An **Tionól Saoránach** The **Citizens' Assembly**

Report and Recommendations of the Citizens' Assembly

On the fourth and fifth topics

THE MANNER IN WHICH REFERENDA ARE HELD

&

FIXED TERM PARLIAMENTS

WWW.CITIZENSASSEMBLY.IE

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Introduction

Following completion of its consideration of the first three topics set out in the Resolution of the Houses of the Oireachtas approving the establishment of the Assembly – *the Eighth Amendment of the Constitution, How We Best Respond to the Challenges and Opportunities of an Ageing Population,* and *How the State can make Ireland a Leader in tackling Climate Change,* the Assembly moved on to consider its fourth topic *The Manner in which Referenda are held* in January 2018. This was followed by its fifth and final topic *Fixed Term Parliaments* in April 2018.

As with the other topics the Assembly had already considered, these topics were wide-ranging and affect us all in one way or another. *The Manner in which Referenda are held* was due to be the final topic considered by the Assembly but it was agreed by the Members at the September 2017 meeting, that the Assembly deliberations on this topic would be better completed before any referendum campaign on the Eighth Amendment of the Constitution commenced. As such, the remaining two topics were swapped and the final meeting in April 2018 focused on *Fixed Term Parliaments.*

The Manner in which Referenda are held is a more difficult topic than its title might have initially indicated. The holding of a referendum is a fundamental component of our democracy. A referendum is the only manner by which our Constitution can be amended. Irish people are most familiar with voting in constitutional referendums as this is the only type of referendum which has been held in Ireland.

Referendums, both the way in which they have been held and their results, have been the subject of complex constitutional case law. The law as laid down by the Superior Courts, and supplemented by legislation, regulations and guidelines, has a significant impact on the way in which referendums in Ireland occur and are held.

The topic of **Fixed Term Parliaments** was initially scheduled for discussion in March 2018 but this had to be postponed until April 2018 because of Storm Emma and the advice of National Emergency Coordination Group for Severe Weather at that time.

The rescheduling of this meeting required the approval by the Houses of the Oireachtas of a second extension to the term of the Assembly by a further one month in order for the Assembly to be able to fulfil its remit. The administration associated with this was carried out by the Department of the Taoiseach for which I am very grateful.

Our consideration of this topic focused on whether the law should be changed and whether there should be greater restrictions in place on the Taoiseach's ability to advise the President to dissolve the Dáil. The topic required the Assembly to consider a number of articles of the Constitution.

As for previous meetings, the importance of structuring a discussion at each weekend, which was fair, informative and evidence based, was the guiding principle which I continued to apply during this final phase of the Assembly's work.

I decided that it would be useful to combine the reports on both of these topics into a single volume, but as readers will observe, there are individual chapters outlining the recommendations and work programmes in respect of each topic.

As this report, and the appendices which support it, show, in considering these two topics, the Members of the Assembly ("the Members") once again had the benefit of an array of expertise and perspectives over the course of both the January 2018 and April 2018 weekends. In January they heard from six experts and in April they heard from four. They actively took part in over 20 hours of listening, discussion and deliberation over the course of two weekends. In addition, the Members prepared diligently for meetings, reading papers in advance and reviewing the submissions received by the Assembly on these topics.

In Chapters 3 and 4 a summary of the material presented to the Members at both weekends is included. This gives an overview of the material received and acts as a direction to the more detailed material. Appendices G and H contain the full suite of material provided to the Members, including the agendas, expert papers and presentations, Secretariat papers prepared for each weekend, and the transcripts of the public proceedings on Sunday 14 January 2018 when Members discussed the Ballot Paper on *The Manner in which Referenda are held* and Saturday 14 April and Sunday 15 April 2018 when members discussed the Ballot Paper on *Fixed Term Parliament.*

As for all of the previous topics, I would strongly encourage each member of the Oireachtas and the public with an interest in these issues to review the footage of the questions and answer and feedback sessions from both weekends. It clearly shows the skill and determination of the Members to get to the heart of a topic, and the level of engagement shown by speakers, members of the Expert Advisory Group and the Members alike.

All of the public proceedings were live-streamed on the Assembly's website, www.citizensassembly.ie, and the recordings are all available to view on the Assembly's YouTube Channel. All of the papers and presentations made to the Members were uploaded on the website as they were delivered.

Chapter 5 deals with the submissions received on both topics. Over 200 submissions were received by the Assembly on *The Manner in which Referenda are held.* A broad range of issues were raised from a wide variety of individuals and groups. As was the case with other topics considered by the Assembly, submissions were received from representative groups, professionals and academics with experience and expertise on the topic, as well as submissions received from individual members of the public.

In order to make the best possible use of these submissions, the Secretariat has prepared a signpost document to give an overview of the key issues, topics and themes presented in the submissions. They were grouped into broad thematic areas and presented a selection of the perspectives which were received. This document is included as Appendix D to this Report.

Despite the Secretariat's best efforts to encourage public engagement with the final topic, *Fixed Term Parliaments,* only nine submissions were received and all but one were published. I decided that there was little value in summarising those received and Members were instead directed to the full text of each submission. For ease of access, these were collated into a single document and this is included as Appendix E to this Report.

Chapter 7 of the Report also deals, in considerable detail, with the issue in relation to the recruitment of Members which emerged following the January meeting on *The Manner in which Referenda are held.* Briefly, by way of explanation, following that meeting, I was made aware that seven of the new Members who were present and voting at that weekend had been recruited in a manner which did not comply with the agreed methodology for recruitment of Assembly Members. This matter was brought to my attention, following a randomised check of the agreed recruitment methodology by the Assembly Secretariat. The matter was then raised with RED C Research and Marketing Ltd, which was responsible for

the recruitment of Assembly Members, and which conducted an extensive audit. That audit was published by the Assembly on 21 February 2018 and is available in full on the Assembly's website. Following consideration of this audit document I concluded that this issue did not impact on the earlier work of the Assembly. It did, however, have implications for the outcome of the voting which took place in January. Because of the fact that seven members were not recruited in compliance with the agreed methodology, the majority view of the Assembly cannot now be determined in respect of Question 7, Question 8b, Question 10a and Question 10b. Full details are available in Chapter 7 and in Chapter 1 which outlines the Assembly recommendations on *The Manner in which Referenda are held* and the implications of this issue for each of the relevant recommendations.

As I outlined in the first three reports, the Assembly is an exercise in deliberative democracy, meaning that, I, as Chairperson, listened to the requests of my fellow Members when devising each of our work programmes. Throughout both weekends, we had open feedback sessions when we heard the views and concerns of Members which subsequently informed their recommendations on both topics. It is hoped that these recommendations will add value to the work that Government is currently doing.

As this is the final report of this Assembly, I have taken the opportunity in Chapter 8 to capture some reflections of mine about the process which we have been through over the past two years. I believe it is essential to include these observations in this final report, which is made publically available. It is my hope that these observations may be of some assistance to the Oireachtas should it decide to have another Citizens' Assembly convened in the future.

Voted Recommendations

The substantive recommendations of the Assembly were the result of the ballots which took place on the Sunday of each of the January and April weekends.

Chapters 1 and 2 of this report give these in detail and also provide a full explanation of the changes to the draft Ballot Papers as requested and agreed by the Members over the course of the weekends. The recommendations were reached by Ballot Paper voting and followed a weekend of deliberation which focused on each of the specific topics.

A total of 11 questions (question 5 and 8 containing two parts) appeared on the ballot for *The Manner in which Referenda are held* on Sunday 14 January, 2018 and a total of four questions appeared on the ballot for *Fixed Term Parliaments* on Sunday 15 April 2018.

In respect of *The Manner in which Referenda are held*, the Assembly voted on recommendations by a majority vote based on 11 questions, full details of which are provided in Chapter 1. In respect of *Fixed Term Parliaments*, the Assembly made recommendations by a majority vote based on four questions, full details of which are provided in Chapter 2.

Acknowledgements

For a final time, I wish to acknowledge the continued professionalism and expertise of all of our suppliers – **The Grand Hotel Malahide, Roomaxx Ltd., Richard Jolly TV/Switch New Media, Gwen Malone Stenography, Q4PR, Beatrice.ie, Bridge Interpreting, Maxwell Photography, pTools Software** and the **Office of Public Works**. They continued to provide us with an exceptional level of service and made the challenging logistical operation of Assembly meetings as smooth as possible.

I would like to express my sincere gratitude to the members of the **Expert Advisory Group (EAG)** for the final two topics **– Oran Doyle** (Trinity College Dublin), **Robert Elgie** (Dublin City University), **John Garry** (Queen's University Belfast), **Kevin Rafter** (Dublin City University), **Theresa Reidy** (University College Cork) and **Rachael Walsh** (Trinity College Dublin) - for their expertise over the course of the months leading to and during the weekend meetings and the tremendous support and advice they provided to the Secretariat and myself.

A special mention should go to **John Garry** who has been on all four EAGs and has provided invaluable advice and support through all five topics considered by the Assembly. Both **Oran Doyle** and **Rachael Walsh** have served as members of both the EAG on the Eighth Amendment and on this current EAG and have made an enormously valuable contribution to the issues considered. I am truly grateful to all three of them for their time and expertise throughout this process.

The EAG had a critical role in identifying appropriate **speakers** to present to the Assembly in their professional capacity on the various issues. I would like to take this opportunity to thank most sincerely all of the speakers who gave their time at no charge to the Assembly. They demonstrated the importance of these topics in the current political climate.

At both the January and April meetings we had the benefit once again of the expert advice and services of **John Fitzpatrick**, former returning officer for County Dublin, **Ciaran**

Manning and their team on the voting. Once again, I would like to express my sincere gratitude to John, Ciaran and their team for their advice and support both in advance of both meetings and at each weekend. Both John and Ciaran have been a constant presence around the development of Ballot Papers, and the running and counting of the voting at each of the Assembly weekends. Their efficiency and accuracy has enabled me to provide the results of each ballot promptly at the close of each weekend meeting.

The members of the **Secretariat** have played a pivotal role in the smooth and effective operation of the Assembly. Sharon Finegan, Secretary to the Assembly, and her small team have worked tirelessly for almost 2 years to support me, the Expert Advisory Groups and the Members throughout the process and make sure each meeting runs smoothly. They have undertaken an enormously complex task and completed every aspect of it successfully, efficiently and professionally and at a relentless pace to ensure that the Assembly could complete its full remit within the agreed timeframe. I received a wonderful service from them over these two years, but most importantly the State has been very well served by their contribution. I thank them most sincerely for all of their work.

The staff of the **Department of the Taoiseach** who help out at the weekend meetings are a very important part of the smooth running of these events and I am sincerely grateful to the Secretary General for his continued support.

And for the final time, I once again thank the **Members** for their enthusiasm, interest and commitment to the Assembly process. After a longer than expected 18 month commitment and consideration of five separate topics they have continued to willingly give up their weekends and have worked hard to ensure that they understood the issues before making carefully considered, informed recommendations. I have been truly astounded by their commitment, energy, openness and hard work. I also greatly admire the collegiality they have displayed and their welcome to the new Members who have joined the Assembly.

All Members have embodied the spirit of the Assembly since they joined with no exceptions. They have been alive to the key principles of the Assembly at all times – *Openness, Fairness, Equality of Voice, Efficiency, Respect and Collegiality.* I have found their level of commitment to public service over the last 18 months extraordinary.

The Hon. Mary Laffoy

June, 2018

Chapter 1: Assembly Recommendations on *The Manner in which Referenda are held*

A. Background

1. The Assembly considered *The manner in which referenda are held* over the course of the weekend of 13-14 January 2018.

2. This chapter is a description of the development of the Ballot Paper and the voting which took place on Sunday, 14 January.

3. All of the Assembly's public proceedings, including the voting, were broadcast live and the footage is now available on the Assembly's YouTube channel.

4. This meeting marked a break with how the Assembly has traditionally carried out its business. The work programme to date had allowed topics to be considered over a number of weekends. This was the first occasion an issue was examined and recommendations made over the course of one weekend.

5. This change was particularly evident regarding the preparation of the draft Ballot Paper, deliberation on it by the Members and its finalisation. Details are provided below about the development of the draft questions on the Ballot Paper, amendments proposed and approved by the Members and the results.

B. Voting Arrangements

6. The Assembly's recommendations were determined by a balloted vote, in accordance with the resolution approving establishment of the Assembly which provides:

"all matters before the Assembly will be determined by a majority of votes of members present and voting, other than the Chairperson who will have a casting vote in the case of an equality of votes".

7. Proceedings on Sunday 14 January comprised a series of important steps:

- agreeing on the issues to be included in a ballot;

- agreeing on the precise wording of the ballot; and finally

- voting.

