



A Submission to the Housing Commission on a Referendum on Housing in Ireland

Executive Summary

We welcome the opportunity to make this submission on a referendum on housing and are available to engage further with the Housing Commission on the issues raised herein.

We recognise the significant impact a referendum on housing could have in the context of the State revising its overall housing policy, in providing constitutional protection to a fundamental human right.

We recommend that the Housing Commission advise that the Irish constitution be amended to provide for a right to housing as a standalone article. We have set out proposed wording below for consideration.

We submit that it is crucial that the wording recommended by the Housing Commission to the Irish government provides for a standalone right to adequate housing, which includes a right to shelter, to be inserted into the constitution.

Proposed wording: Housing

Article 43A

1 The State recognises, and shall vindicate through legislative and other measures within its available resources, the right of all persons to adequate housing.

2 The State recognises, and shall guarantee in its laws as far as practicable, the right of every person to appropriate shelter, conducive to that person's health and well-being needs.



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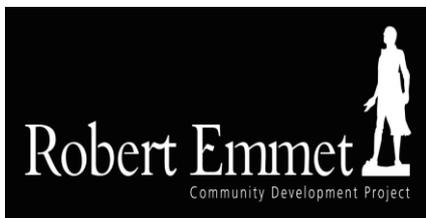
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I. INTRODUCTION

The ongoing nationwide housing crisis is well documented, and recent data reveals the extent of the crisis. For example:

- there were 10,568 adults and children in emergency accommodation at the end of July 2022¹;
- there were 59,247 households on housing lists waiting for social housing, as of 17 November 2021²;
- 19% of the population were living below the poverty line after housing costs are factored in, as of May 2022;³ and
- Of the population of renters who were in receipt of support (i.e. HAP or Rental Accommodation Scheme) as of May 2022, 59.1% were living below the poverty line.⁴

It is clear that the most vulnerable, marginalised and socially excluded communities in Ireland are most acutely feeling the effects of the crisis. These communities include lower income households, people who are homeless or at risk of being made homeless, Irish Travellers and individuals fleeing domestic violence.

This is evident, for example, from the experience of Community Law and Mediation (“**CLM**”). Housing related queries have consistently constituted a high proportion of the queries CLM sees in its legal advice clinics. During the Covid-19 crisis, CLM saw a sharp (40%) increase in housing-related queries, a level which has sustained in subsequent years. The issues CLM is seeing in its social housing and homeless legal advice clinics are very often of an acute and urgent nature. For example, CLM regularly advocates on behalf of clients, including pregnant women, mothers with young babies and elderly couples, who have been refused access to emergency accommodation. CLM also advocates on behalf of people whose living conditions are inadequate and substandard as they are forced to live without heating or running water and with poor sanitation – a breach of their basic human rights. Many of CLM’s clients have been on waiting lists for over a decade, some as long as 15 years, to access adequate social housing. In the interim and due to a shortage of suitable private rental homes, they have no option but to stay in emergency accommodation. Furthermore, on average, one in ten of the individuals CLM meets at its legal advice clinics, are at risk of being made homeless.

We therefore submit that urgent action is needed to effectively tackle the State’s housing crisis and re-shape the State’s housing policy. The explicit recognition of a standalone right to housing, also advocated for by the Home for Good coalition, in the Irish constitution is a fundamental step towards achieving this. A robust and effective constitutional right to housing, which includes a right to shelter, can have significant effects including the prevention of homelessness, the establishment and maintenance of acceptable minimum standards of housing, and ensuring access to justice in the form of the guarantee of a fundamental human right.

¹ Department of Housing, Local Government and Heritage, Monthly Homelessness Report, July 2022. Available at: [gov.ie - Homeless Report - July 2022 \(www.gov.ie\)](http://gov.ie - Homeless Report - July 2022 (www.gov.ie)).

² The Housing Agency, Summary of Social Housing Assessments 2021, Key Findings. Available at: [gov.ie - Summary of Social Housing Assessments 2021 – Key Findings \(www.gov.ie\)](http://gov.ie - Summary of Social Housing Assessments 2021 – Key Findings (www.gov.ie)).

