation that will be required, as well as practical matters including staffing and funding arrangements.
(Dáil Éireann, 2014).

The need for broad consultation

Every person over 18 years of age in the State has a direct interest in the electoral process. Any decisions on Ireland's system of electoral management will potentially impact on every person in Ireland. In progressing plans to establish an electoral commission, the needs of citizens and voters must be a focal consideration.

The decentralised nature of electoral management in Ireland and the number of bodies and office holders involved necessitates an intensive and detailed level of engagement with relevant parties in developing practical plans to establish an electoral commission and in the transfer of functions. Based on the responsibilities currently performed, this would involve consultation with, amongst others:

- The Department of the Environment, Community and Local Government (DECLG) which, under the Minister, has responsibility for policy issues relating to the electoral system generally;

- The Department of Public Expenditure and Reform, which makes the Charges Order for each election (setting rates of pay for local polling staff etc.) and has legislative responsibilities in respect of the Standards in Public Office (SIPO);
- The Department of Finance which manages payments made through the Central Fund;
- The Department of Justice and Equality, which is the line department for the Courts Service, which has responsibilities in respect of the County Registrars and the Sheriffs who act as Returning Officers.
- The Joint Oireachtas Committee on the Environment, Culture and the Gaeltacht;
- Political Parties;
- Local authorities and their representative bodies;
- The Standards in Public Office Commission;
- The Clerk of the Dáil who is the Registrar of Political Parties; and,
- The Association of Returning Officers.

There are also many academics, non-governmental organisations and individuals who maintain an active interest in electoral reform who have views on the roles, responsibilities and configuration of an electoral commission.

The scale and complexity of the task involved in planning and establishing an electoral commission would necessitate the allocation of dedicated resources to this end. Looking at experience in other jurisdictions, and taking account of the particular features of Ireland's current system, this would likely require the assignment of a dedicated project team to deliver on this important task over a number of years.

As a next step it is desirable that a common vision be developed through a process of consultation. To support this goal, questions are set out in this Consultation Paper. Other questions may arise in the course of these being addressed.

This process of building a common vision could be progressed by the Joint Oireachtas Committee on the Environment, Culture and the Gaeltacht undertaking a focused and time-bound consultation process. This would be consistent with the Government's second programme of Oireachtas reform which expanded and formalised the pre-legislative stage for the development of legislation. It would also be consistent with approaches adopted in other countries where a measure of agreement was developed through a cross-parliamentary committee in advance of major reforms to electoral governance.

This Consultation Paper has been prepared to assist in the further consideration of these issues arising, and to progress implementation of the Programme for Government commitment, in relation to the establishment of an electoral commission.

The establishment of an electoral commission will take a number of years to complete and it will not be in place for the next General Election. The development of legislation is a necessary first step and this process is now being commenced.

Structure of this Consultation Paper

The Paper is divided into six sections:

- Section 1 provides a summary of the paper and sets out a series of issues for consideration, including policy questions to be addressed;
- Section 2 describes how Ireland's system of electoral management currently operates and identifies the costs associated with the different elements;
- Section 3 looks at good governance practices, institutional design and accountability arrangements in the creation of new agencies and electoral management bodies;
- Section 4 reviews policy documents in which the establishment of an electoral commission in Ireland has been recommended;
- Section 5 compares electoral management models in Australia, New Zealand, the United Kingdom and Canada to identify lessons that can be learned;
- Section 6 sets out brief concluding comments and includes contact details for queries.

**Department of the Environment, Community and Local Government,
January 2015.**

1. Summary of issues addressed and issues for consideration

1.1. Electoral administration in Ireland

Currently, electoral administration in Ireland has as its central point of accountability the Minister for the Environment, Community and Local Government. The Department of the Environment, Community and Local Government (DECLG) is responsible, under the Minister, for policy issues relating to the electoral system generally, and for preparing draft legislation on behalf of the Minister and Government. It also supports the operation of the electoral system through the preparation of guidelines and the provision of other supports to election officials. Franchise Section of the Department performs these tasks.

Operational functions are carried out with varying degrees of autonomy by, amongst others, local authorities which have responsibility in law for maintaining the register of electors, for running local elections and for the regulation of political funding and election spending at local level. Returning officers act independently with reference to responsibilities defined in law for running Dáil, European and Presidential elections and referendums. Statutory bodies are established from time to time, for specific purposes, in the form of the Constituency Commission, Referendum Commission and the Local Electoral Area Boundary Committee. Each of these stands dissolved once their specific task is completed. The Standards in Public Office Commission is a permanent statutory body with regulatory responsibilities for political funding and election spending. The Clerk of the Dáil acts as the Registrar of Political Parties. The entire system is underpinned by a significant body of law comprising over thirty Acts of the Oireachtas (see Appendix 1).

Creating a new electoral commission will necessarily involve wide-ranging legislative and administrative change.

Applying the standard comparative terms used internationally, Ireland's current model of electoral management is categorised as being 'Governmental' (IDEA, 2006) and 'Decentralised' (López-Pintor, 2000). However, it is possible for electoral management to be both governmental in form but independent in practice. Many countries, particularly in Western Europe, are in this category. Ireland is one of these and its electoral system enjoys a high degree of legitimacy amongst citizens and those involved in politics. However, the governmental model is in a growing minority internationally. Two-thirds of jurisdictions now have a system that is institutionally independent of government. Some established democracies, notably Australia and New Zealand have moved from the governmental to the independent model in the relatively recent past.

The current system and its costs are described in detail in Section 2 of this paper.

1.2. Establishing an electoral commission

Proposals from Oireachtas Committees, political parties, international observers and other bodies show a consensus in favour of establishing an electoral commission in Ireland. This was reaffirmed in 2013 when the Convention on the Constitution recommended the setting up of such a body¹. On 1 April 2014 the Taoiseach confirmed, in the Dáil, the Government's acceptance of that recommendation and the *Statement of Government Priorities 2014-2016* agreed in July 2014 reaffirms this commitment. However, while there is consensus in favour of establishing an electoral commission, there is a range of opinion on the precise functions to be assigned to an electoral commission and the roles that should continue to be performed by those who currently have responsibilities in this area.

The Programme for Government provides for an electoral commission that is to subsume the functions of existing bodies and the DECLG. It is not prescriptive in its detail beyond these points.

As a principle of good governance, it is advisable that the functions of any new public body be clearly defined when it is being set up. These functions should then inform its organisational design. The motive, purpose and goals in setting up the electoral commission should therefore be clearly identified from the outset.

As a next step, it is necessary that the functions to be assigned to the electoral commission be defined more precisely. Experience with the establishment of the Australian Electoral Commission in 1984 and in the reforms to the electoral register in Canada in 1997 point towards the importance of a cross-party approach in achieving a level of consensus as specific proposals are developed and implemented. Seeking agreement among stakeholders on a vision for change, and maintaining such support over time as change is implemented, can aid the process.

The approach in setting up an electoral commission should be informed by an observation made in the OECD Public Management Review on Ireland published in 2008 that, "strategic decisions regarding the creation of an agency should be made only following an assessment of personnel and capacity needs, as well as the most appropriate type of governance structure given the agency's objectives" (OECD, 2008, p.309).

Statutory provision for the electoral commission's independence would be a necessary condition of its autonomy, but not the only one. Other aspects of autonomy concern issues affecting its management, policy making, structures, finance, and the degree to which the commission can be directed by government.

¹ This is a forum of 100 people, representative of Irish society and parliamentarians from the island of Ireland, with an independent Chair. <https://www.constitution.ie/Convention.aspx>

It will be necessary to specify the functions of Ireland's electoral commission first, and then match these with the most suitable organisational form.

Key questions for consideration:

1. *Which functions should be assigned to an electoral commission?*
2. *What roles would / should those currently involved in electoral management continue to perform, specifically:*
 - *What role would the current returning officers continue to perform, and who is to be responsible for the organisation of elections on the ground?*
 - *Who should be responsible for voter registration?*
 - *What responsibilities are to be transferred from Franchise Section of the Department of the Environment, Community and Local Government?*
 - *What policy functions or strategic capacity should remain within the DECLG?*
 - *Should responsibilities of the Constituency Commission and of the Referendum Commission be assigned to an electoral commission?*
 - *Should responsibilities of Local Electoral Area Boundary Committees be assigned to an electoral commission?*
 - *What should happen to the electoral functions of the Standards in Public Office Commission?*
 - *Should an electoral commission have an oversight role in respect of the responsibilities of local authorities in dealing with local election spending and donations?*

1.3. The current system and its costs

The current decentralised nature of electoral governance in Ireland means that expenditure is incurred by a number of different bodies and office holders in performing their statutory duties. Some of these costs are more publicly visible than others. There is a tendency in decentralised electoral management systems for some costs to be absorbed by local bodies and these may therefore not be specifically allocated to, or accounted for, in overall electoral costs. In setting up an electoral commission, it would need to be considered if economies could be achieved. Using a number of sources, the main costs associated with electoral management and the running of elections are identified in this paper. The next step would be to undertake a detailed financial analysis, based on the responsibilities to be assigned to the electoral commission.

There is no permanent electoral management structure at local level. Responsibility for organising polls for Dáil, European Parliament and Presidential elections and for referendums lies with a local County Registrar or Sherriff who is assigned the role of returning officer in law. Costs currently incurred in the running of elections, which are set out in detail in Section 2, include the following costs:

- arising from the operations of Franchise Section of the Department of the Environment, Community and Local Government;
- incurred at local level by returning officers in the on-going maintenance of the electoral system;
- incurred by all local authorities for their franchise functions;
- of undertaking reviews of Dáil and European Parliament constituencies and of local electoral area boundaries;
- of the Standards in Public Office Commission (SIPO) arising from its electoral functions;
- of maintaining the Register of Political Parties;
- arising for Referendum Commissions;
- arising in electoral management in relation to the running of General, European, Presidential and local elections, and of referendums;

For the functions performed by the local authorities, the Standards in Public Office Commission and DECLG there is unlikely to be scope to directly transfer all of the funds currently deployed by these bodies into a new electoral commission. For the reasons set out in Section 2 of this paper, reassigning responsibility for a range of functions to an electoral commission would not necessarily enable the transfer of all the resources currently used across the system.

Notwithstanding this, it seems reasonable that if certain responsibilities are transferred to an electoral commission, there should be an appropriate transfer of resources by the bodies concerned.

As set out in Section 3, evidence internationally has shown that independent electoral commissions are better for democratic stability and are more cost-effective. However, it cannot simply be assumed that economies would be achieved in setting up a new body. It is possible that net savings may not be achieved. Nonetheless, the establishment of an electoral commission may still be desired based on its potential to improve the effectiveness of electoral governance and the legitimacy of the system in the eyes of the electorate and other stakeholders. Policy proposals from some sources, reviewed in Section 4 of this paper, explore the possibility of the electoral commission undertaking additional voter education and election and referendum research tasks. Such additional functions would give rise to further costs. Nevertheless, an electoral commission could bring greater transparency to electoral costs by combining various functions under the same umbrella.

Given the scale of expenditure currently involved in running the electoral system, and the costs that would arise in setting up a new body, it would be appropriate for a detailed analysis of costs and benefits to be undertaken. Guidelines on public spending advise that projects on the scale involved in setting up an electoral commission should be subject to a multi-criteria analysis (Dept. of Finance, 2005). It is proposed to undertake such an analysis.

Key questions for consideration:

3. *What would be the cost implications arising from the assignment of functions to an electoral commission?*
4. *What would be the cost implications for the bodies performing these functions at present?*

1.4. Membership of an electoral commission

Electoral management bodies internationally vary in their number of members and there are differing views on the membership that should comprise an electoral commission.

It can be seen from the discussion on this topic, in Section 3 of this paper, that it has been observed that those with a large membership are usually less effective. The 'Preliminary Study on the Establishment of an Electoral Commission in Ireland' undertaken by the Geary Institute in University College Dublin on behalf of the DECLG in 2008 addressed the matter of the commission's membership and recommended that it comprise a chairperson, who would be a judge or former judge of the Supreme Court or High Court, the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil, the Clerk of the Seanad and the chief executive officer of the commission who would be titled the 'Chief Electoral Officer'. The authors of the study concluded that, "in our view, it would not be appropriate to have a member of the new commission who is a former member of one of the Houses of the Oireachtas, given the additional range of functions which the commission will perform, in comparison with SIPO" (Sinnott et. al., 2008, p.65).

In setting up Ireland's electoral commission a question arises as to whether the body should include members from a political background. In the UK four of the ten commissioners come from a political background, although with a detachment from current active politics. In three of the four countries reviewed in this paper, political parties do not have a role in appointing members and the background of the commissioners is expressly apolitical and non-partisan. The Joint Oireachtas Committee on the Constitution recommended in 2010 that the new commission include former members of the Oireachtas.

In the case of Australia, New Zealand and the United Kingdom, the appointment of members of the electoral commission is provided for in a manner that seeks to guarantee their independence. In Canada, while there is an electoral management body called 'Elections Canada', responsibility ultimately rests with one person in the form of the Chief Electoral Officer. Pursuing this approach in Ireland would be out of kilter with the governance arrangements currently in place for the Standards in Public Office Commission, Referendum Commission and Constituency Commission where the members are existing office holders (with the exception of the provision for a former member of the Oireachtas to be appointed to SIPO).

In the case of SIPO and a Referendum Commission, the law provides that these bodies are headed by a current or former judge of the High Court or a former judge of the Supreme Court or Court of Appeal. The law provides that a Constituency Commission be chaired by a sitting judge of the High Court, the Court of Appeal or the Supreme Court. This is comparable to the situation that obtains for the electoral commissions in Australia and New Zealand.

Key questions for consideration:

5. *Who should be the members of an electoral commission?*
6. *How should the members be appointed?*

1.5. Accountability, performance and audit

Accountability of the electoral commission will be very important, but accountability will need to be achieved in a manner that does not compromise the independence of the commission. Experience in other countries points to both the desirability and necessity of having accountability mechanisms linked to democratic institutions. These include formal reporting arrangements to a designated parliamentary committee, the identification of a specific government minister as a liaison with the electoral commission, audit by the independent state auditing body and the publication of documents against which performance can be assessed – for example, a statement of strategy, budget plan and annual report.

In the four case-study jurisdictions reviewed in Section 5 of this paper, accountability to parliament typically involves an inter-relationship where matters of policy and performance are addressed. The head of the electoral management body reports regularly and appears before a parliamentary committee where there is a two-way communication process. Information is provided to the committee, issues are raised by members and questions answered. The electoral commission can also bring forward recommendations for change based on experience in implementing legislation.

It cannot be assumed that creating a new independent body will lead to an improvement in the performance of electoral governance, as is observed in Section 3 of this paper. However, the four countries examined in Section 5 have put in place performance measurement and reporting frameworks. Both quantitative and qualitative measures are used. These aid in the management of the organisation and provide transparency for the public and stakeholders. It may be desirable for similar arrangements to be put in place when a new electoral commission is being set up in Ireland.

