

# The Constitution

## Summary of organisational submissions to the public consultation process

A number of organisational submissions highlighted the issue of constitutional change as important to address the social responsibility of care paid and unpaid:

Article 41.2 of Bunreacht na hÉireann states: 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

For many submissions, Article 41.2 did not represent the reality of modern Irish society:

“It is clear that the time has come to make some change to this particular Article within the Constitution, written as it was 82 years ago, at a very different time in history” [Care Alliance Ireland](#)

“Article 41.2 of the constitution is problematic due to its outdated and limited wording it does not reflect the reality of families or care in Ireland.” [Mna Glasa/Green Women \(Green Party\)](#)

“Article 41.2 of the Irish Constitution is an outdated provision that directly contradicts the well voiced values of modern Ireland.” [Sinn Féin](#)

For others, the wording of the article itself promoted gender stereotypes about women’ role in society:

“Article 41.2 of the Constitution recognises the role of women in the home and undertakes not to force them to take up paid work to the neglect of those duties. Such provisions are outdated and perpetuate gender stereotyping. It is outdated and does not encompass the variety and diversity of experiences which women have – as employees, as carers, as employers – in modern Ireland.” [Inclusion Ireland](#)

“Articles such as this do little to change attitudes towards gender roles and further entrench gender inequalities within society.”

[Oxfam Ireland](#)

“In its policy statement on Article 41.2, the [Irish Human Rights and Equality] Commission expressed the view that Article 41.2 is not compatible with Ireland’s international human rights obligations. Moreover, the Commission expressed concern that the provision continues to perpetuate stereotypical attitudes towards the role of women in Irish society, which may have a negative impact on women’s participation in the labour market.” [Irish Human Rights and Equality Commission](#)

Aside from being outdated, another submission emphasised how:

“In practice, Article 41.2 ... has had little or no impact on the positive formulation of social policy or improving the position of women. For example, it provided the Constitutional and cultural background for the marriage bar, and its detrimental impact on women’s choices, employment and economic independence, the legacy of which we are still dealing with today. In practice Article 41.2 has not supported the home or family, it has merely diminished women.” [National Women’s Council of Ireland](#)

The Article was also seen as a problem in whom it included and it where it understood care to take place:

“It does not recognise the range of different types of care: in the community as well as with family members and friends.” [National Women’s Council of Ireland](#)

The wording of the article was seen to exclude men from opportunities and responsibilities to care:

““It does not recognise the work which men currently do as carers. Nor does it recognise that men have duties and responsibilities to be carers.” [National Women’s Council of Ireland](#)

A number of submissions drew attention to how Article 41.2 was limited by assuming that care happened in traditional families:

“It presumes a male breadwinner, two parent household where ‘woman’ stays at home and does not take into account the reality of lone parents, LGBTQI+ families, or blended families.” [National Women’s Council of Ireland](#)

For organisations representing carers, article 41.2 was a problem and needed amendment because it operated with a narrow view of who cares:

“– care undertaken by men, non-binary individuals and those women who are not mothers and are providing care to adults and children in the home. By continuing to restrict this recognition at Constitutional level, the State remains complicit in the invisibility of male and non-binary family carers.” [Care Alliance Ireland](#)

The current wording of the article also did not recognise the contribution of older women to care over their lifetime:

“It should acknowledge the significant contribution of women’s unpaid work throughout their lives by legislating for a full and retrospective homecare credit to enable women to access a full pension and achieve gender equality.” [UCD Women Graduates’ Association, Community Law and Mediation](#)

For the majority of organisational submissions that referenced constitutional change the suggested remedy lay in:

- “Holding a referendum to replace Article 41.2 of the Constitution with a gender neutral and inclusive statement on the value of care to Irish society.” [Belong to Youth Services](#), [Soroptimist International](#), [Mna Glasa/Green Women \(Green Party\)](#), [Citizens Information Board](#), [Inclusion Ireland](#), [Irish Federation of University Women](#), [National Collective of Community Based Women’s Networks](#), [National Women’s Council of Ireland](#), [Oxfam Ireland](#), [Society of St. Vincent de Paul](#), [Sinn Féin](#), [Irish Human Rights and Equality Commission](#)

One possible reformulation of the article suggested was:

“The State recognises that care provided by the home, family and community gives society a support without which the common good cannot be achieved” [National Women’s Council of Ireland](#)

This was argued to “give recognition to the valuable work done by thousands of women and men, every day in Ireland. It invites men to take on more responsibility and enjoy the often rewarding, work of care. It extends the definition of care to include care outside the home and in the community. It confirms that the State will seek to support carers” [National Women’s Council of Ireland](#)

## However, on its own it was deemed insufficient:

“However, such a statement does not offer legal protection for the women and men who provide care in our society. It can provide a strong symbolic commitment, but only a full complement of socio-economic rights can address the economic inequality they experience as a consequence of their caring responsibilities and caring needs. Lone parent households, people with disabilities, those providing unpaid care and for children with disabilities.”

