



Relate

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The journal of developments in social services, policy and legislation in Ireland

The Citizens' Assembly

In the *Programme for a Partnership Government*, agreed between Fine Gael, the Independent Alliance and Independent TDs in May 2016, the Government proposed to carry out certain reforms of the Constitution. The programme proposed the establishment of a Citizens' Assembly, a group without participation from politicians, with a mandate to consider a range of constitutional and societal issues.

The Constitution

The Constitution (Bunreacht na hÉireann) is the fundamental legal document that sets out how Ireland should be governed. It establishes the main institutions of the State – the President, the Houses of the Oireachtas, the Government and the courts. It describes the fundamental rights of Irish citizens.

The Constitution was enacted in 1937. It has been amended on numerous occasions, reflecting ongoing societal change. It is not a static document and continues to be subject to regular legal interpretation.

In order to amend the Constitution, the proposed amendment must first be approved by both Houses of the Oireachtas and then submitted to a referendum, which is a vote by all eligible Irish citizens. If the amendment is passed by a referendum, it is signed into law by the President.

The formation of the Citizens' Assembly does not in any way affect the procedure for amending the Constitution.

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Structure and role of the Citizens' Assembly

The Citizens' Assembly is a body formed from the citizens of Ireland to discuss a number of issues which have been referred to it by the Houses of the Oireachtas. The Assembly comprises a Chairperson and 99 citizen members, randomly selected so as to be broadly representative of the Irish electorate.

Essentially, the Assembly hears presentations from experts and civil society groups on various issues facing Ireland. The Assembly members debate these issues amongst themselves and reach conclusions on each issue. These conclusions form the basis of reports and recommendations which are submitted to the Houses of the Oireachtas for further debate by our elected politicians.

The Assembly's terms of reference were agreed by the Houses of the Oireachtas in July 2016. The Assembly has been asked to consider the following issues:

- The Eighth Amendment of the Constitution
- How we best respond to the challenges and opportunities of an ageing population
- Fixed-term parliaments
- The manner in which referenda are held
- How the State can make Ireland a leader in tackling climate change

The Assembly may also be asked to consider other matters that may be referred to it by the Oireachtas.

The Chairperson

The Chairperson of the Assembly is responsible for the running of the Assembly in accordance with its rules and its terms of reference. Ms Justice Mary Laffoy, a Supreme Court judge, was appointed Chairperson of the Assembly by the Government on 27 July 2016.

Members of the Assembly

There are 100 members of the Assembly, 99 citizen members and the Chairperson. The members were chosen at random to represent the views of the people of Ireland. The members are broadly representative of Irish society, as reflected in the most recent census in terms of criteria such as age, gender, social class and regional spread. Individuals were not invited to apply for membership of the Assembly.

At the time of selection, all members had to be on the electoral register to vote in a referendum and they must

remain so throughout the duration of the Assembly. All of the members must be Irish citizens.

During September and October 2016, 99 citizen members and 99 substitute citizen members were recruited. Interviewers recruited participants by cold calling door-to-door to households. The members' names and the general area where each comes from are published on the Assembly's website.

Members are not paid for their time in taking part in the Assembly, but accommodation is provided for them during Assembly meetings, as well as meals and travel expenses.

Members of advocacy groups on the topics to be considered by the Assembly are excluded from membership of the Assembly. Instead, such interest groups are invited to make presentations or submissions on the matters with which they are concerned.

Irish citizens living abroad were not entitled to become members of the Assembly. These citizens cannot be entered on the register of electors and so cannot vote in an election or referendum in Ireland. The only exception to this are those people with a postal vote who may be away from the State, for example, Irish officials on duty abroad and army personnel.