In common with other jurisdictions, for Ireland's electoral commission it would be advisable that an audit committee and other oversight structures be put in place to assure good internal governance and appropriate external financial accountability. In each of the four countries examined, the Comptroller and Auditor General or equivalent is the auditor for the electoral management body. The matter of whether the Comptroller and Auditor General is a member of the electoral commission would be a consideration in addressing this point.

Key questions for consideration:

7. *What mechanisms will be put in place to provide for the accountability of an electoral commission?*
8. *What will be the respective roles of the Oireachtas, the Government and the public in the accountability arrangements?*
9. *What provisions will be made to assure the independence of an electoral commission?*

1.6. Timelines and risks associated with the establishment of an electoral commission

The length of time it will take to establish an electoral commission in Ireland will only become apparent when the functions to be transferred, the form of the commission to be established and the extent of legislative change required are clear. The management of elections is crucial to the effective operation of Ireland's parliament, local authorities and of the State itself. In this regard, a key challenge will be to ensure that this major transition is effected without negatively impacting on our electoral and democratic processes. As the experience with electronic voting has shown, projects aimed at effecting major reforms of electoral management carry with them the risk of serious controversy if they are unable to gain public confidence, address concerns or gain acceptance.

As outlined in Section 5, the lesson from other countries is that significant change takes time and requires planning. It took almost four years to amalgamate the

current functions of the New Zealand Electoral Commission into one body. This was done on a phased basis between 2008 and 2012. Establishing the National Register of Electors in Canada took almost four years from commencement in 1993 to full implementation in 1997, not including the process of debate that took place in the preceding years. The initial development phases in 1993 and 1994 involved detailed analyses of the costs and implications of change. On implementation, problems were identified at the Canadian general elections in 1997 and 2000, which caused controversy and required further modifications.

As well as potential benefits, there are also risks associated with the creation of new public bodies. Laking (2005) describes how the risks come under three broad headings. The first arises when new organisations are set up without clear public policy justification, the second when the rules and systems for external direction are inadequate, while the third risk factor is concerned with shortcomings in internal management arrangements. Organisational form can have an important part to play in getting the governance right.

Some proponents for the establishment of an electoral commission suggest that it should take on the voter registration responsibilities of local authorities. As further outlined in Section 5, changing the system of electoral registration and reassigning responsibility to a new body would be a significant task in its own right, as the experience in Canada would indicate. The Electoral Commission in the UK has described the introduction of a new system of individual registration, which commenced in Great Britain 2013, as involving the biggest change to its electoral system since universal franchise. In New Zealand, assigning responsibility for the register of electors was done as a separate phase in the establishment of its new electoral commission, where registration continues to be performed by the postal service with the newly configured electoral commission now having an oversight and management role as the licensing authority for the maintenance of the register.

The experience in Canada would suggest that even with comprehensive planning, problems can materialise and in the short term the comprehensiveness of the register can even dis-improve. However, this in turn can lead to long term improvements and cost savings.

The UCD Geary Institute study envisaged a two-stage process in the establishment of Ireland's electoral commission. While the principle of adopting a phased approach is consistent with practice that has worked elsewhere, this would of necessity involve making a decision on which functions are to be prioritised for inclusion within the electoral commission structure from the outset. This 2008 study proposed that the electoral commission be built around the current Standards in Public Office Commission with responsibility for the Constituency Commission, Referendum Commission and Register of Political Parties being included from the outset. Phase

two would involve a consolidation of legislation and the conferring of further functions on the commission.

Having regard to the complexities involved in changing the system of voter registration, there may be a case for addressing this as a stand-alone project in its own right or as a separate phase in setting up an electoral commission. This would imply a three-phased, rather than a two-phased process as envisaged in the Geary Institute study. Looking at the organisational structure of other electoral management bodies, there is a case for assigning management responsibility for the register of electors to a distinct functional unit within the electoral commission.

When the Australian Electoral Commission was set up, long-standing state structures for electoral administration were retained. It has been observed that the retention of this grass-roots organisation enabled the new body to preserve and build upon the practical experience that had been developed over many years (Maley, 2001, p.26). There is a possible lesson here for Ireland in relation to its current local administrative arrangements involving the returning officers for Dáil elections. The 2008 report by the Geary Institute favoured maintaining this local structure within the new electoral commission arrangements. It can be observed that, as happened in Australia, such an approach would allow for the retention of a critical part of the current administrative apparatus, and would avoid the need to create a new local structure.

Key questions for consideration:

10. *Should a commission be set up on a phased basis, and if so, in how many phases?*
11. *What would be an achievable timescale to complete the task?*

1.7. Policy questions to be addressed

Based on the issues identified in this paper, there are a number of policy matters that would need to be addressed further in progressing towards the establishment of an electoral commission. A composite list of the key questions arising is below:

1. *Which functions should be assigned to an electoral commission?*
2. *What roles would / should those currently involved in electoral management continue to perform, specifically:*
 - *What role would the current returning officers continue to perform, and who is to be responsible for the organisation of elections on the ground?*
 - *Who should be responsible for voter registration?*
 - *What responsibilities are to be transferred from Franchise Section of the Department of the Environment, Community and Local Government?*
 - *What policy functions or strategic capacity should remain within the DECLG?*
 - *Should responsibilities of the Constituency Commission and of the Referendum Commission be assigned to an electoral commission?*
 - *Should responsibilities of Local Electoral Area Boundary Committees be assigned to an electoral commission?*
 - *What should happen to the electoral functions of the Standards in Public Office Commission?*
 - *Should an electoral commission have an oversight role in respect of the responsibilities of local authorities in dealing with local election spending and donations?*
3. *What would be the cost implications arising from the assignment of functions to an electoral commission?*
4. *What would be the cost implications for the bodies performing these functions at present?*
5. *Who should be the members of an electoral commission?*
6. *How should the members be appointed?*
7. *What mechanisms will be put in place to provide for the accountability of an electoral commission?*
8. *What will be the respective roles of the Oireachtas, the Government and the public in the accountability arrangements?*
9. *What provisions will be made to assure the independence of an electoral commission?*
10. *Should a commission be set up on a phased basis, and if so, in how many phases?*
11. *What would be an achievable timescale to complete the task?*

2. How Ireland's system of electoral governance currently operates

Ireland's model of electoral governance has been categorised by international bodies as being 'Decentralised' and 'Governmental' (López-Pintor, 2000; IDEA, 2006).

This categorisation is borne out in the description of its various structures which follows. However, key parts of the system operate independently of direct government intervention. Ireland, like many established democracies has an electoral governance structure that is described as 'Governmental' but that in practice operates in an independent and impartial manner.

The Minister and the Department of the Environment, Community and Local Government have central policy and co-ordination roles. However, the law governing election management in Ireland assigns significant responsibilities to others, primarily to returning officers and to local authorities. In addition the law assigns roles to the Department of Finance and the Department of Public Expenditure and Reform, to the Referendum Commission, to the Constituency Commission and to the Standards in Public Office Commission. In examining an alternative governance arrangement in the form of an electoral commission, it is important firstly to understand how the present system operates. This section will therefore describe where responsibilities for the various elements of electoral management currently reside and illustrate the costs incurred/arising.

The decentralised nature of electoral governance in Ireland means that expenditure is incurred by a number of different bodies and office holders in performing their statutory duties. Some of these expenses are more publicly visible than others. It has been observed that in decentralised electoral systems a large proportion of electoral costs incurred by local government are normally absorbed by their ordinary operational budgets and not quantified by central electoral authorities when calculating election costs (López Pintor, 2000, p.70).

A key reason for the creation of new public bodies lies in their scope to improve cost-effectiveness and efficiency in the use of public money. As a first step, it is therefore necessary to identify where these costs arise. Using different published data sources and drawing upon financial information provided by the DECLG and Department of Public Expenditure and Reform the paragraphs that follow quantify the expenditure associated with individual aspects of the present system.

2.1. The role of Ministers and the civil service

The Department of the Environment, Community and Local Government is responsible, under the Minister, for policy issues relating to the electoral system generally, and for preparing draft legislation on behalf of the Minister and Government for presentation before the Houses of the Oireachtas. These tasks are undertaken by civil servants in the Franchise Section of the Department, working

with the Office of the Parliamentary Counsel where legislation is involved. Electoral law also provides for the making of regulations by the Minister on technical matters relating to the conduct of elections. This includes, for example, prescribing the nomination form for candidates at Dáil elections. In addition, the Minister is responsible for making the order appointing polling day at European Parliament and local elections as well as for Dáil bye-elections and referendums. These draft regulations and orders are prepared in the Department for signature by the Minister.

As well as its role in relation to policy and legislation, Franchise Section prepares guidance for use by returning officers and poll staff. In advance of each election and referendum, it circulates a guidance manual for presiding officers who manage arrangements at individual polling stations. Franchise Section liaises with the Office of Public Works in procuring equipment (e.g. stamping instruments, stationery etc.) in sufficient quantities to ensure preparedness for elections. Arrangements for the printing of ballot papers and polling information cards are made by the Office of Government Procurement. Franchise Section advises on the quantities required and logistical arrangements for delivery. Election equipment and printed materials are typically sourced by competitive tender. Franchise Section organises the publication in newspapers and other media of reminders about voter registration, arrangements for voters with special needs and identity document requirements at polling stations in advance of every electoral event.

After each Dáil, Seanad, European, Presidential and local election and at referendums the results are compiled by Franchise Section for publication. There is a requirement in law to retain ballot papers and other documents in connection with each of these electoral events for a period of 6 months from the date of the poll. At Presidential and European elections and at referendums these documents are stored by the DECLG in the Custom House.²

The expenditure of Franchise Section for 2011 to 2013 is set out in the table below. These amounts include all salary costs and associated costs, as well as current and capital expenditure. Current expenditure includes the cost of publishing statutory notices in the media relating to elections and referendums. The costs in the table do not incorporate an apportionment of costs for central overheads incurred by the Department as a whole (e.g. electricity, payroll management). There is fluctuation in expenditure between years depending on electoral events.

Table 1 – Franchise Section Expenditure 2011-2013

2011	2012	2013
€873,395	€946,848	€854,821

(DECLG, 2014a)

² At a Dáil election the Clerk of the Dáil has this responsibility. The Clerk of the Seanad retains documents for the five Seanad vocational panel elections. For the Seanad university constituencies, the respective returning officers have this responsibility. At local elections the documents are kept by the local authority concerned.

The Programme for Government envisages an electoral commission subsuming the functions of the DECLG. It will need to be determined if this relates to both operational tasks as well as its role in dealing with policy and legislation.

2.2. Returning officers

Returning officers are the key individuals in the administration of the electoral process (Sinnott et. al., 2008, p.28). Their tasks include accepting nominations, requisitioning buildings for use as polling places, recruiting personnel to take the poll and count the votes, overseeing the counting of votes and declaring the results. Returning officers are also responsible for the printing of ballot papers based on a form prescribed in law³. Provisions relating to the appointment of Dáil returning officers are set out in section 30 of the Electoral Act 1992. The returning officer is either a County Registrar or a City / County Sheriff who is a statutory officer of the Courts Service.

For elections to the European Parliament, returning officers are appointed by the Minister for the Environment, Community and Local Government from amongst the County Registrars or Sheriffs within the relevant European Parliament constituency⁴.

For local elections, article 4 of the Local Elections Regulations 1995 provides that an official of the local authority shall be the returning officer for the election of members of the local authority.

For Referendums and Presidential elections, responsibility for taking the poll and for the counting of votes is assigned to the Dáil returning officers who then communicate the results on a constituency basis to the Presidential or Referendum Returning Officer who has overall responsibility, conducts the central count of the votes and declares the result. That officer is appointed by the Minister. This role is usually performed by a senior civil servant - the Principal Officer in Franchise Section.

The expenses of returning officers are met directly from the Central Fund of the Exchequer. As such, they do not come from funds voted by the Oireachtas. The Minister for Public Expenditure and Reform sets the rates of payment for returning officers for the different categories of electoral and on-going expenses incurred by them. These rates are specified in a 'Charges Order' made by the Minister. For certain expenses associated with professional services and property, co-approval must also be given by the DECLG. The Department of Finance makes the payments and these are subject to oversight and internal audit arrangements operated by that Department.

³ Section 88(1) of the Electoral Act 1992 provides that the ballot paper at a Dáil election shall be in the form set out in the Fourth Schedule to the Act.

⁴ Under section 16 of the European Parliament Elections Act 1997.

Aside from the costs that arise directly from organising elections which are detailed in paragraph 2.8, payments are made to returning officers to meet on-going expenses associated with the performance of their duties. This includes office overheads / storage. The costs arising for the years 2011 to 2013 are set out below.

Table 2 – Ongoing Expenses of Returning Officers 2011 to 2013

2011	2012	2013
€510,380	€487,107	€541,124

(DPER, 2014)

The role played by the Dáil returning officers in the administration of elections was seen to be a particular strength of the present system in the 2008 report on the establishment of an electoral commission prepared by the Geary Institute (Sinnott et. al., 2008, p.29).

The returning officer for a Seanad general election for the five vocational panels that elect 43 of the 60 members of the Seanad is the Clerk of the Seanad⁵. The returning officer for the National University of Ireland constituency which elects 3 Seanad members is the Vice-Chancellor of the NUI. For the University of Dublin constituency, which also elects 3 members, the returning officer is the Provost⁶. 11 Senators are nominated by the Taoiseach.

2.3. Local authorities and the register of electors

Preparation of the Electoral Register is assigned under Part 2 of the Electoral Act 1992 to local registration authorities which are the county, city and city and county councils⁷. It is their duty to ensure, as far as possible, that the Register is accurate and comprehensive. The DECLG provides support to authorities in their registration work and issues guidance in relation to the maintenance of the Register.

Registration authorities conduct door to door and other enquiries in preparing the draft register which is published in November each year. The draft can then be publicly examined for errors over the following weeks, with a deadline date for this process set for late November. The Register then comes into force for the period of twelve months from the following 15 February.

This annual system of household registration can be distinguished from a rolling individual register which is updated on an on-going basis using official data sources such as, for example, in the case in Canada from its revenue agency, driver's licence

⁵ The electorate at the 2011 Seanad general election was 1,096, so the electorate is not as large as for other elections that have a universal franchise. Seanad elections are undertaken by secret postal ballot.

⁶ Arrangements for the reform of the university constituencies are being progressed through the Seanad Electoral (University Members) (Amendment) Bill which is on the Government Legislation Programme.

⁷ In 2013 the number of registration authorities was reduced from 34 to 31 as a result of arrangements for the merger of North and South Tipperary County Councils and the County and City Councils in Limerick and Waterford. Section 19 of the Electoral, Local Government and Planning and Development Act 2013 provides for a single registration authority in each of the merged council areas.

agencies, statistics bodies and existing voters lists. In either arrangement there is an onus also on the voter to ensure that he or she is registered.

The 2008 report by the Joint Oireachtas Committee on the Environment, Heritage and Local Government on the future of the electoral register was critical of the current arrangements and found the existing state of the electoral register, going back over many years, to be unsatisfactory. It reported problems with accuracy, omissions and duplications, and identified the three main reasons as being:

- varying degrees of priority afforded to maintaining that data;
- a wide variety of practices among registration authorities, and;
- insufficient field-workers and door-to-door visits to obtain the necessary information in some registration authorities.