[National Women’s Council of Ireland](#)

## Other submissions suggested reformulations or the addition of other elements in a proposed amendment:

“The [Irish Human Rights and Equality] Commission suggests that this wider recognition could be reflected in a positive obligation within Article 41.2 in a number of ways such as incorporating a statement that: ‘The State shall provide a reasonable level of support to parents and others providing family care’” [Irish Human Rights and Equality Commission](#)

“This new provision should be supplemented by constitutional protections for wider economic and social rights in a Bill or Charter of Rights.” [Sinn Féin](#)

Organisation representing women and men with disabilities made their recommendations for any changes to Article 41.2:

“We request Government investigate the constitutional rights of Disabled Women, Men and Children in any proposed amendments to article 41.2. Recognising care duties in the constitution could be ableist and contravene the Equal Status Act, Employment Equality Act, UNCRPD and undermine the constitutional rights of people with support needs and Disabled Women (and DM) as care-givers.”  
[Clare Leader Forum: Rights Based Group of Disabled Women and Men](#) and [Inclusion Ireland](#)

For some the article should remain with the main text of the Constitution

“An amended 41.2 should remain within the section of the Constitution which is “justiciable”, that is has legal standing rather than be a token statement; this would make it useful to the struggle for equity.” [Sinn Féin](#)

Other organisations were less sure about amending the article but clear that it needed to be repealed:

“It is the position of Irish Women Lawyers Association (IWLA) that given that Article 41.2 has been ineffective in its stated protection of women/mothers, then there is little point in an amendment which would provide ineffective protection to a wider or alternative group.”

[IWLA](#)

For this organisation, debate regarding the Article should ideally take place in two stages: “1. First a decision should be made regarding whether or not to repeal the Article. 2. Then, if a decision is been made to repeal the Article a separate and different debate can be had regarding whether or not to replace the Article.” [IWLA](#)

Aside from Article 41.2, in order for gender inequality to be addressed other aspects of the Article may also require change:

“Article 41.2 is part of the broader Article 41 of the Constitution of Ireland which lays out the rights of the family and contains a number of provisions imposing duties on the State in relation to the family. However, the definition of family within the Constitution is based on a narrow understanding of the family that prioritises heterosexual, married families and fails to recognise and protect the diverse range of family forms that exist in modern Ireland. Failure to recognise diverse family forms means that the care work of many people goes unrecognised and is devalued.” [National Women’s Council of Ireland](#)

“One Family has been seeking an expansion of Article 41.3 of the Constitution in relation to the definition of the family for over 45 years. There are many important reasons for reviewing and expanding the understanding of family in the Constitution which include: 1. The Constitutional definition of family only affords rights and protection to the marital family and no other set of people are considered a Constitutional family. An expanded understanding of family will build on other recent changes such as the Children’s Referendum; the Child and Family Relationships Act; marriage equality and the role of women in the home.” [One Family](#)

“Article 41 of the Constitution of Ireland protects the rights of the family and contains a number of provisions imposing duties on the State. Article 41.1 recognises the family as the ‘natural primary and fundamental unit group of Society’. Noting that Article 41.3.1 obliges the State to ‘guard with special care the institution of Marriage, on which the Family is founded’ the Supreme Court has interpreted the references to the family in Article 41 as the family founded on marriage... The [Irish Human Rights and Equality] Commission is of the view that further reform of Article 41 is required to ensure its compatibility with developments in domestic law and policy, social norms, and the broader conception of family life recognised in international human rights law.” [Irish Human Rights and Equality Commission](#)

## A possible way to address these shortcomings was to:

“to edit Article 41 to add in Article 8 of the European Convention of Human Rights. This new wording offers high level symbolic change that does not put restrictive wording or automatic rights for anyone into the Constitution but allows legislation to be crafted for specific situations as required. It removes the barriers to family equality that are there at the moment, it is child-centred and is potentially helpful to any households/families based on caring arrangements including siblings, other non-nuclear family members, foster families and non-marital families.” [One Family](#)

“The [Irish Human Rights and Equality] Commission recommends that Article 41, including Article 41.3.1, is amended to recognise the broader conception of family life recognised in international human rights law.” [Irish Human Rights and Equality Commission](#)

## Additional submissions referred:

To the constitution as a source of rights for women and children that had been denied as a result of institutional abuse and detention.

[Clann](#)

Another submission referenced the All-Party Oireachtas Committee on the Constitution's description of the text of the Constitution as 'a product of the patriarchal times in which it was written, as being insensitive on the issue of gender, and as invariably presuming that officeholders will be male'. It recommends that the Constitution be amended to include gender neutral language and an explicit provision on gender equality. [Irish Human Rights and Equality Commission](#)

For another, the change made in 2004 to the constitution that children born to parents who were not Irish nationals no longer had an automatic right to Irish citizenship required amendment [National Women's Council of Ireland](#)

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