8. Once again, the Chairperson enlisted independent oversight of the voting process. Mr. John Fitzpatrick, retired returning officer for County Dublin, together with a small team working with him, was available at the weekend and provided his expertise on the following matters:

- The mechanism and infrastructure for voting to be carried out in secret (e.g. the use of voting booths and ballot boxes);

- The counting of Ballot Papers and the accurate presentation of results.

9. Mr. Fitzpatrick also provided the Secretariat with advice in advance in relation to the time allocated on the Agenda for voting and counting of the votes.

10. In advance of the weekend, the Members were provided with a note on the voting arrangements that would operate for the weekend. This document is available on the website and in Appendix G. Members were asked to read and familiarise themselves with the document in advance of the weekend.

C. Development of a Draft Ballot Paper

11. Given that the Assembly is first and foremost an exercise in deliberative democracy, it was important that the Members took ownership of the ballot.

12. To assist with this task and to focus the Members minds as to the types of things they would like to see expressed on a draft Ballot Paper, time was allocated in the agenda at the roundtable discussions after Sessions 3 & 4 and Sessions 5 & 6 on Saturday 13 January to seek feedback from the Members on possible issues arising

for the Assembly's recommendations. This feedback was given in public during the questions and answers sessions.

13. The Secretariat collated all of these suggestions and these informed the preparation of an original draft Ballot Paper. A draft Ballot Paper was prepared by the Chairperson, with the assistance of the Secretariat and the Expert Advisory Group following the conclusion of formal proceedings on the Saturday evening.

14. Copies of the original draft Ballot Paper and the final version which the Members voted on are provided in Appendix G.

15. Time was spent on the Sunday morning before voting commenced, explaining each of the questions individually and why they were included on the Ballot paper.

16. The explanation was provided by the Chairperson. Time was also set aside for roundtable discussion and question and answer sessions to allow the Members sufficient time to examine the draft Ballot Paper and ask questions of the Chairperson, Secretariat and Expert Advisory Group.

17. In order to maximise the time available to discuss the questions which the majority of Members expressed a desire to discuss and suggest changes to, each table was first asked to provide feedback to the Chairperson, on the questions they did not want to see a substantive discussion on. Taking account of this feedback, the Chairperson concluded that substantive discussion was only required in respect of questions 5, 8, 9 and 10. However, should Members suggest amendments to other questions in the course of the discussion (and they did) this would be facilitated.

18. Once all questions were agreed by the Members, time was provided in the Agenda to allow the Secretariat to revise the Ballot Paper in each case as required.

19. All of the public sessions were live streamed on the Assembly website. In addition, a transcript of the public sessions where the Ballot Paper was discussed and agreed was put on the website after the meeting. That transcript is included in Appendix G.

20. The final ballot paper voted on by the Members was divided into three sections –

   A.   Organisation of referendum campaigns

B.   Voting in a referendum

C.   Citizens' initiatives

D. Overview of Voted Recommendations

21. In summary, the Assembly recommended by a majority vote the following:

R1.   94% voted that the functions of the Referendum Commission should be carried out by a permanent Electoral Commission (Question 1);

R2.   94% voted that the Referendum Commission should be obliged to give its view on significant matters of factual or legal dispute that arise during a referendum campaign in the public domain (including on social media) (Question 2);

R3.   87% voted to agree with the current position where the Government is not permitted to spend public money to advocate on one side only of a referendum campaign (Question 3);

R4.   68% voted that the Government should provide money to both sides equally in referendum campaigns (Question 4);

R5.   In respect of spending in referendum campaigns-

     i.   98% voted that the Oireachtas should develop and effectively implement a system of spending limits in referendum campaigns for registered political parties, campaign groups and individuals (Question 5a);

     ii.   72% voted that anonymous donations to registered political parties and campaign groups should be prohibited (Question 5b);

R6.   80% voted that it is a good idea to have more than one referendum on unrelated issues at the same time (Question 6);

R7.   In respect of multi-option voting in a Constitutional referendum 76% voted that it should be permissible to have more than two options on a ballot paper in a constitutional referendum (Question 8a);

R8.   89% voted that, in principle, the Oireachtas and the Government should give effect to the outcome of a referendum within 5 years (Question 9);

R9.   In respect of the introduction of specified initiatives to increase voter turnout in referendums-

     i.   100% voted for weekend voting (Question 10c);

     ii.   70% voted for online voting (Question 10d);

     iii.   83% voted for wider availability of postal voting (Question 10e);

     iv.   89% voted for the ability to vote at any polling station in the State (Question 10f);

  v. 95% voted for the automatic inclusion of all eligible voters on the electoral register (Question 10g);

  vi. 80% voted for lowering the voting age to 16 (Question 10i);

  vii. 77% voted for allowing voting by otherwise eligible voters, who are resident outside the State, for no more than five years (Question 10j);

  viii. 96% voted for greater provision of voter education on Referendums (Question 10k);

R10. In respect of which, if any, specified types of citizens' initiatives should be provided for-

  a) 69% voted in favour of a citizens' initiative to put a constitutional referendum proposal to the people (Question 11a);

  b) 69% voted in favour of a citizens' initiative to put a legislative change proposal to the people (including enacting, changing or repealing legislation) (Question 11b);

  c) 83% voted in favour of a citizens' initiative to put an item on the agenda for decision by the Oireachtas (Question 11c).

E. Issue with Member recruitment and impact on the recommendations of the Assembly

22. The Assembly also voted on four further questions the results of which are not outlined above, namely questions 7, 8b, 10a and 10b. In reviewing the outcome of the weekend meeting on *The Manner in which referenda are held,* because of the fact that seven Members were not recruited in compliance with the agreed methodology, and the fact that the majority margin was less than 14, the majority view of the Assembly cannot now be determined in respect of these. Further detail on the recruitment issues is outlined at Chapter 7. The four questions and the results of the vote in each case are as follows:

- **Question 7**: In the event of more than one referendum on unrelated issues, the highest number of votes cast (35 votes or 42.7%) was that the maximum number should be no more than two.

- **Question 8b**: The Assembly addressed a second question on multi-option voting and the highest number of votes cast (44 votes or 52%) was that when there are more

than two options on the ballot paper in a constitutional referendum the outcome should be decided by PR STV;

- **Questions 10a and 10b:** On the specified initiatives that should be introduced to increase voter turnout in referendums, on the first two the highest number of votes cast was as follows:

     a) 45 votes (or 56%) in favour of early voting in the weeks before the poll

     b) 41 votes (or 51%) against extended voting over a number of days.

23. Further details are provided below and in Chapter 7.

F. Detailed Breakdown and Explanation of Assembly Recommendations and Ballot Results

24. This section of the report provides a detailed explanation of the wording that appeared in each question on the original draft Ballot Papers. The explanation of the meaning of the wording as provided by the Chairperson to the Members in advance of discussion and questions and answers sessions is also provided. An account of any agreed changes to each of the of the questions on the Ballot Paper sought and agreed by the Members is also provided.

25. In framing the questions the focus has been on the relevant principle underlying the relevant question, not on the detail of how it could or might be implemented.

26. The questions about the organisation of referendum campaigns began with Question 1.

Ballot Paper wording including explanation as provided by the Chairperson

27. The question asks *"Do you think the functions of the Referendum Commission should be carried out by a permanent Electoral Commission?"*

28. This question was informed by the material presented to the Assembly from a number of the speakers the Members had heard from over the course of the weekend.

29. This issue also emerged in feedback from the Members following sessions 3 & 4 and 5 & 6 on Saturday 13 January.

30. No amendments to the original proposed wording were suggested by the Members.

Reporting on this question and determining the majority

31. In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question 1

32. The result of Question 1 was as follows:

Question 1: Do you think the functions of the Referendum Commission should be carried out by a permanent Electoral Commission?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
Yes	79 (94%)
No	5 (6%)

Eighty four Members of the Assembly were present and voted. The majority of Members (94%) voted "Yes" in comparison to five Members (6%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 1.

Recommendation: The functions of the Referendum Commission should be carried out by a permanent Electoral Commission (94%)

Question 2

Ballot Paper wording including explanation as provided by the Chairperson

33. Question 2 was a simple referendum style question which asked a straightforward question with 'Yes' or 'No' options.

34. It asked:

"*Do you think the Referendum Commission should be obliged to give its view on significant matters of factual or legal dispute that arise during a referendum campaign in the public domain (including on social media)?*"

35. In his paper to the Assembly, Mark Brennock explained the role that the Referendum Commission plays. He explained that more recent Referendum Commissions have intervened to outline their own view of what effect a referendum will have, occasionally clarifying issues in dispute. However they are not obliged to do so.

36. In their feedback, many Members suggested an enhanced role for the Referendum Commission, particularly in respect of factually incorrect claims.

37. This question was designed to allow the Members to vote on whether such an enhanced role is appropriate. Many Members expressed particular concerns around the role of social media and explicit reference was therefore made to this in the question.

Deliberation on Question

38. During the questions and answers session, a number of suggested amendments to the draft Ballot Paper were made by the Members.

39. A number of queries focused on the level of obligation placed on the Referendum Commission to offer guidance on matters of factual or legal dispute. One table suggested that in order to preserve the independence of the Referendum Commission, rather than being obliged to give its view, the question would be amended to read "obliged to *clarify* significant matters of factual or legal dispute." Another table suggested the removal of "obliged" and the insertion of the word "*permitted*".

40. The Expert Advisory Group explained that the rationale for the inclusion of the word "obliged" specifically was to compel the Referendum Commission to do so as opposed to it choosing if and when it intervenes. In terms of the use of the word "clarify" as an alternative, it was explained that clarify presupposes the notion that the issue can be addressed with a definitive answer. With regard to past referendums, this has not always been the case.

41. Some Members queried how realistic the question was, especially in relation to monitoring social media.

42. One table suggested a follow on question "*Do you think that the Referendum Commission should be obliged to use its expertise proactively to disseminate information in a user friendly manner?*". In response, the Expert Advisory Group advised that the intended benefit behind this question around being proactive in disseminating information would be captured in Question 1.

43. Another table asked whether the following additional question should also be included "*Should it be an offence to publish inaccurate or false information about a referendum during the referendum campaign?*". It was felt that there were a number

of compelling reasons against the inclusion of this as an additional question including: the difficulty of adjudicating on whether information is inaccurate or false; determining where this burden for adjudication would lie; the possibility of creating a chilling effect on people participating in referendum campaigns; and the fact that the Assembly had spent insufficient time on the previous day considering legislating for an offence for the publication of inaccurate or false information.

44. Further clarification on the motive behind the question was provided by the table that suggested it. They did not intend individuals canvassing to be the subject of such an offence but instead organisations that included inaccurate or false information in campaign material disseminated to the public in the form of leaflets or posters. The Expert Advisory Group felt this could be tackled by the Referendum Commission being obliged to intervene in such instances, without the need to create a new criminal offence.

45. Ultimately, there were no changes made to the text of the question as introduced and the Members approved its inclusion by a show of hands.

Reporting on this question and determining the majority

46. In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question 2

47. The result of Question 2 was as follows:

Question 2: Do you think the Referendum Commission should be obliged to give its view on significant matters of factual or legal dispute that arise during a referendum campaign in the public domain (including on social media)?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	1
Total Valid Poll:	83
Yes	78 (94%)
No	5 (6%)

Eighty four Members of the Assembly were present and voted. The valid poll was 83. The majority of Members (94%) voted "Yes" in comparison to five Members (6%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 2.

Recommendation: The Referendum Commission should be obliged to give its view on significant matters of factual or legal dispute that arise during a referendum campaign in the public domain (including on social media) (94%).

Question 3

Ballot Paper wording including explanation as provided by the Chairperson

48. This question concerns the McKenna principles which were outlined in Conor O'Mahony's paper and presentation.

49. Simply put, the McKenna principles interpret the Constitution as precluding the Government from spending public money on advocating for one side of a referendum campaign.

50. With this in mind the question asks:

"*Do you agree with the current position where the Government is not permitted to spend public money to advocate on one side only of a referendum campaign?*"

51. A change of the current position would have to be effected by an amendment of the Constitution, following a referendum.

52. No amendments to the original proposed wording were suggested by the Members.

Reporting on this question and determining the majority

53. In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question 3

54. The result of Question 3 was as follows:

Question 3: Do you agree with the current position where the Government is not permitted to spend public money to advocate on one side only of a referendum campaign?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	1

Total Valid Poll:	83
Yes	72 (87%)
No	11 (13%)

Eighty four Members of the Assembly were present and voted. The valid poll was 83. The majority of Members (87%) voted "Yes" in comparison to eleven Members (13%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 3.

Recommendation: The Members of the Citizen' Assembly agree with the current position where the Government is not permitted to spend public money to advocate on one side only of a referendum campaign (87%).

Ballot Paper wording including explanation as provided by the Chairperson

55. Question 4 continues to examine spending in referendum campaigns. Governments have implemented the McKenna principles by not allocating public funds to referendum campaigns. However, they could have chosen to allocate funds equally to both sides of a referendum campaign. This question asks the Members whether that approach would be preferable.