(Oireachtas, 2008, pp.7-9)

In addition to registration responsibilities, section 28 of the Electoral Act 1992 provides that each local authority shall, at least once every ten years, make a scheme dividing the county or city into polling districts for the purposes of Dáil elections, European elections and local elections and appointing a polling place for each polling district. This is done following consultation with the returning officer for Dáil elections, and in accordance with regulations made by the Minister for the Environment, Community and Local Government.

The total budget across all local authorities under the heading of ‘Franchise’ for 2014 is €10,100,930. This is divided into three elements: the Register of Electors, Local Elections, and Service Support Costs. This final heading represents the apportionment of overheads for services provided centrally from the local authority to support franchise activities, the most significant of which relates to the register of electors. 2014 was an election year so costs under the ‘Local Elections’ heading at some €2.678m were higher than they would be typically. In the non-election year of 2013 the equivalent costs under this heading were estimated at some €0.76m.

Table 3 – Total Local Authority Budgeted Costs for Franchise Activities - 2014⁸

	Register of Electors	Local Elections	Service Support	Total
Cost	€4,846,821	€2,678,317	€2,575,792	€10,100,930

(DECLG, 2014b)

A breakdown of the above figures by individual local authority is contained in the table at Appendix 2.

⁸ In addition to cost data for the county, city and county and city councils, information is included in the table for borough and town councils. The combined total costs for these bodies under the respective headings are: Register of Electors €7,500, Local Elections €126,452, Service Support €13,387. On June 1st 2014 the functions of borough and town councils were subsumed into the 31 county, city and county councils specified in the Local Government Reform Act 2014.

An issue for consideration in setting up an electoral commission is the extent to which it should assume the current responsibilities of local authorities and what financial and other requirements would arise in respect of any franchise-related functions that might continue to be performed by local authorities. A key determining point would be the extent of involvement, if any, of local authorities in the preparation of the register of electors. There are other responsibilities that also require consideration.

Local elections are currently organised by each respective local authority. The regulation of election spending and donations at local level is also overseen by the local authorities. The question of whether these responsibilities should be taken on by an electoral commission is one for consideration. It would also need to be determined if the local authorities would continue to have a role in preparing the scheme of polling districts, as they do currently using their particular knowledge of local areas.

2.4. Boundary delimitation

Provisions for the review of Dáil and European Parliament constituencies are contained in Part II of the Electoral Act 1997. This task is undertaken by an independent Constituency Commission whose terms of reference and membership are set out in sections 6 and 7 of that Act. The Chairperson must be a judge of the Supreme Court or the Court of Appeal or the High Court. The other members comprise the Ombudsman, the Secretary General of the DECLG, the Clerk of the Dáil and the Clerk of the Seanad. Section 11 of the Act provides that the Minister for the Environment, Community and Local Government shall make available staff and such services as may be required by the Commission. The Secretariat for the Constituency Commission is typically provided by officials from Franchise Section of the Department. Section 11 of the Act further provides that the Central Statistics Office and Ordnance Survey Ireland shall provide free of charge to the Constituency Commission such assistance as it may reasonably require for the performance of its functions.

Between 1979 and 1997, when the current provisions were enacted, the task of reviewing Dáil boundaries was undertaken by a series of ad-hoc independent Commissions. In the period prior to 1979, boundary revisions were the subject of much controversy amid allegations of political manipulation (Coakley, 2007).

The most recent Constituency Commission was established by an order made by the Minister in July 2011 under the Electoral Act 1997. In line with its statutory obligations, it presented its report to the Chairman of Dáil Éireann in June 2012. The costs arising from its work are set out in Table 4, below, and these are also incorporated into the overall Franchise Section costs for 2011 and 2012 in Table 1. Following the established convention for such reports, the recommendations of the

Commission were accepted in full by the Government and enacted through the Electoral (Amendment) (Dáil Constituencies) Act 2013.

Table 4 - Constituency Commission costs 2011/2012

Total costs (not including staff)	€45,668
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(DECLG, 2013a)

The Local Government Acts provide that the Minister for the Environment, Community and Local Government may divide a county, city or city and county into local electoral areas, and fix the number of members to be elected for each of these areas. Before doing so, the Minister must request a boundary committee to prepare a report. The report is published and the Minister must have regard to its recommendations. The committee must be independent in the performance of its duties.

Like the arrangements that apply for Dáil constituency boundary reviews, the Local Government Act 1994 provides for the Minister to make available staff and services for a local electoral area boundary committee. The most recent committee was appointed in November 2012 and submitted its report to the Minister in May 2013. The costs arising are set out in Table 5, below, and these are also incorporated in the overall Franchise Section costs for 2012 and 2013 in Table 1. The Secretariat was provided by officials from the Franchise and the Local Government Sections of the Department. The Minister appoints members to the committee and membership is not prescribed in the same way as it is for a Dáil Constituency Commission⁹. In line with established convention, the Minister accepted in full the recommendations in the 2013 report (DECLG, 2013b) and the new local electoral areas were specified in a series of Statutory Instruments made in January 2014.

Table 5 – Local Electoral Area Boundary Committee costs 2012/2013

Total costs (not including staff)	€56,274
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(DECLG, 2013a)

A question arising is whether an electoral commission would undertake boundary reviews itself, or alternatively, support the current independent arrangements by taking on the role performed by the DECLG. An issue for consideration therefore is whether responsibilities for providing the secretariat and other administrative support

⁹ The most recent committee comprised a retired secretary general of a government department, a retired senior local government official, a retired senior civil servant, a senior academic and the chief executive officer of a non-governmental organisation.

to both the Constituency Commission and the Local Electoral Area Boundary Committee should be assigned to the electoral commission.

2.5. Political funding and expenditure

The regulation of political funding and election expenditure at Dáil, Seanad, European Parliament and Presidential elections is overseen by the Standards in Public Office Commission (SIPO). The Commission is an independent body established in law under the Standards in Public Office Act 2001. It has supervisory roles under three separate pieces of legislation. Its functions include supervising the disclosure of interests and compliance with tax clearance requirements under the Ethics Acts, the disclosure of donations and election expenses under the Electoral Act 1997 and the expenditure of state funding received by parliamentary groups under the Oireachtas (Ministerial and Parliamentary Offices) Acts and by political parties under Part 3 of the Electoral Act 1997 (SIPO, 2014a).

The Commission is chaired by a former Judge of the High Court and its membership, which is prescribed in law¹⁰, comprises the Ombudsman, the Comptroller and Auditor General, the Clerk of the Dáil, the Clerk of the Seanad and a former member of the Oireachtas. The Commission has the power to issue legally binding guidelines and to give advice on compliance with provisions contained within the Electoral Acts¹¹.

The secretariat of SIPO is provided by the Office of the Ombudsman at its offices in Dublin, which also house the Office of the Information Commissioner, the Office of the Commissioner for Environmental Information and the Commission for Public Service Appointments. SIPO's annual expenditure in 2013 was some €1,173,000, including staff costs and overheads. This expenditure is provided for in the Vote of the Office of the Ombudsman. Costs for the years 2011 to 2013 are set out in the table below.

Table 6 – Standards in Public Office Commission Expenditure 2011 to 2013

2011	2012	2013
€861,000	€870,000	€1,173,000

(SIPO, 2012, p.61; 2014a, p.63).

The Geary Institute report recommended that the functions of SIPO under the Electoral Acts should be separated from its functions under Ethics and Standards legislation. The former would move to the electoral commission, along with an appropriate degree of transfer of personnel and assets (Sinnott et. al., 2008, p.30). The Statement of Government Priorities 2014-2016 contains a commitment to publish legislation to consolidate local and national ethics requirements (Dept. of the

¹⁰ Membership of the Commission is provided for in section 21 of the Ethics in Public Office Act 1995. The Chairperson shall be a judge, or a former judge, of the Supreme Court or the Court of Appeal or the High Court.

¹¹ Under section 4(6) of the Electoral Act 1997.

Taoiseach, 2014, p.8). This is relevant in dealing with policy issues arising with SIPO's responsibilities under the Ethics Acts were its current functions under the Electoral Acts incorporated into a new electoral commission.

Political funding and election expenditure rules at local elections and for local authority members are set out in the Local Elections (Disclosure of Donations and Expenditure) Act 1999. Enforcement of these provisions is the responsibility of the local authority in each respective area. Guidance and advice in performing this role is issued by Franchise Section of the DECLG. An issue for consideration is whether an electoral commission would have an oversight role in respect of the work of local authorities in implementing these provisions, and whether an electoral commission would assume the functions currently performed by Franchise Section.

2.6. Registration of political parties

Section 25(1) of the Electoral Act 1992 provides that the Clerk of the Dáil shall hold the office of 'Registrar of Political Parties'. To be registered, a party must fulfil the criteria set out under section 25(4) of the 1992 Act concerning its membership, organisation and structure. Costs arising in meeting these responsibilities are met through the administrative budget of the Houses of the Oireachtas Commission as part of the responsibilities of the Clerk.

The registration of political parties was first provided for under the Electoral Act 1963 for the purpose of regulating the descriptions of political parties on ballot papers at local government and Dáil elections (Sinnott et. al., 2008, p.9).

The Geary Institute report recommended that the registration of political parties should be a responsibility assigned to an electoral commission (ibid., p.68). This would need to be considered in assigning functions to the new body.

2.7. Referendum Commission

The Referendum Act 1998, as amended by the Referendum Act 2001, provides for the establishment of a Referendum Commission whenever a referendum falls to be held. Its purpose is, "to explain the subject matter of referendum proposals, to promote public awareness of the referendum and to encourage the electorate to vote at the poll" (Referendum Commission, 2014). Similar to a Constituency Commission, after it performs its functions it ceases to operate. A Referendum Commission must report to the Minister for the Environment, Community and Local Government within 6 months of a referendum and it then stands dissolved one month after this report is submitted¹².

Section 2 of the Referendum Act 1998 sets out the membership provisions for a Referendum Commission. The Chairperson must be a former judge of the Supreme

¹² Section 14 of the Referendum Act 1998

Court or the Court of Appeal or the High Court, or a judge of the High Court. The ordinary members are the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil and the Clerk of the Seanad. Section 2(3) of the 1998 Act provides that the Commission shall be independent in the performance of its functions. Section 2(13) of the Act provides that the Minister for Finance shall make available to a Commission reasonable facilities and services (including clerical, secretarial and executive services). In practice, the secretariat to the Commission is provided by the Standards in Public Office Commission with necessary facilities provided by the Office of the Ombudsman (Referendum Commission, 2013b, p.20).

The operating costs of the Referendum Commission at recent referendums are set out in the table which follows. These costs are met from the Votes of the Government Departments sponsoring the referendums. The information on costs is from the respective reports prepared by each of the recent Referendum Commissions.

Table 7 – Referendum Commission Costs

Referendum	Year	Cost
Seanad abolition/ Court of Appeal	2013	€2.386m
Children	2012	€1.706m
European Fiscal Stability Treaty	2012	€2.053m

(Referendum Commission, 2012; 2013a; 2013b)

These are largely accounted for by one-off costs relating to the fulfilment of the Commissions' mandate and include expenditure on advertising, printing, design, publications and awareness activities. The reports of the respective Referendum Commissions submitted to the Minister following each of these referendums have recommended the establishment of a permanent independent body, such as an electoral commission. The most recent report prepared after the referendums on Seanad Abolition and the establishment of a Court of Appeal noted that:

Previous Commissions have recommended permanent legal status for the referendum commission and this Commission supports that recommendation. This would give continuity to the commission and potentially enable earlier preparation and planning. The Commission recognises that this recommendation would require legislative change. (2013b, pp.21-22)

Assignment of the responsibilities of the Referendum Commission to a permanent electoral commission arises for consideration. Were this to happen the matter of ensuring the appropriate management and productive deployment of resources to other duties between referendums would need to be a factor.

2.8. The cost of running elections and referendums

The costs associated with running elections and referendums are predominantly met from the Central Fund. Involving as this does the marshalling of logistical resources to enable some 3.1 million eligible people throughout the State to vote at 5,689 polling stations in 43 constituencies¹³ and for the resulting votes to be then counted, the costs can be relatively significant. The costs associated with running the most recent general and presidential elections are set out in the table below.

Table 8 – General and Presidential Elections Costs 2011

Expenses	General Election 2011	Presidential Election 2011
Taking the poll and counting the votes – returning officers	€12,282,186.25	€16,465,511.19
Printing – Office of Public Works	€593,768.72	€945,749.45
Delivery of polling cards and postal ballots - An Post	€1,751,229.24	€1,794,849.60
Delivery of free election communications on behalf of candidates and parties – An Post ¹⁴	€11,606,616.72	€10,245,459.36
Reimbursement of candidate election expenses ¹⁵	€2,842,806.64	€600,000
Total:	€29,076,607.57	€30,051,569.60

(Dáil Éireann, 2012a; DPER, 2014)

The costs associated with the 2011 Presidential election include the costs of running a bye-election and two referendums on the same day, but do not incorporate the costs of the Referendum Commission which are in Table 7.

¹³ The number of polling stations at the referendums in October 2013.

¹⁴ Candidates at a Dáil, Presidential, European Parliament and Seanad (university seats) election can send an item of post free of charge to each person on the electoral register in their constituency. Postage costs are met by the state. These provisions are set out in section 57 of the Electoral Act 1992, section 32 of the Presidential Elections Act 1993, section 22 of the European Parliament Elections Act 1997 and section 78 of the Electoral Act 1997. For the 2014 European elections items were sent to each household which resulted in cost savings.

¹⁵ A candidate at a Dáil, European Parliament or Presidential election who receives at least one quarter of the quota of votes can claim a reimbursement of election campaign expenses up to a maximum amount of €8,700 (Dáil), €38,092 (European Parliament) and €200,000 (Presidential). These provisions are set out in sections 21 and 21A of the Electoral Act 1997.

The two most recent referendums were held on the same day in October 2013 and dealt with the question of Seanad abolition and the establishment of a court of appeal. The most recent single referendum was the Children Referendum in November 2012. Details of the costs arising are set out in table 9 below.

Table 9 – Referendum Costs

Expenses	Children - 2012	Seanad Abolition and Court of Appeal - 2013
Taking the poll and counting the votes - Returning Officers	€9,236,856	€10,009,063
National count centre - Referendum Returning Officer	€60,000	€57,959
Printing and equipment - Office of Public Works	€342,696	€378,168
Delivery of postal ballots and of polling cards incorporating the Statement for the Information of Voters - An Post	€1,496,183	€1,447,984
Total	€11,135,735	€11,893,174

(DPER, 2014)

Note: The above expenses do not include the Referendum Commission's costs which are in Table 7

The two most recent elections for the European Parliament and to local authorities took place in June 2009 and May 2014. In each instance the European and local elections were held on the same day. Costs for the 2014 elections are not yet available. Costs for the 2009 elections are set out in the table below. Two bye-elections were also held on the same day.