Key principles of the Assembly

The Assembly aims to apply six key principles in all its activities:

1. *Openness*: the Assembly will operate with complete transparency with all plenary meetings being broadcast live on its website and all documentation freely available. The Assembly should be open to hearing from all sections of society on any issue, including Irish diaspora and people under 18 years old, who are not directly represented in the Assembly membership.
2. *Fairness*: the Assembly will allow all views to be heard on every issue and its briefing materials should be of the highest quality
3. *Equality of voice*: each Assembly member will be given an opportunity to voice their opinions if they so wish
4. *Efficiency*: the Assembly will make best use of its limited time together and will ensure that members can properly prepare for meetings
5. *Respect*: Assembly members will be able to freely and confidently make contributions and express their views without fear of personal attacks or criticism
6. *Collegiality*: the Assembly members will work together in a spirit of friendship in achieving its task

The Expert Advisory Group

The Assembly's terms of reference provide for the establishment of an Expert Advisory Group to assist it in terms of preparing information and advice. The Expert Advisory Group is made up of academics and practitioners across a number of relevant areas including political and social science, Constitutional law and theory, medical law and ethics, medicine and obstetrics.

The main functions of the Expert Advisory Group are:

- Supporting the Chairperson and Secretariat in constructing a fair, balanced and comprehensive work programme for the Assembly on each of the topics
- Providing background expert advice on the issues being discussed
- Advising on the criteria for selecting specialists or experts to appear before the Assembly
- Recommending the specialists or experts to appear before the Assembly, for ratification by the Steering Group
- Working with the Chairperson and Secretariat to select speakers from civil society and advocacy groups

The members of the Expert Advisory Group were chosen based on their relevant expertise and experience, impartiality on the topics before the Assembly, and their willingness and availability to participate. The composition and focus of the Expert Advisory Group may change during the lifetime of the Assembly.

The Steering Group

In accordance with the Citizens' Assembly rules and procedures, a Steering Group was put in place to support the Assembly in the efficient and effective discharge of its role and functions.

The Steering Group's responsibilities are to assist the Chairperson in:

- Oversight of all planning and operational issues for Assembly meetings
- Ongoing monitoring of the work programme
- Ratification of the specialists or experts to appear before the Assembly following advice from the Expert Advisory Group and the Chairperson
- Evaluation of the Assembly procedures and arrangements

The Steering Group consists of the Chairperson and a representative group of Assembly members elected by the members themselves and it is supported by the Assembly Secretariat.

Meetings of the Citizens' Assembly

The inaugural meeting of the Citizens' Assembly took place on 15 October 2016 in Dublin.

Authorised members of the media are allowed to attend the plenary sessions of the Assembly but members of the public may not. The plenary sessions are streamed live on the Assembly's website at citizensassembly.ie. Assembly members are asked not to give media interviews or public commentary while the Assembly is actively considering a topic.

It is recognised that certain organisations or individuals may have a legitimate interest in being present at the meetings to observe proceedings at first hand. Therefore, representatives from advocacy groups, embassies, political parties, academics, and social partners may be permitted to attend the plenary sessions of the Assembly.

The format of the Assembly meetings includes:

- Introductory remarks by the Chairperson
- Expert presentations
- Presentations from civil society and advocacy groups
- Consideration of submissions by members of the public
- Question and answer sessions and debates
- Roundtable discussions

Expert presentations

For each topic, one or more experts or specialists make presentations directly to the Assembly with the aim of providing informed, fair and balanced information to the members.

The Expert Advisory Group and the Steering Group choose these experts based on the following criteria:

- Demonstrated expertise in the field, for example, university academics, members of the legal or medical profession or other subject specialists
- Good communicators, capable of expressing themselves clearly to a diverse audience
- People who are not seen primarily as advocates for one side or another of the issue at hand
- In the case of issues where expert views are contested (that is, where experts can make credible arguments that directly conflict with one another) the Expert Advisory Group will ensure that both sides of the argument will be represented

Submissions

The Assembly may invite and accept submissions from interested bodies and individuals for consideration by the members. Invitations for submissions are issued by the Chairperson in the national press.

All documents and submissions received by the Assembly Secretariat are listed on the Assembly's website and displayed with the relevant name or organisation. The Citizens' Assembly reserves the right not to accept a submission if it is deemed offensive or inappropriate. In the case of personal stories and sensitive submissions, all personal data and related identifiable details will be removed or redacted before being made available.