³ Social Justice Ireland, Housing Costs and Poverty 2022 dated May 2022. Available at: [2022-05-30-housing-costs-and-poverty-2022-final.pdf \(socialjustice.ie\)](http://2022-05-30-housing-costs-and-poverty-2022-final.pdf (socialjustice.ie)).

⁴ As above.

II. NEED FOR A REFERENDUM

There is currently no express right to housing or shelter in the Irish constitution. The constitution provides for the protection of private property rights in Article 40.3.2 and Article 43. The constitution does also contain other related and ancillary rights which are frequently invoked in the housing context, such as the protection of children's rights as enshrined by Article 42A, and various unenumerated rights which are of help to homeowners in difficult circumstances, such as the right to fair procedures.

However, the insertion of a stand-alone, justiciable right to housing into the Irish constitution is imperative for the following reasons:

1. **Removal of a barrier to reform:** The way in which the Irish constitution is currently framed, in solely providing for the protection of private property rights, creates a barrier to the consideration and development of progressive housing policies. This is evident from an Oireachtas Research Report published in 2019, which found that policymakers had invoked the constitutionally protected right to private property as grounds for refusing to pass housing legislation on a number of occasions.⁵ Article 43 provides that the State may intervene with private property rights in the interest of "*common good*", however this basis is too limited and ambiguous to allow for effective policies to be implemented. Therefore, it is fundamental that a standalone right to housing be inserted into the Irish constitution, on an equal footing to the right to private property. This would mean that policymakers would have to consider and balance two equal constitutional rights, namely the right to private property and the right to housing, in developing and implementing housing policies.
2. **Recognition of a basic human right:** Housing is a fundamental human right and has been recognised as such in international law (as detailed below). Housing is not merely a commodity or an asset. A shift towards a rights-based approach to housing is needed in order to effectively and appropriately re-shape the State's housing policy going forward. The recognition of housing as a core constitutional right in the foundational laws of the State is the first step in adopting this rights-based approach. Furthermore, the insertion of a clear and direct right to housing in the Irish constitution would provide the State with both a constitutional basis and a constitutional responsibility for a role in the provision of adequate housing and shelter.

It should be noted that a constitutional right to housing would not require the State to provide housing for everyone, or that individuals could demand that the State provide them with a house. Rather, a constitutional right to housing would provide a clear and direct right against which the State's measures can be assessed. The right to housing would require the State to take action, be it through legislation, policies or other measures, to ensure the right to housing

⁵ Keyes, "Briefing Paper: Property Rights and Housing Legislation", Oireachtas Library and Research Service, 2019. Available at: [Engquiry-2019_715-Property-rights-and-housing-legislation.pdf \(colettekelleher.ie\)](https://www.oireachtas.ie/publications/engquiry-2019-715-property-rights-and-housing-legislation.pdf)

is vindicated. The current absence of a direct right to housing means that it is very difficult to adequately hold the State and local authorities to account.

3. **International standards**: Ireland is already bound by housing rights under international law.

For example, Ireland has already signed up to perhaps the most explicit recognition of housing rights in the international legal order, in ratifying the International Covenant on Economic, Social and Cultural Rights, which provides the following:

Article 11.1.

*The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.*⁶

The State is further bound by housing rights at the multilateral level - the *Sustainable Development Goals* (Target 11.1 of Goal 11) commit the Irish government to ensure access for all citizens to adequate, safe and affordable housing and basic services by 2030. Furthermore, the State also has obligations in relation to housing at the European level, such as those contained in the Charter of Fundamental Rights of the European Union.⁷

Given the State's repeated agreement to be legally bound by housing rights under international law, at the multilateral level and at the European level, for consistency, the Irish government should provide a referendum on the right to adequate housing at the national level.

4. **Environmental Justice**: The casework from CLM's Centre for Environmental Justice highlights how the lack of an express right to housing contributes to environmental injustice. For example, CLM has advised families living in homes which will become uninhabitable due to flooding, or whose homes are located close to environmental hazards such as toxic waste and polluted air and water. Protecting citizens' right to adequate housing, which includes a right to shelter, within the constitution is fundamental to a fair and inclusive transition. This is further detailed below.