"*Do you think the Government should provide money to both sides equally in referendum campaigns?"*

56. No amendments to the original proposed wording were suggested by the Members.

Reporting on this question and determining the majority

57. In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question 4

58. The result of Question 4 was as follows:

Question 4: Do you think the Government should provide money to both sides equally in referendum campaigns?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
Yes	57 (68%)
No	27 (32%)

Eighty four Members of the Assembly were present and voted. The majority of Members (68%) voted "Yes" in comparison to twenty seven Members (32%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 4.

Recommendation: The Government should provide money to both sides equally in referendum campaigns (68%).

Question 5

Ballot Paper wording including explanation as provided by the Chairperson

59. Question 5, which is now divided into two sub questions, is also about spending in referendum campaigns. The original draft of Question 5 asked:

"Do you think the Oireachtas should give consideration to a system of spending limits in referendum campaigns for registered political parties and campaign groups?"

60. Conor O'Mahony in his paper explained how some countries impose spending limits rather than donation limits (as is the case currently in Ireland) and several Members suggested that they would like to vote on a recommendation in relation to this.

61. Having discussed the issue with the Expert Advisory Group, the Chairperson explained that complicated issues arise about the interaction of a spending limit and a donations limit about which the Members had not heard detailed evidence. Therefore, the draft ballot question did not ask Members to vote for or against a spending limit as such. Instead, it asks Members to decide if the possibility of a spending limit merits further consideration by the Oireachtas.

Deliberation on Wording

62. During the questions and answers session, a number of suggested amendments to the draft Ballot Paper were put forward by the Members.

63. There were a couple of suggestions to include an explicit reference to individuals in the wording at the end of the question, either *"...and high net worth private individuals"* or simply *"and individuals."*

64. Another table suggested the deletion of the words "*give consideration to*" and replace them with "*develop and effectively implement*" in order to make a stronger recommendation to the Oireachtas to take action, as opposed to the Oireachtas simply considering the idea.

65. Anonymous donations gave rise to extensive discussion. There were calls for the inclusion of "*the prohibition of anonymous donations*." This was fueled by the potential abuse of the anonymous donation system, whereby a party could essentially give what is effectively an unlimited amount of money in €100 increments in the current system.

66. In response to this suggestion, the Expert Advisory Group highlighted the practical implications of the proposal whereby any groups or parties that are organizing small fundraising events such raffles, church gate collections and such like and where the individual is donating less than €100 the organiser would have to capture the name and details of that individual.

67. A proposal from the floor to circumvent the bureaucracy around small donations for smaller activities would be that it could potentially be limited to referendum issues.

68. A further response by the Expert Advisory Group to counter-act the unnecessary bureaucracy around organisations having to capture information for low level fundraising activities would be to consider reducing the threshold for anonymous donations lower than the current €100 limit.

69. The discussion progressed to the interaction between donation limits and spending limits. Under current legislation and regulations, there is a limit on what one individual can donate in a calendar year. The introduction of spending limits would effectively negate the relevance of the source and amounts donated to a campaign group or political party as they would only be able spend the same amount of money.

Agreement on Wording

70. The following suggested amendments were put to the Members:

   - The inclusion of a reference to individuals at the end of the question;

   - To replace "*give consideration to*" with *"develop and effectively implement";* and

   - The inclusion of an additional question, which became question 5(b), on anonymous donations to be worded as follows: "*Do you think that anonymous donations to registered political parties and campaign groups should be prohibited?".*

71. Members were requested to indicate their acceptance by a show of hands and a count was taken.

72. The Members voted to accept these three changes.

Reporting on this question and determining the majority

73. In terms of reporting for this question, now divided into parts a and b, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question 5a

74. The result of Question 5a was as follows:

Question 5a: Do you think the Oireachtas should develop and effectively implement a system of spending limits in referendum campaigns for registered political parties, campaign groups and individuals?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
Yes	82 (98%)
No	2 (2%)

Eighty four Members of the Assembly were present and voted. The majority of the Members (98%) voted "Yes" to the question with just two Members (2%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 5a.

Recommendation: The Oireachtas should develop and effectively implement a system of spending limits in referendum campaigns for registered political parties, campaign groups and individuals (98%).

Result of Question 5b

75. The result of Question 5b was as follows:

Question 5b: Do you think that anonymous donations to registered political parties and campaign groups should be prohibited?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	1
Total Valid Poll:	83
Yes	60 (72%)
No	23 (28%)

Eighty four Members of the Assembly were present and voted. The valid poll was 83. The majority of the Members (72%) voted "Yes" to the question with twenty three Members (28%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 5b.

> **Recommendation:** Anonymous donations to registered political parties and campaign groups should be prohibited (72%).

Section B: Voting in a Referendum

Question 6

76. The questions about voting in a referendum began with Question 6.

Ballot Paper wording including explanation as provided by the Chairperson

77. When the motion approving the establishment of the Assembly was considered in the Dáil and Seanad in July 2016, Minister of State Damien English T.D., on behalf of the Government, provided some further context as an example as to what was intended to be looked at during the Assembly's consideration of this topic, specifically:

"whether super referendum days, whereby a significant number of referenda take place on the same day, should be held."

78. As such, it was important that the Assembly considered this aspect as part of its deliberations. In his presentation to the Assembly Michael Marsh provided a factual background on super referendum days including the history to date of Ireland holding more than one referendum on one day, together with details on the outcomes of those referendums and issues arising. He also presented some international evidence to outline what happens in other jurisdictions.

79. The following question was included on the original draft Ballot Paper:

"*Do you think that it is a good idea to have more than one referendum, on unrelated issues, at the same time?*"

80. No amendments to the original proposed wording were suggested by the Members.

Reporting on this question and determining the majority

81. In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question 6

82. The result of Question 6 was as follows:

Question 6: Do you think that it is a good idea to have more than one referendum, on unrelated issues, at the same time?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
Yes	67 (80%)
No	17 (20%)

Eighty four Members of the Assembly were present and voted. The majority of the Members (80%) voted "Yes" to the question with seventeen Members (20%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 6.

Recommendation: It is a good idea to have more than one referendum, on unrelated issues, at the same time (80%).

Question 7

Ballot Paper wording including explanation as provided by the Chairperson

83. Following on from Question 6, this question asks:

"In the event that there is more than one referendum, on unrelated issues, at the same time, what do you think should be the maximum number of referendums?"

- *There should be no more than two referendums at the same time;*

- *There should be no more than three referendums at the same time;*

- *There should be no upper limit on the number of referendums held at the same time"*

84. No amendments to the original proposed wording were suggested by the Members.

Reporting on this question and determining the majority

85. In terms of reporting on this question, Members were informed that the recommendation of the Assembly would be the option which obtained the highest number of votes with the Chairperson having a casting vote, if required. The majority was determined by reference to the total votes cast in favour of the options available.

Result of Question 7

Question 7: In the event that there is more than one referendum, on unrelated issues, at the same time, what do you think should be the maximum number of referendums?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
There should be no more than two referendums at the same time	35 (41.7%)
There should be no more than three referendums at the same time	34 (40.5%)
There should be no upper limit on the number of referendums held at the same time	15 (17.9%)

Eighty four Members of the Assembly were present and voted. A slim majority of Members (41.7%) voted for *there should be no more than two referendums at the same time.* In reviewing the outcome of the weekend on *the Manner in which referenda are held,* because of the fact that seven members were not recruited in compliance with the agreed methodology, the majority view of the Assembly cannot now be determined in respect of Question 7 as the margin between the first and second option was less than 14 votes.

Question 8

Ballot Paper wording including explanation as provided by the Chairperson

86. Question 8 was a simple referendum style question which asked a straightforward question with 'Yes' or 'No' options.

87. The original draft Question 8 asked:

"Do you think that it is a good idea to use multi-option voting in referendums?"

88. Niamh Hyland outlined what must happen for a change to the Constitution to be made. The Dáil and Seanad must first approve a referendum bill, which has been commenced in Dáil Éireann and which then must be approved by the people in a referendum. The implication of this is that the Dáil, the Seanad and the people must consecutively approve the same proposal. This means that, at present, multi-option voting in constitutional referendums is constitutionally prohibited.

89. On the afternoon of Saturday 13 January, Michael Marsh provided the Members with an overview of how multi-option voting might function in a referendum context. He provided the Members with some of the arguments in favour and against such an approach.

90. It was made clear to the Members that the introducing of multi-option voting in referendums would necessitate an amendment of the Constitution following a referendum.

Deliberation on Wording

91. During the questions and answers session, a number of suggested amendments to the draft Ballot Paper were made by the Members.

92. The following alternative wordings were suggested throughout the course of the discussion:

    - "Do you think that it is a good idea to use multi-option voting in referendums, yes or no? If answer yes, select one of the following:
        A. First past the post.
        B. PR-STV.
        C. Another."

    - "Do you think that it is a good idea to use proportional representation as part of multi-option referendums?"

    - "Do you think that multi-option voting in referendums should be introduced?"

    - "Should multi-option voting in referendums be permitted?"

93. One table suggested a simpler textual change whereby the word "use" is replaced with"allow".

94. Another table sought clarification on what would be the suggested options available (e.g. first past the post) if they answered yes to the question.

Agreement on Wording

95. Following a brief adjournment, the following suggested amendments were put to the Members:

    - Splitting the question into two parts;

    - Part a to read *"Do you think it should be permissible to have more than two options on the ballot paper in a constitutional referendum?";*

    - Part b to read *"If there are more than two options on the ballot paper in a constitutional referendum, that outcome should be decided by:"* either *"first past the post"* or *"PR STV"*

96. Members were requested to indicate their acceptance by a show of hands and a count was taken.

97. The Members voted to accept these three changes.

Reporting on this question and determining the majority

98. In terms of reporting for this question, in parts a, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority. In part b, Members were asked to mark X in respect of either option, with the option with the highest number of votes deemed to be the majority.

Result of Question 8a

99. The result of Question 8a was as follows:

Question 8a: Do you think it should be permissible to have more than two options on the ballot paper in a constitutional referendum?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
Yes	64 (76%)
No	20 (24%)

Eighty four Members of the Assembly were present and voted. The majority of Members (76%) voted "Yes" in comparison to twenty Members (24%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 8a.

Recommendation: It should be permissible to have more than two options on the ballot paper in a constitutional referendum (76%).

Result of Question 8b

100.   The result of Question 8b was as follows:

Question 8b: If there are more than two options on the ballot paper in a constitutional referendum, the outcome should be decided by:

- *First Past the Post*

- *PR STV*

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
First Past the Post	40(48%)
PR STV	44 (52%)

Eighty four Members of the Assembly were present and voted. The majority of Members (52%) voted for *PR STV* in comparison to 40 Members (44%) voting for *first past the post.* In reviewing the outcome of the weekend on **the Manner in which referenda are held**, because of the fact that seven members were not recruited in compliance with the agreed methodology, the majority view of the Assembly cannot now be determined in respect of Question 8b as the margin between the two options was less than 14 votes.

Question 9

Ballot Paper wording including explanation as provided by the Chairperson

101.   During his presentation on Saturday 13 January, Gary Murphy drew attention to how the Oireachtas never enacted legislation to expand the franchise for election to the University seats in the Seanad, as it was permitted to do by a constitutional change approved in a referendum in 1979.

102.   In their feedback, several Members suggested that the Members should vote on a recommendation that would ensure that this could not happen in relation to a

future referendum. This raises complicated issues that might well differ from one referendum to the next.

103.   For this reason, the draft ballot question was phrased as follows:

"Do you agree that, in principle, the Oireachtas and the Government should give effect to the outcome of a referendum within 5 years?"

Deliberation on Wording

104.   During the questions and answers session, a number of queries and suggested amendments to the draft Ballot Paper were made by the Members.

105.   There were concerns about the inclusion of the phrase "in principle" in terms of compellability of the Oireachtas and Government in reality. There were suggestions to remove those words entirely.

106.   The time period was also at issue. One table queried the five year period and suggested a three year period. Another suggested a shorter two year period. Alternatively, a further suggestion was "within the lifetime of the Government".

107.   There was a lone suggestion to remove the inclusion of a specific time frame completely and instead legislating for a referendum result should permanently feature on the Dáil's formal business until such time as it has been legislated for.

108.   In responding to these suggestions, the Expert Advisory Group reiterated that the result of the Seanad referendum in 1979 is somewhat of an anomaly and legislating for the result was overtaken by other policy decisions and developments relating to the Seanad. They explained that the reason for the inclusion of five years was to match the length of the Dáil term. The risk of a Government collapsing mid-term always exists should the suggested period, "within the lifetime of the Government", be adopted.