Table 10 – Local and European Elections Costs 2009

Expenses	Cost
Taking the poll for the local and European elections and counting the votes at the European elections - Returning Officers	€16,475,191.84
Printing - Office of Public Works	€508,748.48
Delivery of polling cards and postal ballots – An Post	€1,795,566.53
Delivery of free election communications on behalf of candidates and parties – an Post	€11,521,187.82
Dublin Central bye-election – nomination process, count – Returning Officer	€156,141.18
Dublin South bye-election - nomination process, count – Returning Officer	€212,136.84
Total	€30,668,972.69

(DPER, 2014)

3. Governance, institutional design and accountability in the creation of new agencies and electoral management bodies

3.1 Overview of electoral governance and issues in creating new public bodies

This section sets out an overview of issues to be considered in setting up an electoral commission and examines principles of good governance in public bodies that can inform this task. The circumstances of the proposed reforms are somewhat different to those that often prevail when electoral commission structures are the subject of policy debate. There is something of a paradox whereby electoral governance attracts serious attention not when it routinely performs well but when problems arise (Elklit and Reynolds, 2005). This observation points to both the opportunities and challenges of setting up a new body.

The Irish electoral system enjoys a high degree of legitimacy amongst citizens and those involved in politics. The monitoring visit by the Organisation for Security and Cooperation in Europe in advance of the 2011 general election reported that there is, “a very high level of confidence of all stakeholders in the electoral process and the election administration” (OSCE/ODIHR, 2011, p.3). Notwithstanding this observation, it recommended that consideration be given to the establishment of a permanent electoral commission in Ireland.

The absence of controversy surrounding the present structures can potentially provide the time and space necessary to consider and put in place a new set of agreed governance arrangements that most appropriately suit the particular features of Ireland’s electoral system. While this represents an opportunity, there is also a challenge in seeking to improve upon the present structures, whilst not undermining elements that are effective and that have high levels of public credibility and support.

Elections by their nature should give rise to outcomes that cannot be predicted. In a free and fair election the result should not be known in advance. There is a paradox whereby this substantive electoral uncertainty on the outcome requires procedural certainty on the part of the body charged with its administration. It has been observed that “it is this paradox that defines the central task of electoral governance: organising electoral uncertainty by providing institutional certainty” (Mozaffar and Schedler, 2002, p.11).

There is evidence to show that the design of organisational structures and governance arrangements does matter in the creation of public bodies. An electoral commission is a specific type of public body so the design of its structures can serve to enhance its potential to act effectively. However there is rarely political consensus around the optimal organisation of governmental tasks and a specific ‘correct’ structure for public administration is unlikely to be found (MacCarthaigh, 2012, p.129). Nevertheless institutional design is important in the creation of new public

bodies and can improve the likelihood of them achieving their aims and performing well (Gill, 2002).

Laking (2002) advises that a decision by government to create a new agency should be made on the basis of the organisations' contribution to the general principles of good governance in the public sector. He proposes that the purpose of the body should be clear and that the benefits of the organisation should be defined in one or more of the following two sets of criteria:

- *improved economy, efficiency or effectiveness through specialisation of function;*
 - *improved public credibility of governmental operations through enhanced impartiality or legitimacy of decision making and operations.*
- (2002, p.274).

Both of these purposes are valid in relation to the establishment of an electoral commission. However, issues of economy and efficiency on the one hand, and of credibility and legitimacy on the other, give rise to different considerations. This is particularly the case in respect of accountability relationships which are a vital element in the external governance of public bodies and their oversight by elected representatives and citizens. Mayer sums up a crucial question in the design of electoral commission structures as being, "how best to balance neutrality with the need for accountability" (2007, p.3). Similar considerations have been identified in the design of corporate governance arrangements for agencies, where a key challenge has been to find the right balance between accountability, autonomy, openness and performance management (OECD, 2002).

3.2 Models of electoral governance

In more recent decades the models of governance employed in the administration and management of electoral processes has emerged as a particular area of interest. At its most basic, the term 'electoral governance' is defined as a set of related activities that involves rule making, rule application, and rule adjudication, and constitutes "the wider set of activities that creates and maintains the broad institutional framework in which voting and electoral competition take place" (Mozaffar and Schedler, 2002, p.7).

The generic term 'electoral management body' is used to describe an organisational structure that administers elections and associated activities. In defining the constituent elements of such a body the International Institute for Democracy and Electoral Assistance makes a distinction between what are described as 'core' and 'other' activities. 'Core' functions are seen as:

- determining eligibility to vote;
- receiving and validating nominations;

- conducting polling, and;
- counting / totalling votes.

‘Other’ responsibilities are listed as:

- making electoral policies;
- planning;
- training;
- voter information;
- delimiting electoral boundaries;
- electoral logistics;
- the electoral register;
- the registration of political parties;
- the regulation of political funding;
- party candidate selection;
- regulating electoral conduct;
- regulating the media during campaigns;
- regulating opinion polls;
- training and accreditation of observers;
- the announcement and certification of results;
- adjudicating electoral disputes;
- reviewing the electoral framework;
- advising on reform issues, and;
- participating in electoral assistance overseas.

(IDEA, 2006, p.63).

In the Irish system these ‘core’ and ‘other’ functions are performed by various governmental organisations and office holders. Some, like the regulation of the media and opinion polls, do not form part of the remit of electoral management bodies¹⁶.

Three general classifications are used for describing systems of electoral governance (IDEA, 2006, pp.7-8). The first, the ‘Independent’ model, is institutionally independent and autonomous from the executive branch of government. The second is termed the ‘Governmental’ model where elections are managed through a government department and/or through local authorities. The third is described as the ‘Mixed’ model with a dual structure involving a supervisory body independent of government and an implementation body that is part of a

¹⁶ The preparation of opinion polls is not subject to statutory regulation, but there are industry standard guidelines in operation – e.g. ESOMAR – the European Society for Opinion and Market Research (www.esomar.org). Legislation dealing with the regulation of the media in relation to elections and referendums is the responsibility of the Minister for Communications, Energy and Natural Resources having regard to his responsibility for the Broadcasting Acts. The Broadcasting Authority of Ireland has statutory responsibility under the Broadcasting Act 2009 for the regulation of content across all broadcasting, including in respect of the coverage of elections (see www.bai.ie).

government department. Ireland is regarded as coming under the second of these classifications, utilising the ‘Governmental’ model.

Data on electoral governance in 219 jurisdictions shows that 66.2% follow the ‘Independent’ model, 20% the ‘Governmental’ model and 10.9% the ‘Mixed’ model, with the remaining 2.9% falling outside of these classifications (ACE, 2015)¹⁷.

The ‘Governmental’ model does not imply a lack of independence, impartiality or trustworthiness and can be found in many established democracies, particularly in western Europe. Ireland’s current system is therefore in the same category as many of its peers. The Norwegian electoral management body is described as “Governmental, decentralised and trusted” (Vollan, 2006). Sweden which has a decentralised system of electoral administration is categorised as “Governmental in form, independent in practice” (Gratschew, 2006). Elmendorf understands independence in electoral administration as comprising the two features of non-partisanship and insulation from political or administrative retaliation (2006, p.428). The institutional design of the new electoral commission would have to meet both tests to be considered as being independent. Based on the international monitoring of Irish elections, the performance of the present system of electoral governance indicates that it already scores highly on these criteria. That is not to say that improvements in the present institutional arrangements can’t be made.

Before looking at organisational form, Gill advises that it is important to examine other factors including the nature of the underlying issue being addressed, the policy intent and alternative interventions to best achieve that intent. As a starting point, he suggests that “good organisational design is built on a bottom-up analysis including the critical mission, constraints, culture and incentives” (2002, p.33).

Some ground work has already been undertaken to consider issues arising. As noted earlier, in 2008 the then Department of the Environment, Heritage and Local Government commissioned a ‘*Preliminary Study on the Establishment of an Electoral Commission in Ireland*’ which was undertaken by the Geary Institute in UCD.

3.3. Principles of good governance

Laking defines ‘good governance’ as being present when governments and their organisations act legitimately in accordance with the law, meet publicly declared standards of performance, and account to citizens and other stakeholders in terms of those criteria of legitimacy and standards of performance (2002, p.269). These can

¹⁷ This data is compiled by the ACE Electoral Knowledge Network which is a collaborative project between nine organisations: the International Institute for Democracy and Electoral Assistance, the Electoral Institute for Sustainable Democracy in Africa, Elections Canada, Electoral Institute of Mexico, International Foundation for Electoral Systems, United Nations Department of Economic and Social Affairs, United Nations Development Programme and United Nations Electoral Assistance Division. <http://aceproject.org/>

be seen as overarching standards of ‘good governance’ to be applied to public organisations generally and to the proposed electoral commission.

The commitment to set up a new organisation in the form of an electoral commission goes somewhat against the trend in Ireland in recent years where Government policy has focused on rationalising agencies and public bodies. The previous decade, from the 1990s on, had seen a ‘wave’ of agency creation (MacCarthaigh, 2010). While there are many different definitions of what constitutes an ‘agency’, there is a common thread emphasising their separate identity and arms-length relationship to the traditional government department that may have previously performed the same functions.

Internationally, three main motives have been identified to explain the creation of such bodies (OECD, 2002). The first refers to a widely-held desire to improve the efficiency and effectiveness of government entities with specialised functions. The second reason focuses on improving legitimacy and the expertise of decision making. The third emphasises political motives, where a new body may be set up as a political response to demonstrate commitment to an issue or cause. To these reasons can be added what are described as ‘isomorphic’ factors, where practice in another country is copied either out of necessity or choice (McGauran et. al, 2005, p.7).

One benefit of this recent experience in Ireland and elsewhere is that a lot of learning has taken place around the development of agency-type bodies and in how they can contribute to the achievement of public policy objectives. This has been the particular focus of ‘distributed public governance’, an area of study concerned with “the protection of the public interest in the increasingly wide variety of governmental organisation forms” (OECD, 2002). The strengths and weaknesses of agency-type bodies in the Irish context have been the subject of specific examination in the 2008 report by the OECD report, *‘Ireland: Towards an Integrated Public Service’*. Particular criticisms have been that goals in the creation of agencies have not tended to be explicitly defined with insufficient consideration given to governance arrangements.

‘Electoral governance’ has grown as a specific field of study in its own right. While it was acknowledged that there has previously been a dearth of research on election administration generally (Alvarez et. al, 2006), some studies have emerged. One that specifically examined electoral commission structures observed that while numerous contextual factors are seen to shape the process of electoral governance, institutional choice and variations in design do matter (Mozaffar and Schedler, 2002). Similar views have been expressed in relation to the design of public bodies generally.

3.4. Organisational form and the establishment of new public bodies

Gill in posing the question, “when are different organisational forms best used?”, classifies various types of governmental organisation and sets out principles that can be utilised in identifying forms that most appropriately suit particular policy objectives, political considerations and administrative requirements (2002, p.28). A distinction is made between the traditional departmental structure, ‘departmental agencies’ with a degree of managerial autonomy but which are controlled directly, and thirdly, agencies which are indirectly controlled and operate more independently. The two standards of ‘performance’ and ‘legitimacy’ are used by Gill to assess the most appropriate circumstances for using different organisational forms.

As a principle, Gill suggests that the traditional ministry or department can be considered most appropriate where the nature of the task makes measurability of performance difficult and where there is a need for direct ministerial oversight for the purposes of legitimacy. Examples cited are policing and defence.

The ‘departmental agency’ on the other hand is preferred where it can “improve performance through better focus and more performance contracting when there is a cohesive functional grouping of administrative tasks, predominantly delivering tangible services” (ibid., p.42).

What are termed by Gill as ‘public law administrations’ operate at arm’s-length from government departments and with a degree of autonomy. These are most appropriate where a governance board can provide strong leadership and effective monitoring and the legitimacy of decision-making can be improved for a cohesive group of functions.

In Ireland three principal types of agency form have been identified using the labels of Types ‘A’, ‘B’ and ‘C’ (MacCarthaigh, 2012). ‘Type A’ is seen as the classic type comprising a state agency operating at arm’s length from the government department to which it is accountable. Most would have a board of directors. ‘Type B’ agencies have less autonomy and undertake executive functions under the direct control of a department. This is more akin to the ‘departmental agency’. ‘Type C’ agencies, which are smaller in number, have a higher degree of independence and comprise bodies such as the Revenue Commissioners, the Director of Public Prosecutions and the Office of the Attorney General (ibid., pp.136-137).

The system of electoral governance as it presently operates in Ireland was described in Section 2 of this paper. The electoral commission model is most closely matched to what is described as a ‘public law administration’ body. It also has characteristics consistent with the Type ‘A’ and ‘C’ agency referred to above.

Currently, electoral administration in Ireland combines elements of the traditional departmental model of governance, with certain functions carried out with varying

degrees of autonomy by, amongst others, local authorities which are responsible for maintaining the register of electors, and returning officers who act independently with reference to responsibilities prescribed in law. There are statutory bodies established for specific purposes in the form of the Constituency Commission (for Dáil and European Parliament constituencies), Local Electoral Area Boundary Committee and Referendum Commission. These stand dissolved upon the presentation of their reports and the relevant timelines for their establishment and operation are set out in law. The Standards in Public Office Commission on the other hand is a permanent statutory body. The Clerk of the Dáil is the Registrar of Political Parties.

The entire system is underpinned by law with the Geary Institute study on the establishment of an electoral commission citing twenty-seven separate Acts of the Oireachtas dealing with electoral arrangements (Sinnott et. al., 2008, p.78). A further ten pieces of primary electoral legislation have been enacted since that study was published. A composite list of this legislation is included as Appendix 1. Further amending electoral Bills are planned for 2015¹⁸. The creation of an electoral commission will, in addition and of necessity, give rise to significant legislative change.

Gill further suggests that organisational form can be used to signal independence. Majone (1996) uses the term 'non-majoritarian institutions' to describe agency-type bodies with a high degree of independence, and explains why a key rationale behind their creation is to provide credibility and consistency over time in sensitive policy areas. He makes the point that contemporary democracies need politically independent institutions to protect constitutional values and to perform other more routine functions. These observations were informed by the potential benefits that can be achieved by assigning responsibility for regulatory tasks to an independent body.

Having regard to these observations, there is a potential value in having certain electoral governance tasks performed by an independent statutory body, as they are currently by the Standards in Public Office Commission and by the Constituency and Referendum Commissions. A key issue to be considered in setting up an electoral commission is what other tasks would be assigned and in what way would the body be configured.

In addressing issues of organisational form and governance, the doctrine encouraged by the OECD since the mid-1990s is to have regulatory agencies that are independent of a government department, operating according to clear policy

¹⁸ The Government Legislation Programme provides for the publication in 2015 of a Seanad Electoral (University Members) (Amendment) Bill to extend the university franchise at Seanad elections. Additionally, there is a commitment to publish in 2015 an Electoral Commission Bill and an Electoral (Amendment) (Referendum Spending and Miscellaneous Provisions) Bill.
http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/

and staffed by experts (Rones, 2007, p.69). The nature of electoral governance and the widely accepted normative objective of having it removed from the realms of majoritarian politics would support the position that it be placed under the control of an autonomous institution like an electoral commission.

3.5. Independence, accountability and performance

Potential benefits of greater autonomy would arise through improved legitimacy, transparency and public confidence. However, Verhoest et. al. note that autonomy may not necessarily lead to improved performance, observing that the relationship between the two concepts is inconclusive (2004). It should therefore not be assumed that the independence, per se, will lead to a more efficient and effective system. This does not detract from the potential importance of both objectives, but it suggests that they should be treated as separate considerations.