III. POLICY CONSIDERATIONS

It is vital that any constitutional right to housing has regard to the following policy considerations:

⁶ See also Universal Declaration of Human Rights; UN Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Elimination of All Forms of Discrimination Against Women.

⁷ See Article 34(3).

1. **The right to adequate housing:** We submit that a constitutional amendment should call for an explicit right to adequate housing. “Adequate housing” has already been considered by the United Nations Committee on Economic, Social and Cultural Rights.⁸ The right to adequate housing has been considered to include a number of freedoms and entitlements, including protection against forced evictions, security of tenure, and equal and non-discriminatory access to adequate housing. Furthermore, the following conditions must be met in order for housing to be considered adequate:
 - security of tenure;
 - availability of services;
 - affordability;
 - habitability;
 - accessibility;
 - location; and
 - cultural adequacy.

2. **Right to appropriate shelter:** It is fundamental that any right to adequate housing also includes a minimum floor of protection in providing for a right to emergency accommodation, which will protect homeless individuals and those at risk of being made homeless. At present, there is no statutory obligation on the State to provide homeless people with emergency accommodation. The current framework only places a general responsibility on the State with respect to the provision of emergency accommodation. Urgent reform of the framework governing the assessment and treatment of people who present to local authorities as homeless is needed. This is reflected not only in the national figures on homelessness, but also in the significant number of homeless individuals, families and children who are attending CLM’s free legal advice clinics and the acute and urgent nature of their situations. For example, CLM has represented pregnant women and mothers with young babies who are sleeping in their cars or in Garda stations, as a result of being refused emergency accommodation.

We submit that reform of this area must be grounded in the constitutional protection of a right to shelter. It is fundamental that any right to housing places a minimum core obligation on the State to guarantee that shelter be provided, so as to adequately protect those most vulnerable and marginalised in our society. Furthermore, we note from jurisprudence in the international context, that a right to adequate housing does not necessarily contain this minimum core obligation.⁹ We therefore submit that one way to achieve this is to expressly include an ancillary right to shelter in the constitution, in conjunction with the explicit right to adequate housing.

3. **Socio-economic right:** We are calling for an express socio-economic right to be inserted into the constitution. The nature of socio-economic rights are such that they require State resources to be vindicated. As such, we submit that any such right be subject to the resources available to the State. This is reflected in the below proposed wording.

⁸ For further see Offices of the United Nations High Commissioner for Human Rights, The Right to Adequate Housing, Fact Sheet No 21 (Rev. 1). Available at: [FS21_rev_1_Housing_en.pdf \(ohchr.org\)](#).

⁹ For example, we refer to the South African Constitutional Court case of *Government of the Republic of South Africa v Grootboom*[2000] ZACC 26, [2001] 1 SA 46 (CC), 2000 (11) BCLR 1169 (CC).

4. **Environmental Justice:** In 2021, CLM established the Centre for Environmental Justice which works to ensure climate change and other environmental harms do not disproportionately affect those who have contributed least to the problem, and that the State’s response to environmental addresses inequality and protects the rights of present and future generations.

The right to adequate housing is essential to environmental justice in the following ways:

- **Just Transition:** The right to adequate housing, which includes a right to shelter, is essential to a just and inclusive transition. Those without adequate housing and shelter are disproportionately impacted by extreme weather events,¹⁰ despite having contributed the least to climate change.¹¹ Individuals and communities experiencing homelessness, or living in vulnerable or precarious conditions, are also least likely to have political voice and influence in the development of Irish housing and climate policies and legislation. Former United Nations Special Rapporteur on Adequate Housing warned that extreme weather events, such as flooding, sea-level rise, and storm surges can have disastrous impacts on housing and associated infrastructure, such as drainage and sanitation systems.¹² Such events could worsen economic and social disparities across Ireland and undermine the fabric of communities. For instance, in 2020, one of the hottest years on record,¹³ climate-related disasters caused three times more internal displacements than violence and conflict globally.¹⁴ In the UK, the Welsh village of Fairbourne is set to be “*decommissioned*” as a result of sea-level rise. Residents have no right to compensation, and no resettlement plans are in place - a stark example of the need to protect citizens’ housing and shelter rights amidst a rapidly changing climate.^{15,16}