109.   Ultimately, there were no changes made to the text of the question as introduced and the Members approved its inclusion by a show of hands.

Reporting on this question and determining the majority

110.   In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes" or "No". A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes'

and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question

111.   The result of Question 9 was as follows:

Question 9: Do you agree that, in principle, the Oireachtas and the Government should give effect to the outcome of a referendum within 5 years?

Number of Eligible Voters:	84
Number of Votes Cast:	84
Invalid Votes:	0
Total Valid Poll:	84
Yes	75 (89%)
No	9 (11%)

Eighty four Members of the Assembly were present and voted. The majority of Members (89%) voted "Yes" in comparison to nine Members (11%) voting "No". This constitutes the recommendation of the Assembly in respect of Question 9.

Recommendation: In principle, the Oireachtas and the Government should give effect to the outcome of a referendum within five years (89%).

Question 10

Ballot Paper wording including explanation as provided by the Chairperson

112.   Question 10 asked: "*Which, if any, of these initiatives do you think should be introduced to try to increase voter turnout.*"

113.   As introduced, there were eight possible initiatives labelled a) to h) as follows:
         "*a) Early Voting in the weeks before the poll*

b) Extended Voting over a number of Days

c) Weekend Voting

d) Online voting

e) Wider availability of postal voting

f) The ability to vote at any polling station in the State

g) Automatic inclusion of all eligible voters on the electoral register

h) Compulsory Voting"

114.   For each of the initiatives listed the Members are asked to mark an X in either the Yes or No box. The result for each initiative will constitute a recommendation of the Assembly.

Deliberation on Wording

115.   During the questions and answers session, a number of queries around the initiatives listed were made and a number of additional initiatives were suggested for inclusion on the draft Ballot Paper by the Members.

116.   A textual change to initiative d) as presented was suggested whereby the wording would be changed to "*technology based*" from "*online voting*". The Expert Advisory Group advised that the meaning of technology in the context of voting typically refers to how voting is conducted in polling stations, for example, the use of electronic voting machines or electronic counting machines, as opposed to a method to encourage higher voter turnout. Online voting would instead make it easier for voters in certain circumstances, i.e. they would be able to vote from home or vote from anywhere in the State during the particular time of the vote.

117.   Additional initiatives suggested for inclusion were (in decreasing order of frequency):

- To reduce the voting age to 16;
- Better education at second level about the principles, the practicalities and the importance of voting;
- The introduction of a cut off point across all media for the publication of opinion polls prior to a vote;
- To extend the grace period when being out of the State from 18 months to five years;
- Provision for better transport for elderly and disabled people to polling stations;

- An Electoral Commission should take responsibility for updating and maintaining the electoral register;
- An increase in resources committed to educate the electorate and promote greater understanding of referendums; and
- Bi-annual fixed dates or months for voting.

118. With regard to the above suggested additional initiatives, the Chairperson made the point that lowering the voting age to 16 was a recommendation made by the Convention on the Constitution but this would not preclude its inclusion on the Ballot Paper. The Expert Advisory Group explained the presence of Civil, Social and Political Education as a Junior Certificate subject and the recent introduction of Politics and Society as a Leaving Certificate subject as measures to better inform students about voting in second level education.

119. The overlap between the Irish and UK media markets and the dissemination of information through social media and online news sources were some of the difficulties discussed with the practicalities of introducing a cut off point for the publication of opinion polls prior to a vote.

120. In respect of the suggestion to have bi-annual fixed dates for voting, the Expert Advisory Group described how, if this was implemented and a proposal was not ready in time for the next scheduled date, it could potentially delay a vote for a further six months. There was little support for the inclusion of this initiative in the room.

121. The Expert Advisory Group provided further information on a number of the queries received from the floor including: clarifying that being able to vote at any polling station in the State would not include Irish embassies in other jurisdictions; an outline of the limited groups/cohorts that can currently avail of postal voting; and further details about online voting, including that where it is available in other jurisdictions this has not been shown to lead to increased incidence of voter fraud.

122. One table made the suggestion, to be included possibly in the form of an additional question as opposed to an additional initiative, that referendums should be decided on the basis of a qualified majority. There was no further support in the room for this.

Agreement on Wording

123.　　The following suggested initiatives for inclusion were put to the Members:

- Lowering the voting age to 16;

- Allowing voting by otherwise eligible voters who are resident outside the State for no more than five years; and

- Greater provision of voter education on referendums

124.　　Members were requested to indicate their acceptance by a show of hands and a count was taken.

125.　　The Members voted to include these three additional initiatives.

Reporting on this question

126.　　The Members were asked to mark X next to each initiative they wished to see introduced.

127.　　The results of this question would simply be a report for each of the initiatives, of the number of people who marked that initiative, along with the percentage of the electorate that number represents.

128.　　The recommendation or recommendations of the Assembly would arise where a majority, i.e. 50% plus one or more of the Members, votes in favour of one or more of the initiatives.

Result of Question

129.   The result of Question 10 was as follows:

Question 10: Which, if any, of these initiatives do you think should be introduced to try to increase voter turnout:

Number of Eligible Voters:	84
Number of Votes Cast:	84

OPTION	Invalid	Valid Poll	Yes	No
a) Early voting in the weeks before the poll	3	81	45 (56%)	36 (44%)
b) Extended voting over a number of days	3	81	40 (49%)	41(51%)
c) Weekend voting	1	83	83 (100%)	0 (0%)
d) Online voting	3	81	57 (70%)	24 (30%)
e) Wider availability of postal voting	1	83	69 (83%)	14 (17%)
f) The ability to vote at any polling station in the State	1	83	74 (89%)	9 (11%)
g) Automatic inclusion of all eligible voters on the electoral register	2	82	78 (95%)	4 (5%)
h) Compulsory voting	4	80	12 (15%)	68 (85%)
i) Lower the voting age to 16	1	83	66 (80%)	17 (20%)
j) Allow voting by otherwise eligible voters, who are resident outside the state, for no more than five years	0	84	65 (77%)	19 (23%)
k) Greater provision of voter education on Referendums	2	82	79 (96%)	3 (4%)

In reviewing the outcome of the weekend on *the Manner in which referenda are held*, because of the fact that seven members were not recruited in compliance with the agreed methodology, the majority view of the Assembly cannot now be determined in respect of Question (a) and (b) as the margin in each case between the 'Yes' and 'No' votes was less than 14.

There was a clear majority against option (h).

Accordingly, the recommendations relate to eight options- (c) to (g) and (i) to (k).

Recommendation: The following initiatives should be introduced to try to increase voter turnout:

    i.   Weekend voting

    ii.   Online voting

    iii.   Wider availability of postal voting

    iv.   The ability to vote at any polling station in the State

    v.   Automatic inclusion of all eligible voters on the electoral register

    vi.   Lower the voting age to 16

    vii.   Allow voting by otherwise eligible voters, who are resident outside the state, for no more than five years

    viii.   Greater provision of voter education on Referendums

Section C: Citizens' Initiatives

Question 11

130.   The questions on citizens' initiatives began with Question 11.

Ballot Paper wording including explanation as provided by the Chairperson

131.   In her presentation to the Assembly on Saturday 13 January, Dr. Theresa Reidy explained the different types of citizens initiatives which exist in other countries.

132.   Following this, Question 11 asks:

"Which, if any, of the following types of citizens initiatives do you consider should be provided for?

a) A citizens' initiative to put a constitutional referendum proposal to the people;

b) A citizens' initiative to put a legislative change proposal to the people (including enacting, changing or repealing legislation);

c) A citizens' initiative to put an item on the agenda for decision by the Oireachtas."

133.   Similar to Question 8, recommendation 11(a) would involve a change in the way in which constitutional referendums are currently required to be initiated and would necessitate amendment of the Constitution following referendum.

134.   There were no changes made to the text of the question as introduced.

Reporting on this question

135.   The Members were asked to mark X next to each citizens' initiative they wished to see introduced.

136.   The results of this question would simply be a report for each of the citizens' initiatives, of the number of people who marked that initiative, along with the percentage of the electorate that number represents.

137.   The recommendation or recommendations of the Assembly would arise where a majority, i.e. 50% plus one or more of the Members, votes in favour of one or more of the citizens' initiatives.

Result of Question

138.   The result of Question 11 was as follows:

Question 11: Which, if any, of the following types of citizens' initiatives do you consider should be provided for?

Number of Eligible Voters:	84
Number of Votes Cast:	84

OPTION	Invalid	Valid Poll	Yes	No
a) A citizens' initiative to put a constitutional referendum proposal to the people	7	77	53 (69%)	24 (31%)
b) A citizens' initiative to put a legislative change proposal to the people (including enacting, changing or repealing legislation)	6	78	54 (69%)	24 (31%)
c) A citizens' initiative to put an item on the agenda for decision by the Oireachtas	6	78	65 (83%)	13 (17%)

Recommendation: The following types of citizens' initiatives should be provided for:

a) A citizens' initiative to put a constitutional referendum proposal to the people (69%)

b) A citizens' initiative to put a legislative change proposal to the people (including enacting, changing or repealing legislation) (69%)

c) A citizens' initiative to put an item on the agenda for decision by the Oireachtas (83%)

Chapter 2: Assembly Recommendations on *Fixed Term Parliaments*

A. Background

139. The Assembly considered *fixed term parliaments* over the course of the weekend of 14 and 15 April 2018.

140. This chapter is a description of the development of the Ballot Paper and voting which took place on the afternoon of Saturday, 14 April, and Sunday, 15 April.

141. All of the Assembly's public proceedings, including the voting, were broadcast live and the footage is now available on the Assembly's YouTube channel.

142. This was the second occasion on which an issue was examined and recommendations made by the Assembly over the course of one weekend. As set out in Chapter 4, material in the form of four presentations by expert speakers was presented to the Members on the Saturday morning and discussions on the Ballot Paper began on the Saturday afternoon. The Ballot Paper was finalised by Saturday evening to allow the Secretariat to print the final copies overnight for voting on Sunday morning.

143. Details are provided below about the development of the draft questions on the Ballot Paper, amendments proposed and approved by the Members and the results.

B. Voting Arrangements

144.   The Assembly's recommendations were determined by a balloted vote, in accordance with the resolution approving establishment of the Assembly:

"all matters before the Assembly will be determined by a majority of votes of members present and voting, other than the Chairperson who will have a casting vote in the case of an equality of votes".

145.   As with the voting process described in Chapter 1, the voting process comprised a series of important steps:

- agreeing on the issues to be included in a ballot;

- agreeing on the precise wording of the ballot; and finally

- voting.

146.   Once again, the Chairperson enlisted independent oversight of the voting process. Mr. John Fitzpatrick, retired returning officer for County Dublin, together with a small team working with him, was available at the weekend and provided his expertise on the following matters:

- The mechanism and infrastructure for voting to be carried out in secret (e.g. the use of voting booths and ballot boxes);

- The counting of Ballot Papers and the accurate presentation of results.

147.   Mr. Fitzpatrick also provided the Secretariat with advice in advance in relation to the time allocated on the Agenda for voting and counting of the votes.

148.   In advance of the weekend meeting, the Members were provided with a note on the voting arrangements that would operate for the weekend. This document is available on the website and in Appendix H. Members were asked to read and familiarise themselves with the document in advance of the weekend.

149.   It should be noted that following the conclusion of the Assembly's consideration of the topic dealt with in Chapter 1, the Chairperson was made aware of an issue as to how seven Members of the Assembly were recruited in advance of that meeting. This had no impact on the voting on the Fixed Term Parliament topic,

because the seven Members who had been irregularly recruited had not taken part in this process, as outlined in Chapter 7.

C. Development of a Draft Ballot Paper

150.   Given that the Assembly is first and foremost an exercise in deliberative democracy, it was important that the Members took ownership of the ballot.

151.   To assist with this task and to focus the Members minds as to the types of things they would like to see expressed on a draft Ballot Paper, time was allocated in the agenda at the roundtable discussions after Sessions 3 and 4 on the Saturday morning to seek feedback from the Members on possible issues arising for the Assembly's recommendations. This feedback was given in public during the questions and answers session.

152.   The Secretariat collated all of these suggestions over lunch and these informed the preparation of the original draft Ballot Paper. A draft Ballot Paper was prepared by the Chairperson, with the assistance of the Secretariat and the Expert Advisory Group, during the lunch break on the Saturday afternoon.

153.   Copies of the original draft Ballot Paper and the final version which the Members voted on are provided in Appendix H. Time was spent on the Saturday afternoon explaining each of the questions individually and why they were included on the Ballot paper. The explanation was provided by the Chairperson. Time was also set aside for roundtable discussion and question and answer sessions to allow the Members sufficient time to examine the draft Ballot Paper and ask questions of the Chairperson, Secretariat and Expert Advisory Group. Once all questions were agreed by the Members, the Secretariat revised the relevant questions on the Ballot Paper overnight.