How the independence of the electoral commission is manifest in practice is a central issue in setting up the body. The concept of autonomy is open to different interpretations and definitions. Verhoest et. al. see autonomy as comprising six different dimensions which come under the headings of: 'managerial', 'policy', 'structural', 'financial', 'legal' and 'interventional' autonomy (ibid., pp.105-107). They conclude that there is a danger in using the formal legal status of a public organisation as the only guide in judging whether it is autonomous. The relevance of this point to the task of setting up an electoral commission is that establishing its independence in law is a necessary condition of autonomy, but would not be the only condition. The organisational structure, operating environment (including resourcing) and relationship with the government are factors to be taken into account.

With autonomy comes the challenge of having appropriate accountability mechanisms in order to ensure that a public body fulfils its mandate. As Dubnick notes, "modern governance – public as well as private – is at its core based on some form of accountability (2007, p.2). Achieving a balance between independence and accountability is a challenge for public bodies, and is a particular issue that has emerged in the organisational design of electoral commissions (Mayer, 2007).

Electoral management gives rise to competing priorities that can be difficult to reconcile. Mozaffar and Shedler (2008) describe these as the three 'conflicting imperatives' of administrative efficiency, political neutrality and public accountability. These are in conflict because no single imperative can be neglected, nor can they all be maximised at once. While the challenge is greater within emerging democracies, this concern would also be relevant for the institutional design of electoral commissions in all countries, including Ireland.

There are difficulties in precisely specifying how accountability should be structured in a given situation. As Dubnick observes, "there is no known metric for accountable governance" (2007, p.17). However, experience in other countries points to both the

desirability and necessity of having accountability mechanisms linked to democratic institutions. These include formal reporting arrangements to a designated parliamentary committee, the identification of a specific government minister as a liaison with the electoral commission, audit by the independent state auditing body and the publication of documents against which performance can be assessed – for example, a statement of strategy, budget plan and annual report (IDEA, 2006, pp.223-239).

From an operational point of view, accountability involves a focus on “achieving results and performance, which can be formulated as efficiency, effectiveness, quality, value for money and responsiveness” (Verhoest et. al., 2010, p.26).

Performance in the operation of agencies can be assessed in different ways. A distinction can be made between ‘internal’ and ‘external’ performance. Internal performance can include the assessment of risks, efficiencies and adequacies of management and operational systems and processes. External performance has a focus on measuring delivery in relation to financial costs, with ‘efficiency’ used to assess how well the organisation used its resources. ‘Effectiveness’ assesses the extent to which objectives were achieved (McGauran et. al., 2005, p.17). Whatever responsibilities are assigned to an electoral commission, it would be necessary to put in place a performance management and reporting framework, with a focus on both ‘internal’ and external’ aspects. Specific performance measurements and indicators would also need to be developed.

As well as potential benefits, there are also risks associated with the creation of new public bodies. Laking (2005) describes how the risks come under three broad headings. The first arises when new organisations are set up without clear public policy justification, the second when the rules and systems for external direction are inadequate, while the third risk factor is concerned with shortcomings in internal management arrangements (ibid., p.14). Organisational form can have an important part to play in getting the governance right (ibid. p.17). However, the experience with agency-type bodies in Ireland suggests that the relationship between governance structure and function can sometimes be inappropriately matched (OECD, 2008, p.300).

3.6. A new electoral commission – governance issues arising

Having looked at issues arising with the creation of public bodies in general and electoral management bodies in particular, a number of issues emerge as being potentially significant.

The two standards of ‘performance’ and ‘legitimacy’ are regarded as being vital in deciding on the most appropriate organisational form to undertake public administration tasks (Gill, 2002). The decision to set up a new public body should be based either on considerations of improved economy, efficiency and effectiveness,

or on its contribution towards enhanced impartiality and public credibility in delivering public policy (Laking, 2002). These concepts, as well as accountability are seen to encapsulate the principles of ‘good governance’. Measures to enhance credibility and legitimacy, including the appointment of appropriate numbers of skilled staff and the allocation of supporting resources, can give rise to costs.

According to Gill (2002), an independent statutory body is an appropriate type of governance structure where there is a cohesive group of functions, where the board or governing body can oversee leadership and monitoring. What these principles suggest is that it would be important to clearly identify the functions that are to be assigned to the electoral commission. How its membership and responsibilities are defined should also be a key consideration. The form of governance and structure the electoral commission should be tailored to match the functions of the body.

In the next section proposals for change that have emerged in recent years are reviewed while in Section 5 the manner in which these different issues are addressed in other countries is assessed.

4. Review of proposals for a new electoral management body

Some or all of the responsibilities currently assigned to different bodies and office holders could be assigned to an electoral commission. This section considers recommendations that have been made from different quarters to establish such a body, which has been variously titled as an ‘Electoral Commission’, ‘National Electoral Office’, ‘Office of the National Electoral Officer’ and ‘Electoral and Public Offices Commission’. These proposals contain differing levels of detail on what functions should be allocated to the new organisation, and on its possible structures. Although there has been an emerging consensus in favour of a separately formed independent electoral management body, there is a range of views on the responsibilities that should be assigned to such a body.

4.1. Programme for Government and reports proposing a new body

The 2011 Programme for Government provides for an electoral commission that is to subsume the functions of existing bodies and the Department of the Environment, Community and Local Government. It is not prescriptive in its detail beyond these points. A more complete picture will therefore need to be developed around what the new electoral commission is to look like. Recommendations and commitments to establish such a structure have been made by different bodies in recent years. Some of these proposals have common or overlapping elements. Others focus on particular responsibilities.

In Section 3 of this paper it was identified as a principle of good governance that the functions of a new public body should be clearly defined when it is being set up and that these should inform its organisational design. A number of different recommendations to establish an electoral commission are now reviewed in order to provide a synthesis of recent policy proposals and to inform consideration of issues arising.

There is a reference in the 2011 Programme for Government to the electoral commission being created in the context of “open government legislation”. Such legislation is not detailed in the Programme, however in 2010 Fine Gael published draft legislation in the form of an ‘Open Government Bill’ which provided for the creation of a ‘National Electoral Office’ that would be “the central authority of all matters connected with the conduct of elections and the conduct of elected officials” (Fine Gael, 2010, p.92).

In 2010 the Joint Oireachtas Committee on the Constitution published a report reviewing the system for the election of members to Dáil Éireann. The Committee made 29 recommendations. The first four of these came under the heading of ‘An Independent Electoral Commission’, and proposed the following:

1. *The establishment of an independent Electoral Commission, as an urgent priority, with responsibility for the administration and oversight of elections and referendums.*
 2. *That the new Electoral Commission be formally established under the Constitution in order to enhance its legitimacy and guarantee its independence.*
 3. *That the new Electoral Commission assume responsibility for implementing the Committee's recommendations, particularly the recommendations concerning the registration of voters, postal voting, voter education programmes, the drawing of constituency boundaries, the counting of surplus vote transfers and examination of the design of the ballot paper.*
 4. *That membership of the new Electoral Commission includes former members of the Houses of the Oireachtas.*
- (Oireachtas, 2010, p.17)

In 2008 the Joint Oireachtas Committee on the Environment, Heritage and Local Government prepared a report on the electoral register. The Committee recommended that legislation should be drafted to:

establish the Office of the National Electoral Officer to carry out a clearly defined mandate:

- *for preparing and maintaining the National Register of Electors, and*
- *for the operation of elections.* (Oireachtas, 2008, p.18)

The Committee proposed the transfer of existing functions from local authorities and the DECLG to the National Electoral Officer, but recommended that the Department retain overall responsibility for policy and legislation on electoral matters. The functions of the Department of Finance in respect of electoral matters were also to be transferred¹⁹. An 'Office of National Returning Officer' was proposed. The report recommended that adequate resources be provided to the new structure but did not measure or quantify these. Recommendations were also made on measures to improve the registration of voters.

The 2008 study by the Geary Institute undertaken on behalf of the DECLG examined a particular commitment contained in the 2007 Programme for Government which envisaged the electoral commission taking on responsibility for boundary reviews, the electoral register and political funding. The electoral commission was also to have the role of making recommendations on the reform of political funding laws (Dept. of the Taoiseach, 2007, p.86).

When the 2007 Programme was reviewed in 2009, these proposed responsibilities were expanded upon. In addition to the roles previously identified, provision was

¹⁹ These functions are now split between the Department of Finance and the Department of Public Expenditure and Reform.

made for the new electoral commission to run voter education programmes and have an advisory role on a wide range of electoral reform issues dealing with women's participation, votes for emigrants, lowering the voting age, political opinion polls and alternative election arrangements (Dept. of the Taoiseach, 2009, p.32).

The Geary Institute study was based on the 2007 Programme for Government, as opposed to the revised 2009 Programme. It identified four potential options. The first was to establish a completely new electoral commission to perform the full range of functions intended for the body from the beginning. The second option was to take the Standards in Public Office Commission as the basis for a new electoral commission and make the necessary amendments to confer a complete set of new functions upon it immediately.

The third option was to create the new body in two phases. In phase one, the functions of SIPO would be extended to include those of the Constituency Commission and the Registrar of Political Parties along with a new function of co-ordinating and monitoring the maintenance of the register of electors. Then in phase two, SIPO would be renamed as the electoral commission.

In the fourth option, which was the one recommended, it was proposed that the new body would be titled the electoral commission from the outset. The functions of SIPO, the Constituency Commission, the Referendum Commission and the Registrar of Political Parties would all be transferred in phase one. In phase two the existing legislation would be replaced with an Act amending and consolidating electoral law and conferring a wider range of functions on the new electoral commission (Sinnott et. al., 2008, pp.54-57).

It can be observed that the electoral commission proposed in the 2007 and 2009 Programme for Government was to have a significant advisory role on electoral and political reform issues. The circumstances that then prevailed in relation to this policy area have largely changed. The Electoral (Amendment) (Political Funding) Act 2012 implemented a series of reforms to political funding regulations. Measures to improve gender balance in candidate selection for Dáil elections were also enacted.

The 2011 Programme for Government provided for the establishment of the Convention on the Constitution to examine a series of political reform questions. In 2013 it considered, and made recommendations on a number of issues including the nomination requirements to stand in a presidential election, lowering the voting age and on the Dáil electoral system.

When examining the Dáil electoral system at its meeting in June 2013, the Convention recommended the establishment of an electoral commission on a vote of 97% in favour. The resolution was not prescriptive about the functions to be

performed by the body. At the same session, the Convention voted overwhelmingly in favour of extending polling hours and days, greater access to postal voting, improved accuracy of the electoral register, measures to improve voter turnout and education programmes in school (Convention, 2013). On 1 April 2014 the Taoiseach confirmed in the Dáil that the Government had accepted the recommendation of the Convention on the establishment of an Electoral Commission²⁰.

In June 2014 the Joint Oireachtas Committee on Public Service Oversight and Petitions published a report on the design and layout of ballot papers used in the Seanad abolition referendum in October 2013. The report recommended that a permanent electoral commission be established with a mandate to conduct research which should include:

- *how to better distribute information, including through the use of internet and social media technologies;*
- *Holding multi-referenda or a national election and referendum on the one day;*
- *The colour and lay out of ballot papers;*
- *Recording, classification and collation, of statistical returns by Returning Officers to the Electoral Commission in relation to spoiled votes.*

(Oireachtas, 2014, p.15)

4.2. Policy proposals from the 2011 general election and since

The establishment of an electoral commission featured in the manifestos of most political parties at the 2011 general election. Fine Gael's proposals were based on its 'Open Government Bill'. The manifesto proposed that a new independent electoral commission be established and that its first priority would be dealing with the electoral register. It would be formed:

by taking some of the key functions of the Franchise Section of the Department of the Environment, and merging them into SIPO. In addition to compiling an accurate register of electors, the Commission will be responsible for:

- *Electoral administration and oversight, including election spending;*
- *Revising constituencies where necessary;*
- *Maintaining the Register of Lobbyists;*
- *Providing advice to the Minister on non-delegated matters. e.g. fixing of poll dates; and*
- *Overseeing political funding.*

(Fine Gael, 2011, p.9).

²⁰ The Government response to the recommendations in the Fourth Report of the Convention was delivered in the Dáil on 18 December 2014: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014121800046?opendocument#TT01000>

The Labour Party proposed an ‘independent Electoral and Public Offices Commission’ that would “take over the powers of the Standards in Public Office Commission and the responsibilities of local authorities and the Department of the Environment in relation to the electoral register and elections”. This also included a commitment “to overhaul the terms of reference for the revision of constituencies to ensure the fairest and most proportionate distribution of seats possible” (Labour Party, 2011, p.9). In 2012, Ciarán Lynch T.D. (Labour Party) introduced a Private Members Electoral Commission Bill, describing its purpose as:

to create an electoral commission and transfer to it a range of functions performed by the Minister, the SIPO, the referendum commission, the constituency commission, local authorities and the Clerk of the Dáil. The Bill also sets out to provide for a new national register of electors based on the PPS number as a unique identifier of registered voters. (Dáil Éireann, 2012b)

The 2011 Fianna Fáil general election manifesto proposed the creation of an electoral commission, “which will be charged with running elections, maintaining the electoral register and promoting turnout, particularly through public education about the working of the electoral system”. The Commission would “utilise the local authority network as in the present system but will separate national administration and oversight from the Department of the Environment” (Fianna Fáil, 2011, p.32). In a 2013 Fianna Fáil discussion paper titled ‘Real Political Reform’, it was stated that:

While they are run to a very high degree of integrity, there are clear issues that need to be addressed in the oversight of our system of voting. The absolute requirement to maintain public confidence in the administration of our elections requires that an independent Electoral Commission be established by legislation. The Commission would include the work carried out by the ad-hoc referendum commissions and the Standards in Public Office Commission.

(Fianna Fáil, 2013. p.15)

Sinn Féin’s 2011 general election policies proposed the establishment of “an Independent Electoral Commission to be responsible for voter registration and education”. It was envisaged that the commission “should also take on responsibilities currently held by the Constituency Commission, the Standards in Public Office Commission and the Referendum Commission” (Sinn Féin, 2011, p.10). The Green Party 2011 general election manifesto committed to having an electoral commission and continuing the work of the then Government to establish such a body (Green Party, 2011, p.15).

4.3. Common themes

In reviewing proposals from various sources, a number of common themes emerge. Responsibility for the register of electors features frequently and prominently. Most proposals see some form of centralised system of registration being managed by the new electoral commission, with it taking over responsibilities from local authorities. However, one recommendation would see the new commission overseeing the work

of local authorities which would continue to have a role. Given the emphasis placed on this responsibility in many of the proposals it is clear that improving the electoral register is an important driving force underpinning the desire to establish an electoral commission.

Most of the proposals envisage the electoral commission taking on functions currently performed by the DECLG, although a distinction can be made between its operational and policy roles. There is a general co-incidence of opinion that the operational responsibilities of the Department in respect of elections should transfer to the electoral commission. The oversight and administration of elections and referendums by an electoral commission is a common feature across the recommendations. However, the likely role to be played by the current returning officers in a new configuration is addressed to a relatively limited extent.