This process allows the wider public, members of advocacy groups and people living overseas to have an input into the Citizens' Assembly process.

On the topic of the Eighth Amendment of the Constitution, the Assembly received more than 13,000 submissions.

Presentations

After the Assembly invites and receives submissions on any matter, it may then choose to hear oral presentations from any group or individual who has made a submission. The Steering Group can make recommendations in relation to the selection of these interested bodies to present to the Assembly.

Consideration of submissions and roundtable discussions

Deliberation by the members is fundamental to the Assembly exercise. Any member wishing to speak during deliberations may do so. However, members are encouraged to use the opportunity of roundtable discussions to express their views, ask further questions of the experts and deliberate with one another. These discussions may then be reflected in a brief report to the meeting as a whole.

Roundtable discussions are built into the timetable for each Assembly meeting, to allow the members an opportunity to further examine, discuss, debate and enhance their understanding of the material they are considering.

Following a presentation from an expert or invited speaker, the Assembly typically breaks off into roundtable discussions to allow the members to discuss what they have heard, and to hear each other's views.

To assist with these discussions, facilitators and note-takers are present at each table. The role of the facilitator is to:

- Facilitate a discussion focused on the topic and in keeping with the ground rules
- Note any questions from the table which the members would like to ask in the public question and answer session. These must be agreed with all members at the table.
- Record a summary of the discussion and feed this back in the plenary session. Again, this must be agreed with all members.

From time to time, roundtable discussions are scheduled to allow members to consider matters in more detail, for example, to discuss how the Assembly's recommendations might be formed. The role of the facilitator in these sessions is to summarise the discussion that has taken place.

Recommendations

Following these roundtable discussions, all matters before the Assembly will be voted upon, and recommendations based on the majority view of the members will be made to the Houses of the Oireachtas.

The Government will then provide a response to each recommendation of the Assembly and, if accepting the recommendation, will indicate the timeframe it envisages for the holding of any related referendum.

Recent recommendations of the Assembly

The Citizens' Assembly held its fifth meeting on the issue of the Eighth Amendment of the Constitution on 22 and 23 April 2017. During this meeting, voting by the members took place in order to agree what recommendations it would make to the Oireachtas on this issue.

Voting was by secret ballot. The results of the ballot were announced as soon as the votes had been counted and verified.

Article 40.3.3

The first item that was considered by the Assembly was the wording of Article 40.3.3, which reads as follows:

"The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right" (as inserted by the Eighth Amendment, 7 October 1983).

"This subsection shall not limit freedom to travel between the State and another state" (as inserted by the Thirteenth Amendment, 23 December 1992).

"This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state" (as inserted by the Fourteenth Amendment, 23 December 1992).

The relevant votes of the Assembly were as follows:

- The members voted by a majority of 79 votes to 12 that the wording of the Article should not be retained in full

- The members voted by a majority of 50 votes to 39 that the wording should be replaced or amended
- The members voted by a majority of 51 votes to 38 that the Article should be replaced with a constitutional provision that explicitly authorises the Oireachtas to legislate to address termination of pregnancy and any rights of the unborn and any rights of the pregnant woman
- Finally, the members voted on the recommendations to be made to the Houses of the Oireachtas on what should be included in any relevant legislation

The results of these ballots are available on the Citizens' Assembly website.

Following these votes, the Chairperson will prepare a report for the Oireachtas on the recommendations of the Citizens' Assembly regarding the Eighth Amendment of the Constitution.

The next topic for the Assembly

The Citizens' Assembly began the submissions process for the second topic for consideration, 'how we best respond to the challenges and opportunities of an ageing population', on 3 April 2017. The next meeting of the Assembly is scheduled to take place on 10 and 11 June 2017. It will be streamed live and available to view on citizensassembly.ie.

The Citizens' Assembly is required to complete its work within a year from the date of its first meeting, which will be 16 October 2017.