154.   All of the public sessions were live streamed on the Assembly website. In addition, a transcript of the public session where the Ballot Paper was discussed and agreed was put on the website after the meeting. That transcript is included in Appendix H.

D. Overview of Voted Recommendations

155.   In summary, the Assembly recommended by a majority vote the following:

RI.   51% voted that, the current constitutional position as regards the dissolution of Dáil Éireann should be changed (Question 1).

RII.   59% voted that, if the current constitutional position as regards the dissolution of Dáil Éireann is changed, the length of the fixed parliamentary term should be four years (Question 2).

RIII.   95% voted that, if the current constitutional position as regards the dissolution of Dáil Éireann is changed, there should be a fixed term that can be cut short subject to certain conditions (Question 3).

RIV   If the current constitutional position as regards the dissolution of the Dáil is changed, and there is a fixed term parliament which can be cut short subject to certain conditions:

a)   66% voted that the approval of the Cabinet (which includes the Taoiseach) should be needed for an early general election (Question 4a).

b)   52% voted that the approval of a majority of the members of Dáil Éireann should be needed (Question 4b).

c)   70% voted that the approval of a super-majority of the members of Dáil Éireann (eg two thirds) should be needed (Question 4c).

d)   84% voted that the approval of the President should be needed (Question 4d).

E. Detailed Breakdown and Explanation of Assembly Recommendations and Ballot Results

156.   This section of the report provides a detailed explanation of the wording that appeared in each question on the original draft Ballot Paper. The explanation of the meaning of the wording as provided by the Chairperson to the Members in advance of discussion and questions and answers sessions is also provided. An account of any agreed changes to each of the questions on the Ballot Papers sought and agreed by the Members is also provided.

Ballot Paper wording including explanation as provided by the Chairperson

157.   Question 1 on the original draft addressed the central reason for the meeting; to consider if fixed term parliaments should or should not be introduced. Simply put, the question was about retaining or changing the status quo. The exact wording of the question asked:

"*Do you think that fixed term parliaments (whether absolutely fixed or semi-fixed) for Dáil Éireann and Seanad Éireann should be introduced?*".

Deliberation on Question

158.   During the questions and answers session, a number of suggested amendments to the text of Question 1 and the sequencing of voting on the Ballot Paper were made by the Members.

159.   There were concerns that the question should be stated more clearly and the language used needed to be neutralised. It was suggested that the current phrasing invited a positive response to change.

160.   There were concerns about the introduction of the concept of fixed or semi-fixed parliaments in the first question and the appropriateness of whether Members should be voting on that aspect in the first question.

161.   A suggested alternative wording for the question from one table was: *"Do you think that the current situation regarding the term of Irish parliaments should be changed",* which would have a yes or no answer.

162.   The Expert Advisory Group suggested changing the question to two simple statements which would indicate support, or not, for changing the Constitutional position as regards the dissolution of Dáil Éireann. The Members would vote for their

preferred statement. This would allay concerns about the introduction of the concept of fixed or semi-fixed term parliaments prematurely on the ballot paper and would instead demonstrate whether there was a mandate to change the status quo or not.

163. A lot of the discussion from the floor focussed on what would happen if a majority of Members voted against this first question, with many asking if there would be any benefit in answering further questions on the Ballot Paper should that happen. It was suggested that the Ballot Paper should be split and voted on sequentially. Depending on the result of Question 1, voting would conclude if the majority of votes was no, or continue if the majority of votes was yes. There was a concern among the Members that the result of Question 1 could be undermined if further questions were asked contrary to the result of Question 1.

164. The Expert Advisory Group highlighted that the inclusion of the remaining questions on the Ballot Paper would not necessarily undermine the result of Question 1 if it was a negative one, because of the phrasing of the remaining questions, which were prefaced by the words: "*In the event that absolutely fixed or semi-fixed term parliaments for Dáil Éireann and Seanad Éireann were introduced...*". In other words, the wording of the remaining questions took account of the fact that the Members might not have voted to introduce a change to the status quo in Question 1.

165. In comments from the floor, it was suggested that each of the questions could remain on the Ballot Paper but that, in the event that the majority voted against Question 1, in other words that they voted for the status quo to remain, the remaining results would not be reported. It was later decided that this would be an untenable position for the Assembly to hold, that is to say, to be in possession of such information but not to share it with the Houses of the Oireachtas.

166. In the context of the discussion of Question 2, the Members suggested that there should be an option not to state an opinion on the remaining questions, so that Members would not feel compelled to say Yes or No to a subsequent question, where they had earlier indicated in voting on Question 1 that they did not agree with a change in the status quo.

Agreement on Wording

167.   Question 1 was amended to allow Members to indicate their preference by marking X next to one of two statements:

The current Constitutional position as regards the dissolution of Dáil Éireann <u>should be changed</u>

or,

The current Constitutional position as regards the dissolution of Dáil Éireann <u>should not be changed</u>

168.   Members were requested to indicate their acceptance of this amended Question 1 by a show of hands and a count was taken.

169.   The Members voted to accept this change.

170.   Separately, the Members voted on whether they wished to split the Ballot Paper and vote sequentially depending on the outcome of Question 1, or whether they wished to include all questions on the Ballot Paper and report the results of all questions at the same time. Members were requested to indicate their preference for the alternative approaches by a show of hands and a count was taken. The Members voted to be balloted on all the questions at the same time and that the results of all questions would be reported on.

Reporting on this question and determining the majority

171.   In terms of reporting on this question, Members were informed that the recommendation of the Assembly would be the option which obtained the highest number of votes with the Chairperson having a casting vote, if required. The majority was determined by reference to the total votes cast in favour of the options available.

Result of Question 1

172. The result of Question 1 was as follows:

Number of Eligible Voters:	71
Number of Votes Cast:	71
Invalid Votes:	0
Total Valid Poll:	71
The current Constitutional position as regards the dissolution of Dáil Éireann <u>should be changed</u>	36 (51%)
The current Constitutional position as regards the dissolution of Dáil Éireann <u>should not be changed</u>	35 (49%)

Seventy one Members of the Assembly were present and voted. A very slim majority of the Members (51%) voted that the current Constitutional position as regards the dissolution of Dáil Éireann should be changed, in comparison to thirty four Members (49%) voting that it should not be changed. This constitutes the recommendation of the Assembly in respect of Question 1.

Recommendation: The current Constitutional position as regards the dissolution of Dáil Éireann should be changed (51%).

Question 2

Ballot Paper wording including explanation as provided by the Chairperson

173. Question 2 on the original draft Ballot paper asked: "*In the event that absolutely fixed or semi-fixed term parliaments for Dáil Éireann and Seanad Éireann were introduced, how long should the parliamentary term be?*".

The Members were provided with two options to choose from:

- *Option 1: Four years <u>or</u>*
- *Option 2: Five years*

174. This question was not dependent on the outcome of Question 1, but was a stand alone question.

Deliberation on Question

175. During the questions and answers session, a number of suggested amendments to the draft Ballot Paper were made by the Members. It was suggested that the wording of this question should be amended to make it consistent with the wording of Question 1. As recorded earlier, Members sought to have the ability to express 'no opinion' for questions 2, 3 and 4, as happened on ballots in relation to other issues.

Agreement on Wording

176. The following suggested amendments were put to the Members:

- Linking the text of the question to Question 1 by using the same terminology, i.e. "*If the current Constitutional position as regards the dissolution of Dáil Éireann is changed*"; and

- The addition of a third option "*Prefer not to state and opinion*".

177. Members were requested to indicate their acceptance by a show of hands and a count was taken. The Members voted to accept these changes.

Reporting on this question and determining the majority

178. In terms of reporting on this question, Members were informed that the recommendation of the Assembly would be the option which obtained the highest number of votes with the Chairperson having a casting vote, if required. The majority was determined by reference to the total votes cast in favour of the options in which an opinion was stated.

Result of Question

179.   The result of Question 2 was as follows:

Question 2: If the current Constitutional position as regards the dissolution of Dáil Éireann is changed, how long should the parliamentary term be?

Number of Eligible Voters:	71
Number of Votes Cast:	71
Invalid Votes:	0
Total Valid Poll:	71
Option 1: Four years	39 (59%)
Option 2: Five years	27 (41%)
Option 3: Prefer not to state an opinion	5

Seventy one Members of the Assembly were present and voted. Five Members preferred not to state an opinion for this question. Of those Members that did express an opinion on this question, the majority (59%) voted for *Option 1 (Four years),* in comparison to twenty seven Members (41%) voting for O*ption 2 (Five years).* This constitutes the recommendation of the Assembly in respect of Question 2.

Recommendation: If the current Constitutional position as regards the dissolution of Dáil Éireann is changed, the parliamentary term should be 4 years (59%).

Ballot Paper wording including explanation as provided by the Chairperson

180.   Question 3 on the original draft Ballot Paper asked:

 "*In the event that fixed term parliaments for Dáil Éireann and Seanad Éireann were introduced, which of the following systems would you favour?*"

Once again this question was not dependent on the outcome of earlier votes and was a stand-alone question.

181.   Two options were provided for the Members to choose from:
- *Option 1: An absolutely fixed term (i.e. one that <u>cannot</u> be cut short)*
- *Option 2: A semi-fixed term (i.e. one that <u>can</u> be cut short)*

182.   Members heard in the presentation from Prof. Petra Schleiter about the systems used in other countries, in some of which fixed term parliaments exist, where the timing of elections cannot be changed by political choice and in others semi-fixed term parliaments exist, where an early election is permitted but cannot be called at the discretion of a single political actor. Prof. Schleiter's presentation, which is summarised in Chapter 4, outlined what precisely is meant by those terms and how they are applied. To give clarity to Members, the phrase "fixed term" was prefaced by the epitaph "absolutely".

Deliberation on Wording

183.   During the questions and answers session, a number of suggested amendments to the draft Ballot Paper were made by the Members. A number of questions came from the floor about how the conditions would be determined and what would be the implementation process, either constitutional or legislative.

184.   The Expert Advisory Group explained that those questions entered the realm of implementation and that would be a matter for the Oireachtas Committee considering the Assembly's recommendations on this topic.

Agreement on Wording

185.   The following suggested amendments were put to the Members:

- Linking the text of the question to Question 1 by using the same terminology, i.e. "*If the current Constitutional position as regards the dissolution of Dáil Éireann is changed*";

- The rewording of option 1 to read: "*There should be an absolutely fixed term (i.e. one that cannot be cut short under any circumstances)*";

- The rewording of option 2 to read: "*There should be a fixed term but one that can be cut short subject to certain conditions*"; and

- The addition of a third option "*Prefer not to state and opinion*".

186.   Members were requested to indicate their acceptance by a show of hands and a count was taken. The Members voted to accept these changes.

Reporting on this question and determining the majority

187.   In terms of reporting on this question, Members were informed that the recommendation of the Assembly would be the option which obtained the highest number of votes with the Chairperson having a casting vote, if required. The majority was determined by reference to the total votes cast in favour of the options in which an opinion was stated.

Result of Question

188.   The result of Question 3 was as follows:

Question 3: If the current constitutional position as regards the dissolution of Dáil Éireann is changed:

Number of Eligible Voters:	71
Number of Votes Cast:	71
Invalid Votes:	0
Total Valid Poll:	71
Option 1: There should be an absolutely fixed term (i.e. one that <u>cannot</u> be cut short under any circumstances)	3 (5%)
Option 2: There should be a fixed term but one that <u>can</u> be cut short subject to certain conditions	63 (95%)
Option 3: Prefer not to state an opinion	5

Seventy one Members of the Assembly were present and voted. Five Members preferred not to state an opinion for this question. Of those Members that did express an opinion on this question, the majority (95%) voted for *Option 2 (There should be a fixed term but one that <u>can</u> be cut short subject to certain conditions),* in comparison to three Members (5%) voting for O*ption 1 (There should be an absolutely fixed term (i.e. one that <u>cannot</u> be cut short under any circumstances).* This constitutes the recommendation of the Assembly in respect of Question 3.

Recommendation: If the current constitutional position as regards the dissolution of Dáil Éireann is changed, there should be a fixed term but one that can be cut short subject to certain conditions (95%).

Ballot Paper wording including explanation as provided by the Chairperson

189.   Question 4 concerned the potential introduction of semi-fixed term parliaments and it asked the Members to consider from which constitutional organs of the State should approval be required, and in what manner, for an early general election to be held. Put simply, the Members were asked which of such actors should have a role in authorising an early general election.