The Standards in Public Office Commission features prominently in the recommendations. It is seen variously, as a potential starting point with the electoral commission either being formed around this existing body, or alternatively as having its functions subsumed into the electoral commission from the outset.

The review of electoral boundaries and the role currently performed by the Constituency Commission is identified as a responsibility in many recommendations. A role for an electoral commission in respect of local electoral area boundaries does not feature in any of the recommendations reviewed. Electoral reform issues are mentioned to a limited extent, although in one particular instance it is proposed that the electoral commission would have an advisory role to the Minister. Voter education appears commonly and prominently. The possible legal status of the new commission was also addressed. If the recommendation of the Joint Oireachtas Committee on the Constitution was adopted, a referendum would be needed to give the electoral commission constitutional recognition.

In this section an overview has been provided of the levels of agreement and difference that currently exist across the political spectrum on the role and functions of an electoral commission in Ireland. These can usefully inform the next steps to be taken in developing specific plans to progress implementation of the Programme for Government commitment. The experience from other countries can also offer ideas, benchmarks of good practice and lessons that can be learned. This is the focus of the next section.

5. An international perspective

5.1. Learning lessons from other jurisdictions

There are potential benefits in setting up a new electoral management body. Evidence internationally has shown that independent electoral commissions are better for democratic stability and are more cost-effective than ad hoc arrangements (López-Pintor, 2000, pp.11-12). However, such bodies are differently configured across countries and can perform a differing range of tasks.

In Section 3, the importance of having clarity concerning the functions and purpose of newly formed public bodies was highlighted. Two sets of key reasons for the establishment of agencies in general and electoral commissions in particular were identified as enhanced legitimacy and public confidence on the one hand, and improved performance and cost-effectiveness on the other. It was also shown that an important consideration in institutional design involves achieving a balance between independence and accountability. However there is no generally applicable formula in determining how the relationship between these two elements of governance should be configured. A challenge in Ireland in developing the electoral commission structure will be to seek an optimal balance appropriate to its particular functions and organisational shape.

The international organisations that have reviewed arrangements in Ireland in recent years have expressed a preference for the electoral commission model. As a member of the Organisation for Security and Cooperation in Europe, Ireland is subject to election monitoring carried out by the Office for Democratic Institutions and Human Rights, or ODIHR. In its reports on the general elections held in Ireland in 2007 and 2011 the ODIHR proposed that an electoral commission be set up. It recommended that “consideration could be given to establishing a permanent independent commission or office in Ireland, that can focus exclusively on election administration matters at national level, with a view to further enhance consistency and efficiency in the conduct of elections” (OSCE / ODIHR, 2007, p.10). In 2009 the Council of Europe Group of States Against Corruption published an evaluation report on political funding arrangements in Ireland and commented favourably on the then Programme for Government Commitment to have an electoral commission. It expressed the expectation that, “its independence (in terms of both powers and resources) will be ensured and the experience developed by the Standards Commission will be taken on board as a credible tool to increase political transparency and accountability” (GRECO, 2009, p.25).

Examples of successful models can offer ideas in the creation of new public bodies. In this section examples of approaches from elsewhere that can potentially be adopted and used in Ireland are identified.

5.2. A framework for learning lessons

The practice whereby programmes or policy approaches from one jurisdiction are borrowed, adapted and implemented in another has been described as involving a process of ‘lesson-drawing’ (Rose, 1991). As Ireland moves towards having an independent electoral management body it is joining a majority of countries worldwide that now have such structures. While many of these electoral commissions are in relatively new democracies with circumstances somewhat different to Ireland’s, there are also particular examples of longer-standing democracies that have set up electoral commissions in recent years.

The term ‘policy transfer’ has also been used to describe the process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system are used in another (Dolowitz and Marsh, 1996; 2000). It has been observed that the involvement of a wider group of stakeholders can lead to fewer implementation problems. It has also been noted that positive as well as negative lessons can be learned. Particular factors relevant to the host country should be taken into account (ibid.).

In applying the concept of ‘lesson-drawing’ to practical situations, evaluation should be a necessary element. A particular technique called ‘prospective evaluation’ is recommended which combines evidence about how a programme works in one country, with analysis of the likelihood of the approach being successful elsewhere (Rose, 1991). This method is seen as an important element in establishing the ‘practicality’ of models used elsewhere.

In the paragraphs that follow the electoral management bodies in four jurisdictions are compared under a series of headings that deal with key aspects of their operations. The four countries - Australia, Canada, New Zealand and the United Kingdom - each have characteristics relevant to Ireland’s particular needs and all have a similar legal, political and administrative tradition. Each country has experienced significant structural reforms in electoral governance in recent years. In three cases – Australia, the United Kingdom and New Zealand – an electoral commission was established relatively recently. Their experiences are therefore directly relevant to the task being undertaken in Ireland. In the case of Canada, it moved towards having a permanent rolling electoral register during the 1990’s. As outlined in Section 4, a permanent centralised electoral register features in the policy proposals to establish Ireland’s electoral commission.

It is difficult to make direct financial comparisons between the jurisdictions, given their different responsibilities and scale of operation, but the New Zealand Electoral Commission with its centralised office provides some indication of the core staff that would be necessary to run such a body. However, in New Zealand responsibility for electoral registration is not undertaken directly by the Commission but by a separate body under its oversight. This highlights one of main problems in drawing

comparisons and learning lessons from other jurisdictions. While learning can be derived from good practices and relevant experiences elsewhere, the application of such learning is contingent on the particular circumstances in the country where the new programme is being adopted. As Mayer observes, “one cannot point to another country’s system and simply assume that it (or its admirable features) can be imported directly” (2007, p.15).

Notwithstanding this point, a review of electoral governance in four countries has identified potential lessons that can be learned and applied in respect of the functions and structure of Ireland’s electoral commission and when putting in place institutional arrangements for accountability and performance.

A move towards an individually-based electoral register has featured amongst the policy recommendations for change in Ireland reviewed already. Experiences in Canada, Northern Ireland and Great Britain offer lessons on specific approaches and provide evidence of the benefits that can result as well as the possible pitfalls.

New Zealand offers another model, where the register is maintained by the postal service under contract from the Electoral Commission. In Australia on the other hand its electoral commission has more direct responsibility for the register.

Publications produced by the electoral management bodies in the four countries are used as source materials along with analytical articles that have examined their particular governance arrangements.

In Section 3, factors were identified as being important when setting up new public bodies and in electoral governance design. Based on these, arrangements in the four countries identified are compared and analysed under the following headings:

- functions and membership;
- organisational structure;
- the electoral register;
- accountability;
- performance;
- finance and audit.

5.3. Functions and membership

Ireland is not unique as a mature democracy seeking to establish an electoral commission. The Australian Electoral Commission (AEC) was created in 1984 following the unanimous recommendation of a joint parliamentary committee on electoral reform. The committee included members from both houses of parliament and all political parties. Prior to this initiative, the style of engagement between the government and opposition on electoral matters was more partisan and confrontational (AEC, 2011a).

The new commission took on responsibilities previously performed by the Australian Electoral Office, which itself was established in 1973 and operated with a measure of autonomy under a government ministry. The setting up of the electoral commission coincided with the introduction of a registration system for political parties. Like Ireland, the main reason for that was to facilitate the identification of parties on the ballot paper (AEC, 2011b). In 1984 responsibility for boundary delimitation was also given to the AEC. Also like Ireland, this task was previously a matter of controversy with allegations of partisan political behaviour.

Currently the Australian Electoral Commission is assigned the following functions:

- maintain the electoral roll (register);
- manage federal elections and referendums, including the provision of information for voters at referendums;
- conduct ballots for industrial and commercial organisations;
- conduct public awareness and education activities;
- undertake electoral research;
- assist with overseas elections and referendums;
- administer election funding, financial disclosure and party registration requirements, and;
- support electoral redistributions (i.e. boundary changes).

(AEC, 2014a)

New Zealand's programme of electoral governance reform is more recent. On 1 July 2012 the New Zealand Electoral Commission completed a programme which began after the general election in 2008 to establish a single independent electoral agency. Previously three different entities performed separate functions. Up to 2008, the body then titled the New Zealand Electoral Commission was responsible for the registration of political parties, the allocation of broadcasting time and official funds to parties, oversight of party funding and expenditure, and voter education and information. The management of elections and voting was undertaken separately by an office holder called the Chief Electoral Officer in a system described as 'Governmental' (IDEA, 2006, pp.6-7). Compiling the register was the responsibility of New Zealand Post Ltd., the national postal service, through its Electoral Enrolment Centre.

New Zealand holds a general election every three years and the project was undertaken in two phases to avoid disrupting the general election and a referendum held in 2011. Phase one involved the amalgamation of the former Electoral Commission and the Chief Electoral Officer on 1 October 2010, based on amending legislation passed by the Parliament in 2010 (NZEC, 2014a). This legislation amended the Electoral Act 1993 which provides the statutory underpinning for New Zealand's electoral system²¹.

²¹ The functions of the Commission are set out in section 5 of the Act (NZ Parliamentary Counsel, 2014).

In phase two, responsibility for enrollment was transferred into the Electoral Commission on 1 July 2012, based on amending legislation enacted in 2011. However, the enrolment services continue to be provided by New Zealand Post Ltd. under contract to, and statutory delegation from, the Electoral Commission (NSEC, 2013, p.6).

The statutory functions of the New Zealand Electoral Commission comprise:

- compiling and maintaining electoral rolls;
- preparing for and conducting general elections, by-elections, and referenda
- registering political parties;
- allocating government monies and broadcasting time to registered political parties for radio and television broadcasting of electoral programmes;
- promoting compliance with electoral laws;
- promoting public awareness of electoral matters through education and information programmes;
- advising the Minister and Parliament on electoral matters;
- creating advertising and public information resources at referendums;
- making available information and providing guidance, advice and advisory opinions to assist political parties, candidates, and third parties to meet their statutory obligations;
- handling specialised arrangements for the Māori electorate.

(NSEC, 2014b, p.6)

A separate ad-hoc statutory body called 'the Representation Commission' undertakes reviews of electoral boundaries in New Zealand.

In the UK, general elections have historically been managed through the Governmental model, with returning officers operating locally (Greenwood, 2006). This is similar to the system used in Ireland, although returning officers in the UK are appointed from the local authorities. The UK Electoral Commission was set up in 2000 under the Political Parties, Elections and Referendums Act 2000. It has the following responsibilities:

- registration of political parties;
- applying the rules on party and election finance;
- publishing details of party and candidate funding and spending;
- setting standards for elections and electoral registration and reporting on these standards;
- promoting voter registration and providing information on how to vote;
- conducting research;
- undertaking policy work on electoral matters;
- organising and managing referendums.

(Electoral Commission, 2014a)

The UK Electoral Commission does not have responsibility for constituency boundary reviews which are undertaken separately by independent, non-political and impartial statutory boundary commissions. There are separate boundary commissions for England, Scotland, Wales and Northern Ireland (Parliament, 2014).

In contrast to Australia and New Zealand, the UK Commission is the electoral management body for referendums, but not for general elections. In a similar contrast, voter registration is the responsibility of locally-based Election Registration Officers operating through the local authorities. Amending legislation in 2006²² extended the responsibilities of the Commission to include performance monitoring and standard setting for local election officials who are officials of local authorities.

The UK Electoral Commission is headed by ten Commissioners who are supported by a Chief Executive and an executive team. All are independent in the performance of their duties and are appointed by the Queen (Electoral Commission, 2014c, p.28). Amending legislation in 2009 provided for an increase to the current number. Changes made at that time allow for four Commissioners to be put forward for nomination by political parties, although these cannot be involved in active politics or cannot be appointed as Chairperson of the Commission (HM Government, 2014).

In Canada the Chief Electoral Officer (CEO) is responsible for the administration of elections and referendums. The electoral management body that carries out the specific roles and responsibilities under the CEO's mandate is titled 'Elections Canada'. It is described as "an independent, non-partisan agency that reports directly to Parliament" (Elections Canada, 2008, p.7). The legal framework is set out in the Elections Canada Act. The Chief Electoral Officer is appointed by a resolution of Parliament. He or she serves until retirement or resignation and can only be removed by the Governor General of Canada for a specific cause, following a joint address to the House of Commons and Senate. The salary is set at that of a federal judge (Elections Canada, 2014a). This level of independence is regarded as a strength, but has also been described as a constraint because power is concentrated in the hands of one person (Gould, 2006, p.59).

Initially, the Canadian Chief Electoral Officer was responsible only for the administration of general elections and bye-elections. However, the mandate of Elections Canada has extended over the years and now includes the following main functions:

- administering electoral legislation;
- registering political parties, third parties, local electoral district associations, leadership contestants and nomination contestants of registered parties;
- maintaining the National Register of Electors;

²² The Electoral Administration Act 2006 which amended the Political Parties, Elections and Referendum Act 2000.

- appointing and providing instructions to returning officers in each of the 308 electoral districts (the returning officers are appointed by and report to the Chief Electoral Officer);
 - political funding disclosures and state payments to candidates and political parties;
 - ensuring physical access to be able to vote;
 - public information programs;
 - providing support to independent boundary commissions;
 - Providing expert advice to Parliament on electoral reform and legislation.
- (Elections Canada, 2008; 2014b)

It is a feature of each of the four electoral management bodies that their respective remits have progressively expanded over the years. In New Zealand in particular, the expansion occurred in a planned, systematic and structured manner. It is also a common feature that each of the bodies was established in law. This can be contrasted with electoral commissions that have constitutional recognition, which is the norm in the regions of Latin America, Africa and Asia (López-Pintor, 2000, p.20). The legislation establishing each of the electoral management bodies is prescriptive about the responsibilities that are assigned and typically contains a high level of detail.

The creation of the Australian Electoral Commission was provided for through amendments made to the Commonwealth Electoral Act 1918, the primary legislation which underpins the electoral system in Australia (CEA, 2014). The highly prescriptive character of the Act is cited as being important in maintaining the impartiality of the Commission, which is seen to carry out the law as laid down by Parliament. This can be contrasted with some countries where electoral commissions have much wider discretionary powers to make regulations governing electoral procedures – in Uruguay, for example, the electoral commission has legislative, judicial and implementation powers (IDEA, p.2006, p.50). Section 6 of the Commonwealth Electoral Act 1918 specifies that the AEC's membership shall comprise an active or retired judge of the Federal Court of Australia, the Electoral Commissioner, and a non-judicial member who must be the head of a government agency (CEA, 2014). The term of office is for a maximum of seven years and the appointments are made by the Governor General of Australia.

The Electoral Commissioner is also the chief executive and has the powers of a Secretary of a Government Department (AEC, 2013). The current commissioner was appointed in December 2014 for a 5-year term having previously served as deputy commissioner, and has a career background as senior public servant (SMOS, 2014). The third member is the head of the Australian Bureau of Statistics. The Chairperson and non-judicial member both hold their offices on a part-time basis.