The Office of the Ombudsman

The Ombudsman

The Ombudsman service was established under the Ombudsman Acts 1980 to 2012. The main duty of the Ombudsman is to investigate complaints made by members of the public about how they have been treated by certain public bodies in Ireland. The Ombudsman can examine decisions, refusals to take action and the administrative procedures of public bodies.

The Ombudsman is appointed by the President following nomination by both Houses of the Oireachtas. The Ombudsman is not a political office and they must remain independent in the performance of the functions of the Ombudsman. Peter Tyndall is the current Ombudsman. He was appointed in December 2013. The term of office is six years and the Ombudsman may be re-appointed for a second or subsequent term.

What type of complaints does the Ombudsman deal with?

The Ombudsman investigates complaints from members of the public who believe that they have been treated unfairly by certain public bodies or other providers of public services. Such complaints should always be brought to the public service provider first for resolution (see page 6). However, if this approach does not resolve the matter, the complaint can then be brought to the Ombudsman. The public bodies whose actions may be investigated are:

- Government departments and offices (for example, the Department of Social Protection or the Revenue Commissioners)
- Local authorities
- The Health Service Executive (HSE)
- Agencies, such as charities and voluntary bodies, that deliver health and social services on behalf of the HSE
- All public bodies covered by the Disability Act 2005
- Publicly funded, third-level educational bodies
- Public and private nursing homes
- Certain regulatory bodies
- Other bodies listed in Part I of the First Schedule to the Ombudsman (Amendment) Act 2012

The Ombudsman also examines complaints about failures by public bodies to provide accessible buildings, services and information, as required under Part 3 of the Disability Act 2005. For these types of complaints, the term 'public body' includes Government departments, local authorities, the HSE and semi-State bodies, as well as most other State organisations.

Over 180 public bodies were brought under the Ombudsman's remit for the first time under the Ombudsman (Amendment) Act 2012, with effect from 1 May 2013. While there is no definitive list of these bodies available, the Ombudsman's Office has prepared an indicative list of bodies that it considers to be within the criteria set out under the 2012 Act. This list is available on the Ombudsman's website ombudsman.gov.ie.

On 24 August 2015, the Ombudsman's remit was extended to include complaints relating to the administrative actions of any private nursing home in receipt of public funding under subvention or the Nursing Homes Support Scheme (also known as Fair Deal). However, only complaints about actions that occur on or after 24 August 2015 can be examined.

Most recently, since 3 April 2017, people living within the direct provision system for asylum seekers can bring complaints to the Ombudsman about certain actions of accommodation centres and of the Reception and Integration Agency (RIA). The Ombudsman can also examine complaints about services set out in the RIA's house rules, such as standard of accommodation, meals,

cleaning and facilities. The Ombudsman cannot examine decisions about asylum, citizenship, family reunification, residency or visas. If the complaint relates to a person under 18 years of age living in the direct provision system, the complaint should be made to the Ombudsman for Children's Office.

Making a complaint

Under the 2012 Act, bodies under the Ombudsman's remit are legally obliged to give reasonable assistance and guidance to members of the public about their administrative actions. They are also required to deal with members of the public properly, fairly, impartially and in a timely manner.

If you are unhappy with the service you have received from a body under the Ombudsman's remit, you should bring this to the attention of that body and give them an opportunity to address your complaint. In some cases there may be a formal appeals system within that body.

You should:

- Tell the public service provider that you are unhappy with the service provided and why. Tell them what happened, and what you think should have happened instead.
- If you are unhappy with their response, ask them how you can make a complaint
- Ask for the name or title of the person to whom you should make your complaint
- When you are making a complaint, make it very clear what it is about the service that you think is wrong
- Tell the public service provider what it is that you want them to do to rectify the situation

A sample letter of complaint is available on the Ombudsman's website ombudsman.gov.ie. Any letter or email of complaint should include the facts of the situation, any evidence that you have, why you are unhappy, and your contact details so the organisation can respond to you. Your complaint should never make offensive remarks or include views for which you do not have any evidence.