190.   The original draft of the question asked:

"*In the event that semi-fixed term parliaments for Dáil Éireann and Seanad Éireann were introduced, whose approval should be needed for an early general election to be held?*"
Four possible requirements of approval labelled a) to d) were included as follows:

a) *The Cabinet*

b) *A majority of Dáil Éireann*

c) *A Super-majority of Dáil Éireann*

d) *The President*

Deliberation on Wording

191.   During the questions and answers session, there was a large amount of discussion on the draft Ballot paper, and a number of suggested amendments to it, were made, by the Members. Consequently this section of the Report, notwithstanding that not all of the issues raised by the Members are covered, is more detailed than usual, with the objective of demonstrating how the Members engaged with the complex technical issues that arose. The transcript of the full discussion is included at Appendix H.

192.   The discussion involved references to the papers which had been presented to the Members that morning, for example, by Prof Petra Schleiter, which are summarised in Chapter 4, particularly, in the context of the meaning of semi-fixed terms.

193.   The Members at one table suggested the deletion of the words "*In the event that semi-fixed term parliaments for Dáil Éireann and Seanad Éireann were introduced* " so that the question should read: "Whose approval should be needed for an early general election to be held?" Members were concerned that the construct of the question in the original draft might not be appropriate, should the Members decide to vote against any change to the current Constitutional position in Question 1.

194.   The Expert Advisory Group made the point that Question 4 could still provide useful information to the Houses of the Oireachtas even if the Members voted against a change in the status quo regarding the dissolution of Dáil Éireann in Question 1. The Expert Advisory Group explained that any change in relation to the dissolution of Dáil Éireann would necessitate a Constitutional amendment. The involvement of any further actors, beyond the Taoiseach, would result in what political scientists would refer to as a semi-fixed term parliament.

195.   Clarification was sought on more than one occasion to establish, if approval was required from any additional actors, like those listed a) to d), for a general election to be held, why this would result in the introduction of a semi-fixed term parliament and not simply the maintenance of the current flexible system reflecting new roles for those parties.

196.   In responding, the Expert Advisory Group made reference to the terminology used in Professor Schleiter's paper and presentation delivered earlier in the day which outlined how multiple actors being involved with the dissolution of parliament resulted in what was referred to as semi-fixed term parliament. It was explained that the involvement of further actors would introduce additional constraints on the ability to dissolve the Dáil, making the term semi-fixed, as dissolution becomes more difficult. A huge spectrum of circumstances and options falls under the definition of a semi-fixed term parliament.

197.   With respect to the clarification of option 4d), that is to say, the need for approval of the President, the Expert Advisory Group pointed out that it was implicit that the President would have a greater role in the dissolution of the Dáil, in that his approval would always be necessary, and that the President could refuse to dissolve the Dáil even if the Taoiseach still had the support of the majority of the Dáil. This was a reference to Article 13.2.2° which provides: "The President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann".

198.   One table questioned why the approval of the Taoiseach was excluded as an option listed. The Expert Advisory Group explained that the reason why the Taoiseach was not included was because the question, as it was phrased, assumed a move towards a semi fixed term parliament, which would have the effect of a change to the status quo. The status quo is often seen as requiring just the input of the Taoiseach. Apart from this, the logic of the phrasing of the question in this manner was that the Taoiseach is already involved and the question is enquiring as to which additional actors the Members want to be involved in the dissolution of Dáil Éireann. Also, the inclusion of the cabinet, of which the Taoiseach is a member, negated any reason to list him separately as an option. However, in aid of the Members, the final draft of Question 4 referred to "the Cabinet (which includes the Taoiseach)".

199.   One table recommended the inclusion of another category to include a role for Seanad Éireann, as well Dáil Éireann, to approve an early general election.

200.   In response, the Expert Advisory Group explained that it had not been included on the draft Ballot Paper, as the Seanad is not the source of democratic authority in the Constitution, having a very limited electorate. To allow a body that does not have a democratic mandate in that sense to prevent the holding of a general election was not something that had occurred to the Chairperson, Secretariat or Expert Advisory Group during the formation of the draft Ballot Paper. It was emphasised that the foregoing was not a reason to not include it, if the Members wished to do so.

201.   With regard to option 4c) (approval of a supermajority of Dáil Éireann), the Members at one table sought clarity that it should be the approval of the majority of the overall members of the Dáil, rather than the members of the Dáil present and voting, which was required. This was clarified in the final Ballot Paper, where it was made clear, it was a super majority of members of Dáil Éireann that was required. Similarly, clarity was given in relation to option b) by approval being required from a majority of the members of Dáil Éireann.

202.   One table had a question about, how, if both options 4b) and 4c) were marked yes, the recommendation would be reported and whether both options would be differentiated between.

203.   In response, the Expert Advisory Group explained that each option, 4b) and 4c), would be presented as separate recommendations. If a Member was in favour of option 4c) (a super-majority e.g. two thirds), it would follow they would be in favour of option 4b) (a majority), as well, because a simple majority is subsumed within a supermajority, so that a Member would naturally vote yes to both option 4b) and 4c). If a Member thought just a simple majority should be sufficient, and not a supermajority, he/she would vote Yes to option 4b) and No to option 4c). It was not felt that there would be a difficulty in identifying what the Assembly was recommending in this instance.

204.   The Expert Advisory Group further explained how the appropriateness of listing each possible combination of actors (e.g. the Cabinet in combination with the President) whose combined approval might be required, had been considered in preparing the draft Ballot Paper but that such a specific selection would reduce the value of the recommendation, as the vote and view of the Assembly would be diluted across a broad range of options. By keeping it relatively simple, whilst bearing in mind that it would not provide a complete or very detailed picture, a steer could be given to the Houses of the Oireachtas that these are the sorts of actors that should be involved, if semi-fixed parliaments were to be introduced.

205.   There were calls from the floor to expand the areas the Assembly would vote and make recommendations on, with the inclusion of additional questions specifically around the instances that could cause the dissolution of Dáil Éireann and constraints on dissolution. All of the Members at one table suggested a specific question to the

effect that dissolution would be made possible under specific circumstances, listed being:

   a) Collapse of government;
   b) A failed government formation within 30 days;
   c) Failure to pass a budget.

on which the Members would answer "Yes" or "No" to each of the options a) to c).

206.   The Expert Advisory Group explained that options a) and c) in the Members' proposed question were covered by option 4b) in the Secretariat's original draft. As regards option b) of the Members' proposed question, it was acknowledged that this would require further consideration if fixed term parliaments were to be introduced. It was reiterated that the Ballot Paper was not designed to recommend a complete system for the regulation of fixed term parliaments. The Assembly's report will go to the Oireachtas, which will have more resources at its disposal to consider those detailed implementation issues. It was acknowledged that there are technical issues that would have to be resolved that were not addressed by the Assembly due to the limited time in which the topic was considered.

Agreement on Wording

207.   The following suggested amendments were put to the Members:

* Linking the text of the question to Question 1 by using the same terminology, i.e. "*If the current Constitutional position as regards the dissolution of Dáil Éireann is changed*";

* The addition of a second clause to read: "*and there is a fixed term which can be cut short subject to certain conditions*";

* An explicit clarification in option a) that the Cabinet includes the Taoiseach;

* Inclusion of the words "*of the members of*" before the words "Dáil Éireann" in options b) and c); and

* The addition of a third voting column with the option "*Prefer not to state an opinion*".

208.   Members were requested to indicate their acceptance by a show of hands and a count was taken. The Members voted to accept these changes.

Reporting on this question and determining the majority

209.   In terms of reporting for this question, the Members were asked to mark X in one box – either "Yes", "No" or "Prefer not to state an opinion" for each of the options a) to d) listed. A majority, and therefore the recommendation of the Assembly, would be determined by reference to the total votes cast in favour of 'Yes' and 'No', with the answer with the highest number of votes deemed to be the majority.

Result of Question

210.   The result of Question 4 was as follows:

Question 4: If the current constitutional position as regards the dissolution of Dáil Éireann is changed, and there is a fixed term which can be cut short subject to certain conditions, whose approval should be needed for an early general election to be held?

Number of Eligible Voters:	71
Number of Votes Cast:	71

OPTION	No Opinion	Opinion Stated	Yes	No
a) The Cabinet (which includes the Taoiseach)	12	59	39 (66%)	20 (34%)
b) A majority of the members of Dáil Éireann	15	56	29 (52%)	27 (48%)
c) A super-majority of the members of Dáil Éireann (e.g. two thirds)	14	57	40 (70%)	17 (30%)

	16	55		
d) The President			46 (84%)	9 (16%)

Seventy one Members of the Assembly were present and voted.

Recommendation: If the current constitutional position as regards the dissolution of the Dáil is changed, and there is a fixed term which can be cut short subject to certain conditions:

- the approval of the Cabinet (which includes the Taoiseach) should be needed for an early general election (66%).
- the approval of a majority of the members of Dáil Éireann should be needed (52%).
- the approval of a super-majority of the members of Dáil Éireann (eg two thirds) should be needed (70%).
- the approval of the President should be needed (84%).

Ancillary Recommendations

211.   During discussions on the draft Ballot Paper on Saturday 14 April, a Member asked if there would be an opportunity for Members to make comments and suggestions on further ancillary recommendations, as had been done on some of the earlier topics considered by the Assembly. In response, the Chairperson undertook to provide the Members with a response form to allow them to express their views.

212.   These forms were circulated to Members on 15 April. As responses were only received from three Assembly Members, no reportable ancillary recommendations have emerged.

Chapter 3: Work Programme on *The Manner in which Referenda are held*

<u>Agenda and Work Programme</u>

213.   The Agenda and work programme of the Assembly on *The Manner in which Referenda are held* was developed in advance of the meeting in January 2018. As was the case with the Assembly's earlier work, the agenda and work programme were to a large extent informed by the submissions received on the topic.

214.   This topic was originally listed as the final item on the Assembly's work programme. However, at the September 2017 meeting, the Chairperson outlined her view to the Members that it would be preferable if the Assembly had concluded its deliberations on *the manner in which referendums are held* before any referendum campaign commenced. This was in light of the possibility of a referendum on the Eighth Amendment of the Constitution, as a consequence of the Assembly's recommendations on the Eighth Amendment.

215.   The Chairperson outlined her view that it was important that the Assembly, which went on to consider how referendums are conducted generally, did not in any way confuse a national discussion on a referendum campaign on a specific matter to be put before the people. The change in scheduling, which was agreed by the Members in September 2017, was designed to avoid any such confusion.

216.   This was the first topic before the Assembly in which the Members would consider the evidence and make recommendations in a single weekend. This was a significant departure from the manner in which the Assembly structured its work and considered the previous three topics, and raises some important points for consideration about the construct of work programmes for Citizens' Assemblies more generally, which the Chairperson deals with in Chapter 8. However, it is also worth noting that this is primarily how the predecessor of the Assembly – the Convention on the Constitution – structured its meetings.

217.   The submissions process opened on 13 November 2017 with a closing date of 22 December 2017. Further details on the submissions process are provided in Chapter 5.

218.   During the final weekend on *How the State can make Ireland a leader in tackling climate change* in November 2017, Members of the Assembly were asked what they wanted to see included on the work programme of the Assembly's discussions on referendums. As such, the views of the Members were an important part of the work programme development.

<u>Background documents</u>

219.   Referendums, both the way in which they have been held and their results, have been the subject of complex constitutional case law in the courts. The law, based on the Constitution and the relevant legislation, as interpreted and applied by the Superior Courts, and supplemented by regulations and guidelines, determines the way in which referendums in Ireland occur and are held.

220.   In advance of the weekend, Members were advised of a number of documents which might be of interest to them in relation to the topic. The documents provided were as follows:

A. The relevant articles of the Constitution of Ireland 1937
- Articles 27, 46 and 47 of Bunreacht na hÉireann

B. The relevant Legislation
- Referendum Act, 1994
- Referendum Act, 1998
- Referendum Act, 2001

C. Reports of the Referendum Commission
The Referendum Commission is an independent body that explains the subject matter of a referendum proposal, promotes public awareness of a referendum and encourages the electorate to vote. Every Referendum Commission to date has published a report following the referendum. The reports made available in advance were:
- Marriage Referendum and Age of Presidential Candidates Referendum (2015)
- Abolition of Seanad Éireann and Court of Appeal referendums (2013)
- The Children Referendum (2012)

- Fiscal Stability Treaty (2012)

- Judge's Remuneration and Houses of the Oireachtas Inquiries (2011)

- Lisbon Treaty (2009)

- Lisbon Treaty (2008)

- Irish Citizenship (2004)

- Treaty of Nice (2002)

- Protection of Human Life in Pregnancy (2002)

- Abolition of the Death Penalty, International Criminal Court, Treaty of Nice (2001)

D. Documents Published by the Department of Housing, Planning and Local Government

The Department of Housing, Planning and Local Government (previously the Department of the Environment, Community and Local Government) has produced a number of documents in this area of which the following were provided to the Members in advance:

- The Referendum in Ireland

- Referendum Results 1937 - 2015

These documents were also made available on the Assembly's website.