What is termed an ‘Independent Crown Entity’ is the legal form used for the creation of agencies in New Zealand. The Electoral Commission was formed as such a body. The governing body is its Board, which comprises three members who are appointed by the Governor General following a motion of the House of Representatives (NZ Parliamentary Counsel, 2014). The current Board comprises the Chair, who is a retired Judge of the High Court, the Deputy Chair who is a professional company director and the Chief Electoral Officer (CEO), who is also the chief executive officer of the Electoral Commission. The current CEO was appointed for a five year term in 2010 (NSEC, 2014b, p.6).

The governance role performed by the appointed members of an electoral commission can be distinguished from the structures for its operational management.

5.4. Organisational structure

A feature of each of the operating structures of the four electoral management bodies is their division into a number of separate organisational units, each of which is headed by a responsible manager. These units can be broadly divided into two identifiable categories that typically co-exist within each organisation. The first type of unit has a focus on a specific functional responsibility like, for example, electoral registration or political funding regulation.

The second type of unit typically performs corporate services functions for the whole organisation, with examples that include personnel management, finance, legal services and information and communication technology. The division into organisational units observed in the four electoral management bodies is consistent with the wider experience of electoral management bodies internationally (IDEA, 2006, p.125).

The organisational structures of the four electoral management bodies under review are summarised in table 11.

Table 11 – Comparison of Organisational Structure

Australian Electoral Commission	New Zealand Electoral Commission	UK Electoral Commission	Elections Canada
<p>The national office is divided into eight 'branches':</p> <ul style="list-style-type: none"> • Education and Communications; • Elections; • Finance and Business Services; • Information Technology; • Legal and Compliance; • People Services; • Roll Management; • Strategic Capability. <p>(AEC, 2013, p.9)</p>	<p>There are 8 functional areas:</p> <ul style="list-style-type: none"> • Electoral Events • Enrolment* Services • Information Technology • Electoral Policy • Communication and Education • Statutory Relationships • Corporate Services • Field** <p>*The New Zealand Postal Service is contracted to undertake enrolment. **Temporary field staff include five Regional Managers, one Returning Officer per electorate, and approximately 18,000 Electoral Officials.</p> <p>(NZEC, 2014b, p.16).</p>	<p>There are four main 'directorates':</p> <ul style="list-style-type: none"> • Party and Election Finance; • Electoral Administration; • Communications; • Finance and Corporate Services. <p>(Electoral Commission, 2014a).</p>	<p>There are five 'sectors':</p> <ul style="list-style-type: none"> • Electoral Events; • Integrated Services, Policy, and Public Affairs; • Regulatory Affairs; • Human Resources; • Chief of Staff and Chief Audit Executive. <p>(Elections Canada, 2014b).</p>
<p>Population: 21.5m (2011)</p>	<p>Population: 4.4m (2013)</p>	<p>Population: 64.1m (2014)</p>	<p>Population: 33.5m (2011)</p>

Each of the electoral management bodies has a structure that is aligned with its scale of operations and specific responsibilities. This provides a potential lesson for Ireland. Depending on the responsibilities to be assigned, it would appear that a form of divisionalised organisational structure could appropriately be applied to Ireland's electoral commission, as it has been in the four countries reviewed.

When the Australian Electoral Commission was set up, long-standing state structures for electoral administration were retained. It has been observed that the retention of this grass-roots organisation enabled the new body to preserve and build upon the practical experience that had been developed over many years (Maley, 2001, p.26). There is a possible lesson here for Ireland and its current local administrative arrangements involving the returning officers for Dáil elections. The 2008 report by the Geary Institute favoured maintaining this local structure within the new electoral commission arrangements (Sinnott et. al., 2008, p.29). It can be observed that, as happened in Australia, such an approach would allow for the retention of a critical part of the current administrative apparatus, and would avoid the need to create a new local structure.

The New Zealand Electoral Commission offers some further potential lessons in this area. The Commission operates with a core staff of 25 full-time equivalents, and does not have a permanent field structure at local level (NSEC, 2014b, p.7). The population of the country at the most recent census in 2013 was some 4.4m (Statistics New Zealand, 2013), and is therefore somewhat comparable to Ireland's.

Like New Zealand, the UK Electoral Commission does not have a localised office network but does operate regional offices. The head office is based in London with offices in Wales, Scotland, and Northern Ireland, and three regional offices in England. There are 123 staff in total (Electoral Commission, 2014b, p.80). The size of Ireland and scale of its electoral operations may not warrant an equivalent regional office network, although this may depend on the responsibilities to be assigned to the new electoral commission.

In the Canadian model, authority is vested primarily in a single person rather than an electoral commission, with the Chief Electoral Officer appointing senior personnel. Elections Canada has some 500 staff working centrally in its offices (Elections Canada, 2014b).

5.5. The electoral register

Electoral registration has been identified in a number of the proposals reviewed in Section 4 as a specific responsibility that could be assigned to Ireland's electoral commission. There are some comparable experiences that Ireland could draw upon in this regard. In 1997 Canada moved to having a permanent electoral roll, which is now titled the 'National Register of Electors', with responsibility for its maintenance assigned to Elections Canada. Previously, registration was undertaken through a door-to-door canvass with a new register created once an election was called. The new system provided for the permanent register to be maintained using a variety of official data sources.

Courtney identified the three key contributing factors that led to the successful transition as being, (1) the strong support from the Prime Minister for the change, (2)

an absence of political opposition to the move and (3) the availability of ample resources to overcome obstacles. He also noted the importance of consensus in agreeing upon the particular system of electoral registration that was pursued (2002, p.125). This experience may be of relevance to Ireland and suggests that leadership, political agreement and sufficient funding would assist the introduction of a new electoral register.

Implementation in Canada was preceded by a period of political dialogue informed by a series of official reports between 1986 and 1992 (Black, 2003, p.7). Elections Canada played a pivotal role in demonstrating the technical feasibility of the new registration system. This experience points to another potential lesson for Ireland – that any new system has to be shown to be technically feasible before being rolled out.

The manner in which the change was managed offers further potential lessons. While the new register became operational in 1997, planning commenced in October 1993 with the establishment of a steering group within Elections Canada. By the spring of 1994 a discussion paper on continuous registration was produced by the group. In late 1994 a special project team was established and charged with examining the costs and benefits, looking at the work needed on new processes, evaluating sources for updating data, consulting with potential partners and undertaking a feasibility assessment (Black, 2003, pp. 12-13). The project team reported in early 1996 and the legislation to give effect to the new system was enacted later that year. The register became operational in the Autumn of 1997.

While the new national register delivered financial savings, Black argued that it caused confusion and negatively impacted on levels of registration and on turnout. He proposed a return to some form of door-to-door enumeration. The system of national registration continues in operation today and measures were taken by Elections Canada to address criticisms that were raised, particularly following the general elections held in 1997 and 2000.

The UK also offers potential lessons and has been transforming its system of electoral registration. The Electoral Registration and Administration Act 2013, enacted in January 2013, provided for a move to a system of individualised electoral registration in Great Britain in place of the household-based system which is updated annually following a canvass of electors. The process is being supported by the Electoral Commission which had stated that, “this will be the biggest change to our electoral system since the universal franchise” (Electoral Commission, 2014c, p.11). The change has involved work by a programme team based in the Cabinet Office, 387 teams based in the local authorities and input from the Department of Work and

Pensions (GDS, 2014). The local authorities are the registration authorities at local level. There is a single point of access via a website to register to vote on-line²³.

Household registration was abolished in Northern Ireland in 2002 and replaced by individual registration. The annual canvass was abolished in 2007. Although there were initial improvements, research conducted by the Electoral Commission in 2012 found that the quality of the register deteriorated since 2008. To address this situation a public awareness campaign and canvass of voters was organised in 2013. The new register was published in December 2013 and it contained over 1.2 million entries representing 88% of the eligible electorate (Electoral Commission, 2014c, p.11)

5.6. Accountability

In providing a practical definition, the International Institute for Democracy and Electoral Assistance advises that, “Accountability means that an electoral management body is responsible for its activities, and must periodically provide evidence to its stakeholders and the public that its activities are effective and meet its prescribed legal, ethical, service and financial standards” (IDEA, 2006, p.223). Achieving a balance between independence and accountability was identified in Section 3 as one of the critical issues to be considered in the institutional design of electoral management bodies.

For the four countries reviewed here, accountability is effected through a combination of transparency in their operations and a direct relationship with a specifically identified parliamentary committee. Each body operates independently of Government and is not subject to Ministerial direction. However, responsibility for dealing with electoral matters is typically assigned to a designated minister who acts as a conduit for the exchange of information, and for addressing policy issues that require a response from Government.

The Australian Electoral Commission is accountable to the Australian Federal Parliament through the Joint Standing Committee on Electoral Matters. The Commission also supports the Committee in its role of inquiring into and reporting on the conduct of elections and other electoral matters deemed relevant by the parliament. In 2012-2013, the Committee conducted three enquiries (AEC, 2014b, p.87). In an examination of these accountability relationships, it has been observed that:

The AEC, by jointly working with the Joint Standing Committee has contributed to good governance by enhancing the effectiveness and accountability of the conduct of elections. This has basically been achieved by providing a forum for the open discussion of electoral issues, by facilitating dialogue between political parties, and by being

²³ <https://www.gov.uk/register-to-vote>

accountable to the Committee, which operates in the public eye, instead of to a ministry that, by its nature, belongs to a more closed political space.

(Lópes Pintor, 2000, p.153)

In New Zealand, the independence of the Electoral Commission is provided for in legislation, as are certain accountability mechanisms. The Electoral Commission must report in writing within 6 months of a general election to the responsible minister on the administration of that election²⁴. The minister must then present the report to the House of Representatives within 5 working days and it must be published.

In the UK, schedule 1 to the Political Parties, Elections and Referendums Act (PPERA) 2000 provides that the Electoral Commission shall not be regarded either as a servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown (HM Government, 2014). The Commission has no power to draft electoral law, but the government is under a statutory obligation to consult with it on proposed changes.

The main channel of accountability is through a committee chaired by the Speaker of the House of Commons. Membership of this committee comprises the Chairperson of the Home Affairs Select Committee, the Lord Chancellor, a Minister (who must be an MP) with responsibilities in relation to local government and five MPs (HM Government, 2014).

The functions of the Committee include:

- examining the Commission's annual estimates;
- examining the Commission's five-year plans;
- receiving the Commission's accounts;
- receiving the annual report from the Comptroller and Auditor General on the Commission;
- designating the Commission's Accounting Officer;
- reporting to the House of Commons.

(Electoral Commission, 2014b, p.25)

In Canada the Chief Electoral Officer reports directly to Parliament through its Standing Committee on Procedures and House Affairs. The CEO appears before the committee several times a year (Gould, 2006). There is a two-way relationship, with the CEO being held accountable, but also having a right of initiative to bring forward recommendations for change (Elections Canada, 2012). As an agency of Parliament, Elections Canada reports to Parliament through the Speaker of the House of Representatives. For ease of communication, a Minister, usually the

²⁴ Section 8 of the Electoral Act 1993 (NZ Parliamentary Counsel, 2014)

Leader of the House, is designated as the person responsible for communicating with Elections Canada (Gould, 2006).

These arrangements are somewhat different to those currently operating in Ireland where there is parliamentary accountability in electoral matters primarily via the relevant Minister. Responsibilities largely fall within the remit of the Minister for the Environment, Community and Local Government. The Minister for Public Expenditure and Reform and the Minister for Finance also have responsibilities in respect of expenditure on elections, the bulk of which is met from the Central Fund.

For some current electoral functions in Ireland there are analogies with the reporting structures operating in the other countries reviewed. For certain of its responsibilities under the Electoral Act 1997 the Standards in Public Office Commission reports directly to the Chairman of Dáil Éireann²⁵, as does a Constituency Commission when reviewing Dáil electoral boundaries²⁶. A Referendum Commission on the other hand reports to the Minister for the Environment, Community and Local Government, who must then lay copies of the Commission's report before the Houses of the Oireachtas²⁷.

An implication of Ireland adopting the electoral commission models reviewed here would be a change in the current accountability arrangements, with the Oireachtas taking on a more significant role. However, a distinction can be drawn between the operational independence of an electoral commission, its potential accountability relationship with the Oireachtas and the policy-making responsibilities of the Government. The Geary Institute report envisaged the Minister for the Environment, Community and Local Government retaining certain policy making functions like the fixing of the date for polling and proposing changes to the electoral system. While the electoral commission could have an advisory role, the Minister would have final responsibility in these matters (Sinnott et. al., 2008, p.5).

The matter of whether the electoral commission's relationship would extend beyond one of accountability to a parliamentary committee to include a role in aiding parliamentary enquiries into electoral matters would also need to be considered.

5.7. Performance

Elklit and Reynolds (2005) identify four performance indicators for assessing electoral management. These can be summarised as:

- the perceived legitimacy and acceptance of the electoral management body by political parties and voters;
- the perceived degree of impartiality,
- the perceived quality in the delivery of services; and,

²⁵ Sections 4(1) and 88(1) of the Electoral Act 1997.

²⁶ Section 9(1) of the Electoral Act 1997.

²⁷ Section 14(1) of the Referendum Act 1998.

- the perceived degree of transparency (2007, p.152).

The recommended methods of measurement are surveys, expert panels and polling evidence.

In common with international trends in public administration, performance management and reporting have become priorities in recent years for the electoral commissions reviewed here, with formal systems and mechanisms becoming more developed. The preparation of a Strategic Plan setting out an agreed set of objectives based on legally defined responsibilities is regarded as basic good practice for an electoral commission (IDEA, 2006, pp.131). It is seen as good practice to prepare operational plans within this strategic framework.

It is also possible to identify certain performance expectations in legislation. In Canada for example, time-based performance standards for levels of service are set out in law, which include standards for electoral registration and the announcement of election results.

The Australian Electoral Commission operates a 'Planning, Operating and Reporting Framework' (AEC, 2014b, p.78). Its performance outcomes are set out through a Strategic Plan prepared every five years and an annual National Business Plan. Because the Australian Electoral Commission is not subject to direction by the responsible government minister or by the Joint Committee of Parliament, it has been observed that accountability comes primarily through transparency (Maley, 2001, p.28).

The AEC publishes an annual report which, in addition to providing more detailed information on its activities, also reports on 'key performance results'. Table 12 sets out illustrative examples of these results taken from the Commission's annual report.

Table 12 – Australian Electoral Commission – Sample Performance Indicators

Key Performance Indicator	Result Achieved 2012/2013
95% of eligible people are on the electoral roll	91.4%
99.5% of enrolment transactions processed correctly	99.6%
99% of enrolment transactions processed within three business days	82.7%
At least 98% of roll products are accurate	98.8%
At least 98% of roll products delivered by agreed deadline	100%
Effective assistance is provided with the conduct of state, territory and local government elections where requested by the relevant electoral body	Achieved
State, local government stakeholders and fee-for-service clients are fully satisfied with the services provided	Achieved
High level of election preparedness maintained and key milestones met	Achieved
Party registration processed in accordance with the legislation and the Party Register updated in a timely manner	Achieved
Election funding calculated and paid in accordance with the legislation	Not applicable – there were no federal elections
Financial disclosures obtained and placed on the public record in accordance with legislated timeframes	Achieved
International assistance by the AEC meets the goals specified for individual projects undertaken, with stakeholders fully satisfied with the services provided	Achieved
78,000 visitors to the National Electoral Education Centre (NEEC) per annum.	Achieved – 90,400 visitors
2,000 NEEC Education sessions delivered per annum	Achieved – 2,600 sessions
100,000 participants in AEC education outreach services	Achieved – 100,717 participants
1,200 participants in teacher professional development sessions	Achieved – 3,184 students from 18 universities
Participant feedback indicates 90% satisfaction with AEC education services.	Achieved
AEC communication strategies and services developed, implemented and reviewed as appropriate	Achieved

(AEC, 2014b, pp.20-71)

Indicators like these can potentially inform the development of a performance framework for Ireland’s electoral commission. They provide useful examples of quantitative and qualitative measures which are used to report on activities undertaken.

