

# ARTICLE 41.2

Dr Laura Cahillane

## ARTICLE 41.2:

1. In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
2. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Why was this included in the Constitution  
in the first place?

- Not to prevent women from working but to protect the idea that if a woman wished to remain in the home the state should enable her to do so.
- Economic benefit?



# Does existing provision have any legal effect?



- **LvL case** – could have been a landmark but SC disagreed
- **Sinnott case** – Denham attempted to read in some value but minority
- **TvT case** – recognised care work has value, but similar in UK without 41.2



Probably not

OPTIONS IF YOU VOTE  
NOT TO RETAIN ARTICLE  
41.2

Delete

Replace

Replace with what?

## REPLACEMENT OPTIONS

1. Replace current provision with gender neutral language and recognition for carers in the home

2. Replace current provision with version which imposes a positive duty on the State

## Consequences of option 1

‘The State recognises that home and family life gives to society a support without which the common good cannot be achieved. The State shall endeavour to support persons caring for others within the home as may be determined by law.’

Note: This recommendation was not accepted by the Government.

- Recognise the importance of care-work in the home
- Provide for a legislative basis for economic support
- Location: 41 or 45
- Preserve executive and legislative autonomy over the economic issue
- Exclude carers outside of the home
- Would not commit the State to a ‘reasonable level of support’
- Would not ensure that carers ‘shall not be obliged by economic necessity to engage in labour’.
- Potentially no legal effect

## Consequences for option 2

Similar to option 1 but expressed as ‘the State shall support ...’

- Gender-neutral and recognition for carers in the home
- Positive duty on the state to support carers in the home
- Radical – unusual to express something like this in the Constitution
- Unlikely to be accepted by Government



## Consequences of deletion

- Insulting degrading language no longer part of Constitution
- No unintended consequences (judicial interpretation)
- Constitution not cluttered with meaningless provisions
- Reform by legislative means can effect real change
- No recognition for carers in the Constitution
- No guidance or duty on Government or Oireachtas to support carers in the Constitution