¹⁰ Every, D., Richardson, J., Osborn, E. 2019. ‘There’s nowhere to go: counting the costs of extreme weather to the homeless community.’ *Disasters ODI* 43:4, pp.799-817. Available at: <https://doi.org/10.1111/disa.12400>

¹¹ According to Oxfam, the top 10 percent of the Irish population contributed about a third of the cumulative carbon emissions between 1990 and 2015 - almost as much as the bottom 50 percent (28 percent compared to 29 percent). See: Oxfam. 2020. ‘Confronting Carbon Inequality in Ireland.’ Available at: <https://www.oxfamireland.org/blog/governments-must-confront-extreme-carbon-inequality#:~:text=Oxfam%20is%20calling%20on%20governments,emissions%20than%20lower%20income%20groups.>

¹² United Nations General Assembly. Report by Special Rapporteur Raquel Rolnik (6 August 2009) UN Doc A/64/255 available from <https://undocs.org/Home/Mobile?FinalSymbol=A%2F64%2F255&Language=E&DeviceType=Desktop&LangRequested=False>.

¹³ NASA. 2021. ‘2020 Tied for Warmest Year on Record, NASA Analysis Shows.’ Available at: <https://www.nasa.gov/press-release/2020-tied-for-warmest-year-on-record-nasa-analysis-shows.>

¹⁴ Internal Displacement Monitoring Centre. 2021. ‘Global Report on Internal Displacement 2021.’ *Norwegian Refugee Council*, Available at: [https://www.internal-displacement.org/global-report/grid2021/.](https://www.internal-displacement.org/global-report/grid2021/)

¹⁵ Gerretson, I. 2022. ‘The UK “Climate Refugees” Who Won’t Leave.’ BBC Future Planet, Available at : <https://www.bbc.com/future/article/20220506-the-uk-climate-refugees-who-wont-leave.>

¹⁶ Wall, T. 2019. “This is a wake-up call’: the villagers who could be Britain’s first climate refugees.’ *The Guardian* Available at: <https://www.theguardian.com/environment/2019/may/18/this-is-a-wake-up-call-the-villagers-who-could-be-britains-first-climate-refugees.>

- **Climate change:** In the Irish context, the impacts of climate change are becoming increasingly visible; sea levels are rising at twice the global rate in Dublin,¹⁷ and more than 40% of Ireland's population lives within 5km of the coast.¹⁸ Approximately 350Km² of land in Ireland is vulnerable to flooding if sea levels rise by 1 metre, which increases to 600Km² under a sea level rise scenario of 3 metres.¹⁹ The erosion of Ireland's soft coastline means that, over time, a significant number of people may be displaced and forced to move inland. The distribution of such impacts will not be felt equally. While some households will have a second home to relocate to, and some will have savings, others will not have savings, insurance, home ownership, mobility, or work. Evidence from Germany demonstrates that high-income households have a higher probability of being insured, living in safe areas, and having physical or behavioural flood mitigation measures than poorer households.²⁰ Recognising citizens' rights to adequate housing is therefore essential to reducing the risk and exposure of communities to the impacts of climate change.

Furthermore, the right to adequate housing is essential to meeting Ireland's legally binding emission reduction targets enshrined in the Climate Action and Low Carbon Development (Amendment) Act 2021. Ireland's residential sector currently contributes to climate change; almost half (48%) of Ireland's housing stock is energy inefficient,²¹ with poorly insulated homes locked into fossil fuel dependence. Housing is accordingly responsible for 28% of Ireland's energy consumption, and 19.8% of Ireland's carbon emissions. Irish homes are 60% more energy-intensive than the average EU home.²² The Climate Change Advisory Council and the Environmental Protection Agency recently highlighted the gap between climate action planning and implementation, calling for immediate implementation of the Climate Action Plan 2021 and the identification of new measures if Ireland is to meet its legally binding emission reduction targets.²³²⁴ Ireland must urgently increase the ambition of its climate action while safeguarding housing and shelter rights. This could provide an opportunity to

¹⁷ Nejad, A.S., Parnell, A.C., Greene, A., Thorne, P., Kelleher, B.P., Devoy, R., McCarthy, G. 2022. A newly reconciled dataset for identifying sea level rise and variability in Dublin Bay. *Ocean Sci.*, 18, pp. 511–522 <https://doi.org/10.5194/os-18-511-2022>.