New Zealand provides further examples. For its electoral commission, impact measures are identified under three headings. The performance achieved is then measured against the performance forecast. A summary of the key results, as reported by the Commission, is set out in table 13. These provide illustrative examples of qualitative indicators. They also demonstrate the usefulness of using benchmarks and targets in assessing performance.

Table 13 – New Zealand Electoral Commission - Key Impact Measures

Result / Measure	Performance Forecast	Performance Achieved 2011/12
1. Key Impact: Reduced Barriers to Participation		
Impact Indicators:		
1A - % of voters satisfied with voting experience	90%	88%
1B - % of non-voters identifying administrative barriers to participation as the reason for not voting	4% or less	2%
1C - % of secretaries of registered political parties satisfied with the service provided	95%	98.8%
1D - % of candidates satisfied with the service provided	90%	93.6%
2. Key Impact: Better Understanding of Elections		
Impact Indicators:		
2A - % of voters who consider the Mixed Member Proportional (MMP) voting system is easy to understand ²⁸	60%	Not surveyed in 2011 due to the referendum on the voting system
2B - Rate of informal voting as a % of total votes cast resulting from voter error in marking the ballot paper ²⁹	0.25%	0.26%
3. Key Impact: Public Confidence Maintained		
Impact Indicator		
3A - % of the public who are confident or very confident in the administration of the parliamentary elections and referenda	85%	Not surveyed in 2011 due the referendum on the voting system

(NSEC, 2013, p.16)

These results are gathered through general surveys of the public or targeted surveys of particular groups. Satisfaction of political party secretaries and candidates is measured through surveys of both groups. New Zealand is one of the leading countries involved in the development of public sector performance and accountability measures during the past two decades. Not surprisingly therefore, the Electoral Commission has what can be considered as a relatively advanced framework for performance management and for the reporting of results and outputs.

²⁸ A system that combines members of parliament elected from individual constituencies and members elected from a list prepared by each political party. A referendum was held in 2011 to change the MMP system. Voters opted to retain the Mixed Member Proportional system with 57.77% voting in favour and 42.23% against.

²⁹ This refers to invalid or spoiled votes.

In the UK, similar methods and measures are used. The Electoral Commission publishes an annual report with accounts which sets out its performance against stated objectives. The Commission uses an annual opinion survey of the general public and surveys of groups of stakeholders in assessing its activities.

For 2013 it was recorded that 89% of the UK public know how to go about registering to vote, and 82% are satisfied with the process. Dissatisfaction with the process of registering to vote was at its lowest level since the annual survey began in 2008. The Electoral Commission assesses how well Returning Officers meet performance standards. The Commission's target is that 90% of electors should be served by Returning Officers who meet the performance standards. The outcome achieved in 2013 was 92.5%. In 2013, 99.6% of all statutory donations returns were submitted on time. The target was 90%. Research and performance data are used to inform the work of the Commission (Electoral Commission, 2014b).

At a strategic level, the UK Electoral Commission publishes a corporate plan annually that projects its challenges, priorities, plans and costs for the following five year period. The most recently published plan is for the period 2014 to 2019 (Electoral Commission, 2014c).

While the UK Electoral Commission reports on its own performance, it also has a specific role in monitoring the standards of election officials that is potentially relevant in the Irish context. The Commission has the power to determine and publish standards for Electoral Registration Officers, Returning Officers and Referendum Counting Officers. It can direct these officers to provide the Commission with reports regarding their performance against these standards and can publish its assessment of the level of performance against the standards set.

Performance standards for Electoral Registration Officers were first published in 2008 and most recently revised in 2013 (Electoral Commission, 2013a). The performance standards for Returning Officers were first published in 2009 and most recently revised in 2013 (Electoral Commission 2013b). In developing these performance standards, the Commission undertook a baseline survey to provide an initial picture of performance and consulted with stakeholders before agreeing the final published standards. Each of the performance standards contains the title of the standard, the aim, what the electoral officials must do and the data or evidence required to demonstrate performance. The Commission publishes reports on the performance of the electoral officials and provides advice and support on how improvements can be achieved.

This approach offers a potential model for the role that could be played by Ireland's electoral commission if it is decided that the administration of elections is to continue to be performed at a local level by returning officers.

5.8. Finance and audit

An important aspect of electoral governance concerns arrangements for the allocation of funding and oversight in its use. These issues lie at the intersection between accountability and performance. The level of financial independence an electoral commission can exercise provides an indication of its autonomy (Verhoest et. al., 2004). On the other hand, how an electoral commission is funded and how it spends its budget are central questions in assessing ‘internal’ and ‘external’ performance. Internal performance is concerned with matters of risk, management and operating systems, while external performance covers issues of efficiency and effectiveness in the use of public money (McGauran et. al., 2005).

In the funding arrangements in Canada a distinction is drawn between two sets of activities. The salaries for the staff that run Elections Canada are funded through an annual parliamentary appropriation. All other expenditure is drawn directly from what is called the ‘Consolidated Revenue Fund’ (Elections Canada, 2013). There is an equivalent distinction in Ireland between voted expenditure that appears in the annual estimates of government departments and payments made from the Central Fund for the taking of polls and the counting of votes at elections and referendums.

The Geary Institute study proposed that a similar distinction be made in respect of Ireland’s electoral commission, recommending that expenditure related to elections and referendums would come from the Central Fund, while funding in respect of other electoral commission functions would come from voted exchequer expenditure. In this way a distinction would be drawn between ‘mandatory’ and ‘discretionary’ exchequer expenditures (Sinnott et. al., 2008, p.6).

Elections Canada operates an Audit Committee which, “provides the Chief Electoral Officer with objective guidance on risk management, control framework, and reporting practices” (Elections Canada, 2013). The Committee’s membership comprises the Chief Electoral Officer and three independent appointees, with a representative from the Office of the Auditor General also participating.

There is an equivalent arrangement in the UK Electoral Commission, which also has an Audit Committee. Its role is to offer objective advice in order to ensure that “the most efficient, effective and economic risk, control and governance processes are in place, and that the associated assurance processes are optimal (Electoral Commission, 2014b, p.25). The Chief Executive of the Commission is designated as its Accounting Officer.

The Australian Electoral Commission has four management and oversight committees which are described as the Executive Management Group, Investment and Strategies Committee, Business Assurance Committee and Fraud Control Committee (AEC, 2013, p.92).

For Ireland's electoral commission it would appear that an audit committee and other oversight structures should be put in place to assure good internal governance and that appropriate external financial accountability also be provided for. In each of the four countries examined, the Comptroller and Auditor General or equivalent is the auditor for the electoral management body, which seems like an appropriate arrangement for Ireland to also apply.

In planning its expenditure, the UK Electoral Commission makes a distinction between what are termed 'core' and 'event-related' costs. Core costs cover the activities of the Commission regardless of electoral events. This includes pay, rent, ICT and recurring annual responsibilities like registering parties, analysing performance standards and research work. Core costs are estimated at £11.1m for 2014-15, at £11.192m for 2015-16 and at £11.055m for 2016-17. Event-related activities for these three years are estimated at £10.993 for 2014-15 (2015 is a general election year), £7.871 for 2015-16m and £4.750m for 2016-17 (Electoral Commission, 2014c, p.31).

In New Zealand, the bulk of the funding is provided by the exchequer. For the year 2011/2012, which included a general election and referendum, total revenue for the Commission was NZ\$39.093m, of which \$38.696m was provided from government appropriations (NZEC, 2013, p.8). Revenue in 2013 was NZ\$26.833m, of which NZ\$26.347m was provided by the Government (NZEC, 2014b, p.20).³⁰

³⁰ €1 = NZ\$1.49. European Central Bank exchange rate at 19 January 2015. <https://www.ecb.europa.eu/stats/exchange/eurofxref/html/eurofxref-graph-nzd.en.html>

6. Conclusions

This paper has considered issues arising in the establishment of an electoral commission in Ireland. Setting up such a new body will be a significant undertaking. As work on the task proceeds, decisions will need to be taken on the functions to be assigned and the governance arrangements to be put in place. In section 1 a series of issues for consideration were identified and summarised into eleven questions. The pre-legislative process for proposed legislation provides an opportunity for members of the Oireachtas to address these questions.

In moving forward, it is necessary to have a full understanding of the present system and the implications of change. In section 2 current electoral management arrangements were described. Costs were identified for the different elements. When planning new structures account needs to be taken of these existing arrangements and their costs.

There is a good deal of experience in Ireland and internationally in the creation of new public bodies. Section 3 considered good governance practices, institutional design and accountability arrangements in the creation of new agencies in general, and electoral management bodies in particular.

It is evident from published reports and policy documents from across the political spectrum that there has been a general convergence of opinion in recent years in favour of having an electoral commission in Ireland. In Section 4, these documents were reviewed. While there is agreement on the principle of an electoral commission, there is a divergence in views on the functions that should be assigned.

There are relevant examples in other countries where electoral commissions have been set up and have operated effectively. In Section 5 electoral management models in four countries were examined – in Australia, New Zealand, the United Kingdom and Canada. Potential lessons are identified.

Experience with major reforms affecting electoral matters in Ireland and in other countries highlights the value of consultation and the development of a common vision for change. The electoral system involves a large number of stakeholders and it is important that a wide range of opinion is heard. The needs of citizens and voters must be a central consideration in this process of change.

Further information

Queries can be addressed to Franchise Section, Department of the Environment, Community and Local Government, Dublin 1.

Email: franchise@environ.ie, Tel: 01-8882878.

Appendix 1 – Acts of the Oireachtas dealing with electoral matters

Seanad Electoral (University Members) Act 1937
Seanad Electoral (Panel Members) Act 1947
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Electoral Act 1992
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Referendum Act 1994
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European Parliament Elections Act 1997
Electoral Act 1997
Referendum Act 1998
Electoral (Amendment) Act 1998
Local Government Act 1998, section 12(12)
Local Elections (Disclosure of Donations and Expenditure) Act 1999
Local Government Act 2001, Part 4
Electoral (Amendment) Act 2001
Referendum Act 2001
Electoral (Amendment) Act 2002
Electoral (Amendment) (No. 2) Act 2002
Local Government (No. 2) Act 2003, section 6
European Parliament Elections (Amendment) Act 2004
Electoral (Amendment) Act 2004
Electoral (Amendment) Act 2005
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Electoral (Amendment) (No. 2) Act 2009
Communications (Regulation) Postal Services Act 2011
Electoral (Amendment) Act 2011
Electoral (Amendment) (Political Funding) Act 2012
Electoral (Amendment) Act 2012
Electoral (Amendment) (Dáil Constituencies) Act 2013
Electoral, Local Government and Planning and Development Act 2013
European Parliament Elections (Amendment) Act 2014
Local Government Reform Act 2014
Electoral (Amendment) Act 2014
Electoral (Amendment) (No. 2) Act 2014

Appendix 2 - Local Authority Budgeted Costs for Franchise Activities 2014

Local Authority	Register of Elector Costs €	Local Election Costs €	Service Support Costs €	Total Franchise Costs €
Carlow County Council	78,400	18,000	52,080	148,480
Cavan County Council	109,425	0	24,429	133,854
Clare County Council	90,960	20,000	151,914	262,874
Cork County Council	215,690	93,794	72,392	381,876
Donegal County Council	127,140	150,000	105,227	382,367
Fingal County Council	301,800	250,000	183,812	735,612
D.Laoire/Rathdown County Council	226,600	50,000	187,340	463,940
Galway County Council	217,864	1,000	73,996	292,860
Kerry County Council	183,000	60,000	81,816	324,816
Kildare County Council	224,000	100,000	75,521	399,521
Kilkenny County Council	76,700	32,000	131,045	239,745
Laois County Council	140,000	36,000	49,554	225,554
Leitrim County Council	0	12,000	73,211	85,211
Limerick County Council	182,737	80,000	77,795	340,532
Longford County Council	63,780	140,000	45,183	248,963
Louth County Council	147,306	180,000	50,975	378,281
Mayo County Council	150,034	230,000	42,953	422,987
Meath County Council	129,239	100,000	79,754	308,993
Monaghan County Council	59,178	30,000	25,245	114,423
Tipp NR County Council	36,631	20,000	66,148	122,779
Offaly County Council	2,929	27,071	107	30,107
Roscommon County Council	99,000	136,500	34,239	269,739
Sligo County Council	72,245	85,000	32,045	189,290
Sth Dublin County Council	192,100	352,800	82,190	627,090
Tipp SR County Council	85,663	40,000	48,724	174,387
Waterford County Council	105,794	0	40,424	146,218
Westmeath County Council	23,331	15,000	38,404	76,735
Wexford County Council	174,502	50,000	60,784	285,286
Wicklow County Council	172,286	20,000	58,977	251,263
Cork City Council	202,700	104,700	97,000	404,400
Dublin City Council	735,245	18,000	294,328	1,047,573

Local Authority	Register of Elector Costs €	Local Election Costs €	Service Support Costs €	Total Franchise Costs €
Galway City Council	152,739	20,000	41,071	213,810
Limerick City Council	6,000	80,000	37,004	123,004
Waterford City Council	54,303	0	46,718	101,021
Clonmel Borough Council	0	10,000	3,080	13,080
Drogheda Borough Council	0	5,000	2,275	7,275
Kilkenny Borough Council	0	0	0	0
Sligo Borough Council	7,500	0	2,782	10,282
Wexford Borough Council	0	0	0	0
Arklow Town Council	0	0	134	134
Birr Town Council	0	0	33	33
Bray Town Council	0	0	72	72
Carrickmacross Town Council	0	0	89	89
Castleblaney Town Council	0	0	2,189	2,189
Cobh Town Council	0	35,852	0	35,852
Dundalk Town Council	0	0	726	726
Enniscorthy Town Council	0	1,000	1,043	2,043
Kells Town Council	0	0	151	151
Kinsale Town Council	0	69,000	0	69,000
Longford Town Council	0	0	495	495
Monaghan Town Council	0	0	100	100
Nenagh Town Council	0	0	218	218
New Ross Town Council	0	5,600	0	5,600
	4,846,821	2,678,317	2,575,792	10,100,930

(DECLG, 2014b)

Notes:

- The figures in the table represent budget costs, not actual expenditure.
- On June 1st 2014 the functions of borough and town councils were subsumed into the 31 county, city and county councils specified in the Local Government Reform Act 2014.

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