Making a complaint to the Ombudsman

If you are not satisfied with the response you receive from the public service provider, you can make a complaint to the Ombudsman. You can make a complaint as an individual or as a public representative, or as a business or organisation. You can complain on your own behalf, or for someone else if they ask you to. There is no fee for making a complaint.

You must make your complaint as soon as possible. The time limit for making a complaint about a decision or action of a public service provider is 12 months. This time starts to run from the date the decision is made, or action is taken or from the date that you become aware that the decision or action occurred.

Complaints can be made in writing, by telephone, by calling to the Office of the Ombudsman, by email or by using the online complaint form. You should include any relevant documentation or correspondence in your complaint.

The Office of the Ombudsman is located at 18 Lower Leeson Street, Dublin 2. The Office provides monthly outreach services at Citizens Information Centres in Cork, Limerick and Galway. It also has a programme of regional visits to other counties throughout the year. Members of the public can drop in, either to make a complaint directly or to get advice and assistance from staff of the Office about how to go about making a complaint.

Preliminary examination of your complaint

When you make a complaint to the Ombudsman, he will carry out a preliminary examination of your complaint. The preliminary examination is a quick and informal way of deciding whether an investigation is necessary.

During the preliminary examination, it will be decided whether the action of the public service provider that you complained about affected you in a negative way. You may also be interviewed by the Ombudsman in an informal way at this stage.

The Ombudsman will then consider if the action that you complained about:

- Was made without proper authority
- Was made on irrelevant grounds
- Was made in a negligent or careless manner
- Was based on wrong or incomplete information
- Discriminated against you
- Was based on bad administrative practice, or
- Was otherwise an example of unfair or unsound administration

Most complaints do not go any further than the preliminary investigation stage.

Investigation of your complaint

Following a preliminary examination, if your complaint appears straightforward, the Ombudsman may ask the public service provider you complained about for a report

on your complaint. They may ask that provider for your case file. Once received, the Ombudsman will consider the information the service provider sends about your case. He may be able to make a decision on your complaint at this point. If a decision is made, he will write to you and tell you the decision and how it was reached.

If your complaint is more complex, the Ombudsman may need to get further information from you or from the public service provider, as well as examine files from the service provider or meet with the staff involved. You can send additional relevant information, views and comments during the investigation for consideration. Following this examination, he will write to you with the decision and how it was reached.

If a person fails to comply with a request from the Ombudsman to provide specified information or documents, the Ombudsman may apply to the Circuit Court for an order of compliance.

The Ombudsman may decide to carry out a formal investigation based on the results of the preliminary examination. As part of a formal investigation, he will prepare a Statement of Complaint, in consultation with you, to be delivered to the relevant public service provider setting out the issues to be investigated.

Investigations are carried out in private and usually in writing. The Ombudsman may demand any information, files or documents that he needs to help him carry out the investigation. At the end of the investigation process, he must inform you of the decision and how it was reached.

How long will an investigation take?

The Ombudsman will try to complete the examination of your complaint within three to six months. If your case is more complicated, it may take longer. You will be kept informed of how the examination of your complaint is progressing but you can request an update at any stage.

You can also check the status of your complaint online at ombudsman.gov.ie/en/Make-a-Complaint/My-complaint-status/

Complaints that the Ombudsman cannot investigate

The Ombudsman (Amendment) Act 2012 contains a list of specific public bodies which are not within the Ombudsman's remit. A full list is included in Part I of the First Schedule to the 2012 Act.

There are also situations where the Ombudsman cannot carry out an investigation of your complaint, such as:

- Where your complaint is about a private company, an individual, or a private practitioner, for example, a dentist, optician, pharmacist
- Where your complaint is about the clinical judgement of a doctor
- Where any minister of the Government sends a request in writing to the Ombudsman to cease the investigation
- Where the matter you complained of is being decided by the courts
- Where legislation gives you a right of appeal to the courts against the decision of the public service provider
- Where legislation gives you a right of appeal to an independent appeals body against the decision of the public service provider
- Where the decision or action of the public body that you complained about relates to recruitment or the terms and conditions of employment
- Where you are complaining about a decision relating to immigration or naturalisation
- Where you are complaining about a decision relating to a pardon or remission of a prison sentence
- Where you are complaining about the actions of the Garda Síochána or the administration of a prison

If your complaint is not something that the Office of the Ombudsman can consider, you may be able to bring your complaint to one of the other Ombudsman services.