Summary of Assembly Meeting on *the Manner in which Referenda are held*

221.   It should be noted that with just one day to provide information to the Members, in deciding on the work programme, regrettably not all possible issues were included on the agenda. As can be seen from the signpost document on the submissions, the number of issues which this topic gives rise to are numerous. Nonetheless, the work programme did cover the most important issues to be considered in this context.

222.   The weekend began with an overview of the history of referendums held in Ireland and the legal background and process. This was followed by consideration of the legal regulation of a referendum campaign and the impact the law has on the media in providing information to the public. The Assembly then looked at voter turnout, super referendums and repeat referendums along with a session on citizens' initiatives.

223.   Provided below is a short summary of the material presented to the Members of the Assembly. This summary is provided as a guide for members of the Oireachtas; to give an overview of the material presented and to act as a signpost to

allow the members of the Oireachtas to access all of the detailed material. Appendix G contains the full suite of material provided to the Members, including the agenda, expert papers and presentations, Secretariat papers, and the transcript of the public proceedings on Sunday 14 January when Members discussed the Ballot Paper.

224.   All of the papers and presentations, together with the video footage from each session are available on the Assembly website. Members of the Oireachtas, and any member of the public with an interest in this topic, can therefore read all of the material in full.

225.   The proceedings on the Sunday 14 January concerned the preparation of a draft Ballot Paper, agreement on the Ballot Paper and voting. This has been covered in Chapter 1, and is, therefore, not repeated here.

226.   The papers, presentations and oral presentations are very comprehensive and contain a wealth of useful and relevant material in relation to the issues discussed by the Assembly. It is worth noting that on occasion the presentation developed or elaborated on points raised in the written paper. As such, in order to get a complete picture of the material which the Members considered it is necessary to consider the full suite of materials. The summary, which follows is designed to give an overview and does not reflect how comprehensive and detailed the material was. The summary does, however, give insight as to the matters which informed the questions and proposals raised on the Ballot Paper and, in particular, the Member contributions.

227.   In the summary, certain judgments of the courts which were cited by the speakers are referred to by reference to the name of the applicant litigant only. For completeness, the following is the full title and citation of each of those cases:

- McKenna v An Taoiseach (No. 1) [1995] 2 I.R. 1 (McKenna);
- Coughlan v Broadcasting Complaints Commission [2000] 3 I.R. 1 (Coughlan);
- McCrystal v Minister for Children [2012] 2 I.R. 726 (McCrystal);
- Jordan v Minister for Children and Youth Affairs [2015] 4 I.R. 232 (Jordan).

<u>Session 1: Referendums in Ireland- History and outcomes to date</u>

228. **Gary Murphy**, Professor of Politics and Head of the School of Law and Government at Dublin City University presented a paper which outlined the history of referendums in Ireland, including providing details of the outcomes of referendums to date. Prof. Murphy's paper, presentation (both of which are available in Appendix G) and a video archive of his oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

229. The key issues covered by Prof. Murphy were:

- The history of referendums in Ireland including information on the number of referendums which have been held. In total there have been 38 proposed amendments, with 27 approved by the people and 11 rejected[1];

- Details of the topics on which referendums to amend the Constitution have been held. There have been nine on moral issues, nine on European issues, seven on voting, four on the political, governmental, and judicial framework, one on Northern Ireland, one on children's' rights, and a further seven on relatively technical issues. Prof. Murphy also provided details on any notable changes in frequency or engagement by the electorate;

- An overview of the number of repeat referendums held in Ireland to date. There have been four repeat referendums where the people have been asked to vote on the same proposal- the electoral system in 1959 and 1968; divorce in 1986 and 1995; the Nice Treaty in 2001 and 2002; and the Lisbon Treaty in 2008 and 2009. Details were also provided about the number of times more than one referendum has been held on the same day. This has happened on nine occasions to date.

<u>Session 2: Referendums in Ireland- Legal background and process</u>

230. Niamh Hyland, Senior Counsel presented a paper on the legal background to referendums in Ireland. Ms. Hyland's paper, PowerPoint presentation (both of which are available in Appendix G) and a video archive of her oral presentation and the

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[1] It should be noted that Prof. Murphy's presentation happened in January 2018, before the Referendum on the thirty-sixth amendment of the Constitution (May 2018)

questions and answers session with the Members which followed, are all available on the Assembly's website.

231.　　　The key issues covered by Ms. Hyland were:

- Details of the constitutional provisions governing the amendment of the Constitution, including, in particular, details of how proposals for a referendum are generated.

- An outline of the relevant legislation (the Referendum Acts 1994-2001) and key provisions contained therein, including how polling day is determined, how long polling should take place on a given day, and the rules around the counting of votes.

- A brief introduction on the history of the establishment of the Referendum Commission together with details about its functions and membership.

- Details of how referendum challenges are taken under the Referendum Act 1994 together with a brief outline of the most significant case law including the McKenna, Jordan, and McCrystal judgements.

Session 3: Referendum Campaigns: Legal Regulation

232.　　　Building on the material in Ms. Hyland's paper and presentation, Dr Conor O'Mahony, senior lecturer at University College Cork School of Law, presented a paper on the legal regulation of referendum campaigns. Dr. O'Mahony's paper, presentation (both of which are available in Appendix G) and a video archive of his oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

233.　　　The key issues covered by Dr. O'Mahony were:

- The implications of the relevant case law on the conduct of referendum campaigns, including, in particular, the impact of the McKenna and McCrystal judgments which prohibit direct expenditure of public funds to favour one side of a referendum campaign during the formal campaign. Dr. O'Mahony outlined some further issues which have arisen in discourse on the judgments including the definition of 'direct' financing and the potential impact of 'indirect' financing, and the application of the principles outside of the formal referendum campaign.

- Detailed explanation of campaign rules, regulations and procedures both for political parties and other groups, including, in particular, rules around campaign finance,

noting in particular donation limits and disclosure requirements. A brief comparison with rules in other countries with reference to financing was also provided.

- An overview of the rules governing broadcast coverage of a referendum campaign in Ireland, and an outline of how the Coughlan judgement has been applied.

- Further detail on the role of the Referendum Commission, including the presentation of some frequently aired discussion points in relation to the body, in particular, whether there should be a permanent or an ad hoc Commission, and if the Commission should have a role in 'fact checking' during a referendum campaign.

Session 4: Referendum Campaigns: Legal Regulation- Impact on the Media

234.		Mark Brennock, Director of Public Affairs at Murray, presented a paper on the impact of the regulations outlined in Dr. Murphy's paper on the media. Mr. Brennock's paper, presentation (both of which are available in Appendix G) and a video archive of his oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

235.		The key issues covered by Mr. Brennock were:

- The significant role played by the media in communicating information during a referendum campaign.

- The regulation of media and how it affects journalists and media organisations during a referendum campaign. An explanation was given of how those rules apply to different forms of media, and specifically how only broadcast media are obliged to adhere to the legal requirement to be balanced and fair. In his paper and presentation Mr. Brennock posed a number of questions to the Members on this point, including asking them to consider if this requirement should also apply to print media. Mr. Brennock also noted that while there is a requirement on broadcast media to be balanced, it had been made clear by the Broadcasting Authority of Ireland that this did not mean that coverage should be split precisely 50/ 50 between each side.

- Building on the point made by Dr. Murphy about a possible role for the Referendum Commission in 'fact checking', Mr. Brennock outlined some of the issues which give rise to call for these powers to be given to the Commission, including examining how best to challenge any patently untrue claims which emerge during a campaign.

Session 5: Voter turnout, super referendums and repeat referendums

236.   Michael Marsh, Emeritus Professor of Political Science at Trinity College
         Dublin presented a paper on voter turnout, super referendums and repeat
         referendums. Prof. Marsh's paper, presentation (both of which are available in
         Appendix G) and a video archive of his oral presentation and the questions and
         answers session with the Members which followed, are all available on the
         Assembly's website.

237.   The key issues covered by Prof. Marsh were:

• The factors influencing voter turnout including the perceived importance of the issue,
  the sense of duty felt by the voter and the convenience to the voter. The level of
  information available to the voter also has an impact on turn out. Typically when
  people feel more informed, they are more likely to turn out.

• Evidence and factual background on super referendum days, including: an overview
  of the impact of having more than one referendum on voter turnout; presentation of
  some of the arguments for and against having super referendum days; and an
  overview of the international experience of super referendum days.

• An outline of the role that turnout has played on the outcome of the four repeat
  referendums in Ireland, and a presentation of some of the arguments for and against
  the holding of repeat referendums.

• A brief exploration of the advantages and disadvantages of holding multi-option
  referendums, as opposed to referendums with a simple binary choice, as is the case
  currently in Ireland.

Session 6: Citizens initiatives and direct democracy

238.   Dr. Theresa Reidy, political scientist in the Department of Government and
         Politics at University College Cork presented a paper on citizens' initiatives. Dr.
         Reidy's paper, presentation (both of which are available in Appendix G) and a video
         archive of her oral presentation and the questions and answers session with the
         Members which followed are all available on the Assembly's website.

239.	The key issues covered by Dr. Reidy were:

- An overview of the types of initiatives covered by the broad term 'citizens' initiatives' including citizens' initiatives (citizens proposing and voting on new legislation/ constitutional change), agenda initiatives (citizens proposing new legislation for consideration by parliament), abrogative referendums (citizens' use of a popular vote to make a decision on an existing piece of legislation- to repeal or not) and rejective referendums (citizens' use of a popular vote to make a decision on a new piece of legislation).

- An outline of the use of these instruments in other jurisdictions including in Switzerland, the USA, and Austria and an overview of the European Citizens' Initiative (ECI) which was introduced with the Treaty of Lisbon 2007, was also provided.

- Details of some of the limitations and safeguards which are in place in other jurisdictions, including in relation to the subject matter, the validity rules and procedural rules.

Chapter 4: Work Programme on *Fixed Term Parliaments*

240.   It is understood that this topic was included in the programme for the Assembly at the request of the Independent Alliance. In 2015, a private member's bill was proposed by Independent Alliance TD Shane Ross, now Minister for Transport. The Bill entitled Thirty-fifth Amendment of the Constitution (Fixed Period for the Duration of Dáil Éireann) Bill 2015, sought to introduce a fixed term parliament in Ireland. Members of the Assembly were provided with links to this Bill, as well as extracts from the Report of the Constitution Review Group 1996, which was chaired by T.K Whitaker.

Agenda and Work Programme

241.   The Agenda and work programme of the Assembly on *Fixed Term Parliaments* was developed in advance of the meeting in April 2018. This meeting was originally scheduled for discussion in early March 2018 but was postponed because of Storm Emma and the advice of the National Emergency Coordination Group for Severe Weather at that time.

242.   During the previous weekend in January 2018, when the Assembly considered *The Manner in which Referenda are Held*, Members of the Assembly were asked what they wanted to see included on the work programme of the Assembly's discussions on fixed term parliaments. As such, the views of the Members were an important part of the work programme development.

243.   In developing the work programme, while, on its face, this topic appears to be relatively discrete and self-contained, as the discussion on the Ballot Paper as outlined in Chapter 2 and the summary of the presentations by the four expert speakers which follows reveal, the topic gives rise to consideration of complex

technical issues. It requires consideration of provisions of the Constitution and existing legislation, the implications of those provisions in the political context in the past, and the implications of any changes to the existing law in the future. Therefore, in developing the agenda and work programme, the focus was on whether the law should be changed, whether there should be greater restrictions in place on the Taoiseach's ability to advise the President to dissolve the Dáil and what changes might be introduced and how they would be implemented

244.   This was the second occasion an issue was examined and recommendations made over the course of one weekend. Given that the Assembly had to consider this topic over one weekend, material was presented to the Members on the Saturday morning and discussions on the Ballot Paper began on the Saturday afternoon. The Ballot Paper was finalised by Saturday evening to allow the Secretariat to print the final copies overnight for voting on Sunday morning. On Sunday morning the Ballot Paper in its final form was explained to the Members prior to the commencement of voting.

245.   As with all of the Assembly's other topics, a submissions process opened on 5 January 2018 with a closing date of 23 February 2018. Despite the Secretariat's best efforts to engage the public, a very small number of submissions were received. This greatly reduced the impact of the submissions on the development of the work programme for this topic. Further details on the submissions process are provided in Chapter 5.

Summary of Assembly Meeting on *Fixed Term Parliaments*

246.   The weekend began with an overview of the current law and practice on the summoning and dissolving of Dáil and Seanad Éireann. This was supplemented with a history of the political practice on invoking the legal provisions around summoning and dissolving the Houses of the Oireachtas. An overview of the experience and practice of fixed term parliaments in other jurisdictions, including the different types of fixed term parliament that exist and are used in different parts of the world, was also given. Finally, the potential implications of the introduction of a system of fixed term parliaments in Ireland were presented.

