



## AMICUS CURIAE GUIDELINES

Whereas –

1. The functions of the Irish Human Rights and Equality Commission ('the Commission') under the Irish Human Rights and Equality Commission Act ('the 2014 Act') include that of applying to the High Court and Supreme Court for liberty to appear as amicus curiae in proceedings that involve or are concerned with the human rights or equality rights of any person, and appearing as such an amicus curiae on foot of such liberty being granted, pursuant to s.10(2)(e) of the 2014 Act;<sup>1</sup>
2. The Commission enjoys the power to apply to the Court of Appeal for liberty to appear before it as amicus curiae by virtue of s.8(h) of the Human Rights Commission Act 2000, as amended by s.60 of the Court of Appeal Act 2014, and pursuant to s.44(1) of the 2014 Act, and/or pursuant to the inherent jurisdiction of the Court of Appeal;
3. The function of applying for liberty to appear as amicus curiae, and of appearing as amicus curiae where liberty is granted, is to be exercised in furtherance of the functions provided for at s.10(1) of the 2014 Act, which said functions are to –
  - a) protect and promote human rights and equality,
  - b) encourage the development of a culture of respect for human rights, equality, and intercultural understanding in the State,
  - c) promote understanding and awareness of the importance of human rights and equality in the State,

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<sup>1</sup> In these guidelines, the phrase 'human rights' has the meaning assigned to it at s.2(1) of the 2014 Act, namely –

- (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution,
- (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party, and
- (c) without prejudice to the generality of paragraphs (a) and (b), the rights, liberties and freedoms that may reasonably be inferred as being –
  - (i) inherent in persons as human beings, and
  - (ii) necessary to enable each person to live with dignity and participate in the economic, social or cultural life in the State.



- d) encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in the State and respect for the freedom and dignity of each person, and
  - e) work towards the elimination of human rights abuses, discrimination and prohibited conduct.
4. The Commission must, subject to the provisions of the 2014 Act, be independent in the performance of its functions, pursuant to s.9(2) of the 2014 Act;
  5. The Commission enjoys all such powers as are necessary or expedient for the performance of its functions, pursuant to s.10(5) of the 2014 Act;
  6. The Commission previously adopted *Amicus Curiae Guidelines* on 17 December 2014;
  7. The Commission has established a casework committee, and adopted terms of reference for the said committee on 6 April 2016;
  8. Pursuant to the said terms of reference, the functions of the casework committee include making recommendations that the Commission apply for liberty to appear as amicus curiae in proceedings that involve or are concerned with the human rights or equality rights of any person;
  9. The Commission considers it both necessary and expedient to make further provision in relation to the exercise of its powers and/or functions under s.10(2)(e) of the 2014 Act;

**The Commission hereby adopts the following resolution in exercise of its powers under s.10(5) of the 2014 Act.**

*Revocation*

10. The Commission hereby revokes the *Amicus Curiae Guidelines* adopted by the Commission on 17 December 2014;

*Requests that the Commission apply for liberty to appear as amicus curiae*

11. The Commission acknowledges the bona fides of persons who request that the Commission apply for liberty to appear as amicus curiae in proceedings to which they are a party;
12. The Commission notes however that s.10(2)(e) of the 2014 does not confer a right on any person to request that the Commission apply for liberty to appear as amicus curiae;



13. The Commission considers that the function of applying for liberty to appear as amicus curiae is one that falls to be exercised of its own volition, rather than at the request of a party to proceedings;
14. The Commission further considers that decisions as to whether or not to apply for liberty to appear as amicus curiae are to be made in a manner that is consistent with both the Commission's obligation to be independent in the performance of its functions, and with the duty of impartiality owed to the court by an amicus curiae;
15. The Commission, having regard to the need to ensure the most beneficial, effective, and efficient use of its available resources, will not generally (a) engage in any decision-making process or (b) conduct any assessment of the merits or otherwise of requests (in whatever form) that it apply for liberty to appear as amicus curiae;
16. The Commission may however have due regard to the nature of the proceedings that form the subject matter of such requests in forming an independent view as to whether or not it should apply for liberty to appear as amicus curiae in proceedings concerning the human rights or equality rights of any person;
17. Any or all requests that the Commission apply for liberty to appear as an amicus curiae will be brought to the attention of the Commission;
18. Where the Commission has been requested to apply for liberty to appear as amicus curiae, and –
  - the proceedings to which the request relates are not before the High Court, Court of Appeal, or Supreme Court;
  - the proceedings to which the request relates do not concern the human rights or equality rights of any person;such that the proceedings fall outside the scope of the Commission's powers and/or functions under s.10(2)(e) of the 2014 Act, no further consideration will be given to the proceedings to which the request relates, and a member of staff will inform the person requesting the Commission's intervention accordingly.
19. Where it deems it appropriate, the casework committee may request the Head of Legal to arrange for the preparation of an assessment as to whether or not to apply for liberty to appear as amicus curiae in the proceedings to which the request relates;
20. The casework committee may make such recommendations to the Commission as it deems fit as to whether or not the Commission should apply for liberty to appear as amicus curiae in the proceedings to which the request relates.



*Decisions to apply for liberty to appear as amicus curiae*

21. Decisions as to whether or not to apply for liberty to appear as amicus curiae will be made by the Commission at meetings held in accordance with s.16 of the 2014 Act;
22. Such decisions will normally be taken on the basis of recommendations made by the casework committee, such recommendations having been made in accordance with the casework committee's terms of reference;
23. In making a decision as to whether or not to apply for liberty to appear as amicus curiae, the Commission may have regard to the following matters –
  - a) The importance of the human rights and/or equality rights raised in the proceedings;
  - b) The extent to which the proceedings raise an issue or issues, the determination of which may affect to a significant extent the human rights and/or equality rights of those who are not parties to the proceedings;
  - c) The extent to which the human rights and/or equality rights raised in the proceedings are central to the determination of the case;
  - d) The extent to which the proceedings come within the Commission's priority areas of work, as outlined in its strategic statement;
  - e) The circumstances of the case;
  - f) The extent to which the relevant court is likely to be assisted by the Commission's participation in the proceedings as amicus curiae;
  - g) Any resource implications for the Commission.
24. The foregoing matters represent a non-exhaustive list of the factors to which the Commission may have regard in exercising its statutory discretion as to whether or not to apply for liberty to appear as amicus curiae.

*Applications for liberty to appear as amicus curiae*

25. It is recognised that decisions as to whether or not to grant liberty to the Commission to appear as amicus curiae are a matter for the relevant court's absolute discretion;
26. The Commission will endeavour, insofar as is reasonably practicable, to obtain the consent of the parties to the proceedings before applying to the relevant court for liberty to appear as amicus curiae;



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

27. In seeking liberty to appear as amicus curiae, the Commission will undertake –

- a) to act in an independent and impartial manner;
- b) to abide carefully by such directions as the relevant court may deem appropriate in relation to the nature and scope of the Commission's participation in the proceedings;
- c) to bear its own legal costs arising from and/or incidental to the proceedings.

*This resolution was adopted by the Commission at its plenary meeting on 1 November 2016 and may be amended or revoked in whole or in part at the Commission's absolute discretion.*