¹⁸ <https://www.cso.ie/en/releasesandpublications/ep/p-cp2tc/cp2pdm/pd/>.

¹⁹ Stori, F. T., O'Mahony, C. 2021. 'Coastal Climate Adaptation in Ireland: The Effects of Climate Change in Portrane (Fingal, Co. Dublin) and Future Perspectives.' *MaREI the SFI Research Centre for Energy, Climate and Marine; Environmental Research Institute; University College Cork*. Coastal Communities Adapting Together – CCAT Project. 202p. https://www.marei.ie/wp-content/uploads/2021/11/Stori-and-OMahony-2021_Coastal-Climate-Adaptation-Ireland-Portrane.pdf

²⁰ Reaños, M.A.T. 2021. 'Floods, flood policies and changes in welfare and inequality: Evidence from Germany.' *Ecological Economics*, 180, p.106879

²¹ According to the Central Statistics Office, 48% of homes in Ireland have a BER rating between D-G <https://www.cso.ie/en/releasesandpublications/er/dber/domesticbuildingenergyratingsquarter22021/#:~:text=118%25%20increase%20in%20Domestic%20BER%20audits%20in%20April%2DJune%202021&text=There%20were%2022%2C336%20Building%20Energy,223%25%20higher%20than%20April%202020>

²² <https://www.seai.ie/data-and-insights/seai-statistics/key-publications/energy-in-residential-sector/>

²³ Climate Change Advisory Council. 2022. 'More Focus on Implementation and Adaptation Needed.' <https://www.climatecouncil.ie/media/climatechangeadvisorycouncil/Climate%20Change%20Advisory%20Council%20Annual%20Review%202021%20Press%20Release.pdf>

²⁴ Environmental Protection Agency. 2022. 'EPA Greenhouse Gas emissions projections highlight the need for urgent implementation of climate plans and policies.' <https://www.epa.ie/news-releases/news-releases-2022/epa-greenhouse-gas-emissions-projections-highlight-the-need-for-urgent-implementation-of-climate-plans-and-policies-.php>

deliver climate and housing justice in tandem. As noted by the United Nations Special Rapporteur on Housing, climate action presents an opportunity to improve housing systems, policies and legislation so as to ensure adequate housing for all.²⁵ This finding was echoed by the Intergovernmental Panel on Climate Change (IPCC) which reported in 2022 with “high confidence” that “*unmet needs for healthy, decent, affordable and sustainable housing and infrastructure are a global opportunity to integrate inclusive adaptation strategies into development.*”²⁶

- **Right To A Healthy, Clean And Sustainable Environment:** Finally, the right to adequate housing, which includes a right to shelter, is inherently connected to the right to a healthy, clean and sustainable environment, recognised by the United Nations (UN) in July 2022. UN Secretary-General has called upon nation states to make this newly recognised right “*a reality for everyone, everywhere.*”²⁷ The resolution explains that a right to a healthy, clean and sustainable environment includes “*sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations.*”²⁸ However, the paucity of adequate housing and appropriate shelter in Ireland currently undermines citizens’ right to a healthy, clean and sustainable environment. For instance, energy poverty, which disproportionately impacts vulnerable and marginalised groups,^{29,30} is impacted by the lack of quality and energy-efficient homes that are affordable, social, and culturally appropriate. Many households in, or at risk of, energy poverty may rely on burning solid fuels without access to readily available and affordable alternatives. The negative effects of emissions caused by the burning of solid fuels can be compounded with serious impacts on their health and wellbeing, such as air pollution in the home.³¹

²⁵ United Nations Human Rights Council. Report by Special Rapporteur Raquel Rolnik (11 January 2010) UN doc A/HRC/13/20/Add.3 available from <https://digitallibrary.un.org/record/679700>

²⁶ IPCC, 2022: Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Lösschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. In Press.