These are:

- a) The Financial Services Ombudsman is an independent officer whose remit is to investigate, mediate and adjudicate unresolved complaints of customers about financial service providers
- b) The Ombudsman for Children is responsible for safeguarding and promoting the rights and interests of children and young people under 18 years
- c) The Pensions Ombudsman investigates and decides complaints and disputes involving occupational pension schemes and Personal Retirement Savings Accounts (PRSAs)
- d) The Ombudsman for the Defence Forces investigates complaints made by serving or former members of the Defence Forces, about actions taken by serving or former members of the Defence Forces or civil servants, where there is an adverse effect
- e) The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory agency that is responsible for receiving and dealing with all complaints made by members of the public concerning the conduct of members of the Garda Síochána

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

Head Office t 0761 07 9000
Ground Floor f 01 605 9099
George's Quay House e info@ciboard.ie
43 Townsend Street w citizensinformationboard.ie
Dublin 2
D02 VK65

Possible outcomes of a complaint

The Ombudsman only has the power to make recommendations. His findings are not legally binding and he cannot force the body to accept or act upon his decision. If the body that you complained about fails to act upon the decision of the Ombudsman, he may make a report to the Houses of the Oireachtas.

In exceptional cases, he may recommend financial recognition of the time and trouble taken in making and pursuing a complaint.

Following an investigation of a complaint, he may also make general recommendations to a body under his remit even if that public body was not the focus of the complaint or investigation.

The Ombudsman may refer any question of law to the High Court for determination.

Review of decisions

The Ombudsman's decision completes his examination of your complaint. In certain limited circumstances, he may review a decision where one or more of the following five criteria exist:

- New relevant evidence or information has become available which might have had a bearing on the original decision in the case
- There was a failure on the part of the Ombudsman to examine a relevant and substantial issue
- There was a failure on the part of the Ombudsman to obtain relevant and necessary information from the body concerned
- The complaint has been misunderstood or misinterpreted by the Ombudsman
- The decision of the Ombudsman was incorrect or unreasonable in the context of the complaint or the particular circumstances of the case

The Ombudsman will not review a case simply because you disagree with his decision.

Any requests for reviews must be submitted using the appropriate form, within one month of you receiving the decision letter. The review form is available on the Ombudsman's website. In exceptional circumstances, a late

review request may be accepted. There will be one review only of a decision.

A review manager or a senior investigator, who has had no previous involvement in the case, and who is in a more senior position than the original investigator, will review the original decision. All members of the Ombudsman's Office must act professionally and impartially with complainants and colleagues when conducting a review.

Where the most senior person in the Office has already made a decision on the case, the request for a review will not be accepted. In such cases, the review manager will write to you informing you that a review will not proceed.

If the review finds some failing in the Ombudsman's examination of your complaint, a new case will be opened. If the review does not find any failings with the Ombudsman's examination of the complaint, the person considering the review will inform you accordingly and explain why. The case will then be closed with no further action.

The Ombudsman aims to reach a decision on reviews within 90 days.

Future developments

In 2016, it was announced that the Minister for Justice and Equality supported the recommendation that prisoners should be able to have their complaints investigated independently by the Ombudsman if they have been unable to resolve them using the internal complaints process of the Irish Prison Service. No commencement date has yet been given for this extension of the Ombudsman's remit.

In March 2017, the Ombudsman and the Medical Council signed a Memorandum of Understanding to allow for the exchange of information and complaints between both offices. Under this agreement, the Medical Council will continue to have legal responsibility for the regulation of doctors, with the Ombudsman responsible for public service providers. The agreement will establish procedures to assist members of the public in accessing the services of both organisations, and enable joint initiatives such as projects and research on improving the quality and safety of patient care.

The information in *Relate* is intended as a general guide only and is not a legal interpretation