²⁷ UN News. 2022. ‘UN General Assembly declares Access to a clean and healthy environment a universal human right.’ Available at: <https://news.un.org/en/story/2022/07/1123482>.

²⁸ General Assembly Resolution, *The human right to a clean, healthy and sustainable environment*, A/RES/76/300 (26 July 2022) available from <https://digitallibrary.un.org/record/3982508?ln=en>.

²⁹ Members of the Traveller community are a disproportionately impacted cohort; a 2019 MABS report concluded that 77% of Travellers live in energy poverty, spending on average over 26% of their income on energy. See: Stamp, S., Kearns, M. 2019. ‘Accommodating Ethnicity: Addressing Energy Poverty Among Travellers Living in Mobile Homes and Trailers: An Exploratory Study.’ National Traveller MABS. https://www.citizensinformationboard.ie/downloads/social_policy/MABS_Energy_Poverty_Report_2019.pdf.

³⁰ The Irish Human Rights and Equality Commission identified migrants, one-parent families, youth, and those with disabilities as least likely to maintain the home warm - cohorts which are disproportionately represented in the private rental sector. Tenants, unlike homeowners, have fewer options regarding investments and legal decision-making power to make their homes more sustainable, and are more likely than homeowners to experience energy deprivation and inadequate home heating. See: <https://www.ihrec.ie/app/uploads/2021/09/Monitoring-Adequate-Housing-In-Ireland-Sept-2021.pdf>.

³¹ Ireland’s Environmental Protection Agency note that: “People of lower socio-economic status tend to be disproportionately exposed to environmental pollution (such as air pollution), and this may be exacerbated in the future without appropriate policies to protect those most vulnerable in our society.”

Furthermore, housing or halting sites located close to polluting infrastructure, traffic congestion, or lacking access to green space, are less likely to be contested for investment or development and are more likely to be affordable. For example, a 2020 report by Youth Justice Ireland showed that 71% of landfill sites and waste incinerators are located in areas below the national average of deprivation.³² The recognition of a right to adequate housing could reorient housing policy and legislation from the prioritisation of housing as an asset to the prioritisation of housing as a physical basis for a healthy environment. Such an approach would ensure that housing policy and legislation protects, rather than undermines, communities' health, and would promote access to environmental amenities for all, such as accessible and reliable public transport and safe places to exercise and play.

IV. PROPOSED WORDING

In light of the above policy considerations, we submit that the proposed wording for a standalone right to housing could take the following form:

"Housing

Article 43A

1 The State recognises, and shall vindicate through legislative and other measures within its available resources, the right of all persons to adequate housing.

2 The State recognises, and shall guarantee in its laws as far as practicable, the right of every person to appropriate shelter, conducive to that person's health and well-being needs."

We submit that the wording that is ultimately recommended by the Housing Commission to the Irish government should have regard to our above outlined policy considerations, in providing for a standalone right to adequate housing which includes a right to shelter.

V. CONCLUSION

It is clear that urgent action needs to be taken to effectively tackle the housing crisis. A crucial step in achieving this is the adoption of a constitutional right to housing, which includes a right to shelter. The Irish constitution needs to be reframed and rebalanced to provide for the protection of this fundamental human right.

The insertion of a right to housing could have widespread implications in shaping Ireland's housing policy going forward. As outlined above, it could, for example, prevent homelessness, ensure minimum standards of housing, protect security of tenure, and lead to a just and inclusive transition to a completely decarbonised economy and society, among other effects.

A robust right to housing, which includes a right to shelter, would enhance the rights of all people of all circumstances and crucially, would provide meaningful minimum floor of protection to those most vulnerable and marginalised in society.

³² Youth Work Ireland. 2020. 'Climate Justice Report 2020.' Available at: [https://www.youthworkireland.ie/images/uploads/general/Youth_Work_Ireland_Climate_Injustice_Report_Final_\(1\).pdf](https://www.youthworkireland.ie/images/uploads/general/Youth_Work_Ireland_Climate_Injustice_Report_Final_(1).pdf).

In light of the above, we ask that the Housing Commission recommend that a referendum on housing be held to insert a standalone article on housing and consider the above proposed wording.