247.   Provided below is a short summary of the material presented to the Members of the Assembly. This summary is provided as a guide for members of the

Oireachtas: to give an overview of the material presented; and to act as a signpost to allow the members of the Oireachtas to access all of the detailed material. Appendix H contains the full suite of material provided to the Members including the agenda, expert papers and presentations, Secretariat papers, and the transcript of the public proceedings on Saturday 14 April and Sunday 15 April when Members discussed the original draft Ballot Paper and were presented with the final Ballot Paper.

248.	All of the papers and presentations, together with the video footage from each session are available on the Assembly website. Members of the Oireachtas, and any member of the public with an interest in this topic, can therefore read all of the material in full.

249.	The proceedings on the Saturday afternoon (14 April) concerned the preparation of the original draft Ballot Paper, and agreement on the final Ballot Paper. Voting was carried out on the Sunday morning (15 April). This has been covered in Chapter 2, and is therefore not repeated here.

250.	The papers, presentations and oral presentations are very comprehensive and contain a wealth of useful and relevant material in relation to the issues discussed by the Assembly. It is worth noting that on occasion the presentation developed or elaborated on points raised in the written paper. As such, in order to get a complete picture of the material which the Members considered it is necessary to consider the full suite of materials. The summary which follows is designed merely to give an overview and does not reflect how comprehensive and detailed the material was. The summary does, however, give insight as to the matters which informed the questions and proposals raised on the Ballot Paper and, in particular, the Member contributions, and because of the engagement of the Members in relation to the Ballot Paper, as outlined in Chapter 2, it is more detailed than usual.

Saturday Morning:

Session 1: Explanation of current law and practice on the summoning and dissolving of Dáil and Seanad Éireann

251.   **Dr. Eoin Daly**, lecturer in the School of Law at NUI Galway presented a paper on the current law and practice on the summoning and dissolving of Dáil and Seanad Éireann. Dr. Daly's paper, presentation (both of which are available in Appendix H) and a video archive of his oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

252.   After emphasising the significance of the power to dissolve parliament, the key issues covered by Dr. Daly were:

- The relevant constitutional provisions which specify the length of the Dáil, i.e. how it is summoned and dissolved (Article 16.5) and the respective constitutional roles of the Taoiseach and President (Articles 13.2.1° and 13.2.2 °) and their implications.

- The relevant legislation, including legislation which is in place to give effect to those constitutional provisions, in particular, Section 33 of the Electoral (Amendment) Act 1992, which sets the maximum period at five years from the meeting of the first Dáil.

- The uncertainties surrounding the proper interpretation and the application of Article 13.2.2°, which provides that the President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of the Taoiseach who has ceased to retain the support of Dáil Éireann, which power has never formally been used.

- The absence of case law to guide the interpretation of those provisions, referring to Article 13.8 which provides that the President shall not be answerable to any court in the exercise of his powers and functions.

- How the dissolution of the Dáil impacts on the electoral cycle of the Seanad (as laid out in Article 18.8 of the Constitution).

- The likelihood that, in the absence of an amendment to the Constitution, any legislation to introduce a fixed term parliament of the type enacted in the United Kingdom in 2011 would be unconstitutional in this jurisdiction.

Session 2: History of political practice in Ireland on the summoning and dissolving of Dáil and Seanad Éireann

253. **Dr. Eoin O'Malley**, Associate Professor in political science at the School of Law and Government, Dublin City University presented a paper detailing the political practice in Ireland on the summoning and dissolving of Dáil and Seanad Éireann. Dr. O'Malley's paper (available in Appendix H) and a video archive of his oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

254. Having explained in his introduction that it is not possible to say whether the Taoiseach's control of the term of the Dáil causes certain outcomes because the counterfactual is the subject of speculation, the key information on political practice historically covered by Dr. O'Malley comprised:

- Data in tabular form on each Dáil term and the cause of dissolution, showing, inter alia, that the average lifespan of the Dáil since 1937 was three years and four month and details of the four occasions to date when the Dáil has lasted its full five-year term.

- Instances when the Dáil has been dissolved because the government has been defeated in a confidence vote and other occasions when the Dáil has been dissolved without the government being defeated in a confidence vote, but when it has effectively ceased to retain the support of a majority there.

- What the President's role has been when the government has ceased to retain the support of a majority in the Dáil, in particular, his power under Article 13.2.2° to refuse to dissolve the Dáil and the political impact of the approach taken by the President over time, it having been suggested in his introduction that, although the President has little effective Constitutional power, it can often be wielded in subtle, but important, ways.

- The Taoiseach's exercise of his power under Article 13.2.1° to require dissolution in the past and its implications, when there was a minority

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Government and even when the government had a majority, the point in the Dáil's term at which such dissolutions have occurred and the circumstances in which these dissolutions have occurred.

- Impacts of the exercise of the Taoiseach's power to dissolve including: whether early dissolutions have benefited the party of which the Taoiseach is a member; the impact on smaller coalition parties in government at the time; and whether it has had an impact on policy or public attitudes generally.

Session 3: Fixed Term Parliaments- experience and practice in other jurisdictions

255.   **Petra Schleiter**, Professor of Comparative Politics at the University of Oxford, presented a paper on the experience and practice in other jurisdictions regarding the fixed nature of parliamentary terms. Prof. Schleiter's paper, PowerPoint presentation and infographic (all of which are available in Appendix H) and a video archive of her oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

256.   The key issues covered by Prof. Schleiter by reference to what happens cross-nationally and particularly in the United Kingdom, were:

- What is meant by a fixed term parliament and a semi-fixed term parliament. A fixed term parliament was defined by Prof. Schleiter as when the timing of elections cannot constitutionally be affected by political choice. A semi-fixed term was defined as when parliamentary early elections are permitted, but they cannot be called at the discretion of a single political actor, e.g. the Prime Minister, whereas flexible parliamentary terms make election timing constitutionally amenable to political influence.

- An overview of where respectively fixed term, semi-fixed term and flexible term parliaments are used in 39 OECD and EU parliamentary democracies and the level of influence on parliamentary dissolution enjoyed by the different actors (the prime minister, the government, the legislature, the president).

- A comparison of parliamentary term lengths in those countries.

- The circumstances in which early dissolutions are allowed in the case of semi-fixed term parliaments, namely: subject to the agreement of multiple political

actors; to address specific types of crises (e.g. failure to adopt a budget); and subject to certain time restrictions.

- The impact of introducing fixed or semi-fixed term parliaments on the frequency of elections, the duration of government, and public policies e.g. economic policy and electoral fairness.

- The change which was introduced in the United Kingdom following the introduction of the Fixed-Term Parliaments Act 2011 and its effect.

Session 4: Fixed Term Parliaments: What if they were introduced in Ireland? Pros and cons, implications and issues arising

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257.   **Rory Costello**, lecturer in the Department of Politics and Public Administration at the University of Limerick, presented a paper looking specifically at the Irish example and the implications, both positive and negative, of introducing fixed term parliaments here. Dr. Costello's paper (available in Appendix H) and a video archive of his oral presentation and the questions and answers session with the Members which followed, are all available on the Assembly's website.

258.   The key issues covered by Dr. Costello were:

- A summary of the arguments in favour and against, in other words the pros and cons, of the various alternative options available, in terms of the rules governing the dissolution of parliament across various jurisdictions, which broadly reflected the most relevant alternatives, being, as defined by Professor Schleiter; flexibility (currently the position in this jurisdiction); semi-fixed; and fixed. Such pros and cons were outlined in tabular form, in the context of the current position in this jurisdiction (the Taoiseach can call an early election) and five other options (e.g. the Parliament can call an early election either by a majority or by a supermajority) and by reference to the impact of the options on a range of factors.

- A detailed analysis of those factors followed, both in the context of the current position in this jurisdiction (flexible) and the implications of change to a semi-fixed or fully fixed term.

- The first factor was described as "electoral fairness" and was analysed for example, by reference to a perceived lack of fairness, based on the argument that the current situation in this jurisdiction is that it hands an unfair advantage to the party of the Taoiseach over other parties on the one hand, and that small parties in Government would be strengthened if it was the Cabinet as a whole (rather than the Taoiseach) which had the right to request dissolution of the Dáil, on the other hand.

- The other factors thus analysed were:

  - Government cohesion enabling policy consistency;

  - Short-termism at the end of the Dáil term;

  - Effective opposition throughout the Dáil term;

  - The danger of "political business cycle" to maximise the chances of re-election; and

  - The risk of "lame duck" governments.

- The role of the President in relation to the dissolution of the Dáil, outlining the five occasions in the past when the President's discretion to dissolve under Article 13.2.2° could have come into play, and whether the role of the President would need to be changed in the event of the introduction of a semi-fixed term system.

- The length of the Dáil term, suggesting that the option is between four years and the current system in this jurisdiction (five years).

Chapter 5: Submissions on *The Manner in which Referenda are held* and *Fixed Term Parliaments*

Submissions on The Manner in which Referenda are held

<u>Submissions Process</u>

259.   The Oireachtas Resolution states that "*the Assembly may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable*".

260.   Submissions on this topic were accepted from 13 November, 2017 to 5pm on 22 December 2017.

261.   **213** submissions were received, of which 209 were received online and 4 were received by post.

262.   The most dominant issue to emerge in the submissions was the concept of Citizen Initiated Referendums, with 156 out of the total 213 being received on this topic. However, some 132 of these were duplicate submissions with identical text being submitted from multiple individuals.

263.   A number of steps were taken to encourage the public to engage with the submissions process. Advertisements were placed in a number of national newspapers on 14 November 2017. The submissions process was also promoted on the Assembly's Twitter account @CitizAssembly and by using the hash tag #citizensassembly.

264.   Of the 213 submissions received, **206** have been published on the website. In total seven were not published for the following reasons:

- Four submissions were not relevant to the topic;
- One submission was a duplicate;
- Two submissions were anonymous

<u>Use of the Submissions and Discussion by the Members</u>

265.   In order to assist Members in incorporating the submissions into their considerations, the Secretariat created a signpost document to outline some of the key issues and some possible solutions indentified by individuals, non-governmental organisations, and professionals. It is worth noting, however, that many of the Members read the submissions in full online as they were being published.

266.   Given that there were fewer submissions received on this topic than on previous topics, the Secretariat had the capacity on this occasion to prepare a signpost document which summarised the key points emerging in all of the 206 submissions published. Therefore, unlike the signpost document prepared for the third topic, climate change, which was prepared with reference to a range of the total submissions selected (all of the NGOs, advocacy and interest groups, academics and commercial entities who made a submission on the topic, and a random sample of 100 of the total), on this occasion, the signpost document was prepared with reference to all 206 submissions published. A copy of the signpost document is available at Appendix D.

267.   Where possible, a reference number was provided to allow the Members to consider the relevant submissions in more detail.

268.   The Secretariat acknowledges fully that a signpost document such as this cannot capture the full range of issues raised in all of the submissions made to the Assembly. Instead, the document was designed to give the Members an overview of the main issues and the range of perspectives which emerged in the submissions. It was hoped that it would be of assistance to them in considering the topic before them.

269.   Members were advised in advance of the meeting of key reference documents which might be of interest to the discussions on the manner in which referendums are held. These documents were also made available on the Assembly's website. The documents are outlined in Chapter 3.

Submissions on Fixed Term Parliaments

Submissions Process

270.   Submissions on this topic were accepted from 8 January, 2018 to 12pm on 23 February 2018.

271.   Nine submissions were received, of which all were received online. A number of steps were taken to encourage the public to engage with the submissions process. Advertisements were placed in a number of national newspapers on 8 January 2018. The submissions process was also promoted on the Assembly's Twitter account @CitizAssembly and by using the hash tag #citizensassembly.

272.   Of the nine submissions received, eight were published on the website. The ninth submission was not relevant to the topic.

Use of the Submissions and Discussion by the Members

273.   Given that there were fewer submissions received on Fixed Term Parliaments than all previous topics, on this occasion, it was decided to prepare a document containing the complete submissions rather than a signpost document used in some previous topics. This document contains all published submissions received on the topic and was circulated to Members in advance of the meeting. A copy of the complete submissions document is available at Appendix E.

Submissions Rules/ Guidelines

274.   The following rules applied in respect of submissions received by the Assembly on both *The Manner in which Referenda are held* and *Fixed Term Parliaments* and were advised in advance.

- The Assembly welcomed submissions from Irish citizens and non-citizens living in Ireland or living abroad.
- All submissions received were published on the website and displayed with a full name (first name, surname)/ name of organisation, if appropriate.
- Anonymous submissions were not accepted. Submissions made with just a first name listed were not published. Equally, submissions received with an initial and surname (e.g. J Smyth) were not published. ***Exception:*** *Submissions received*

with a series of initials that are commonly recognised as being a name (i.e. JP, PJ, AP) and a surname were published.

- In the case of personal stories and sensitive submissions, all personal data and related identifiable details were removed or redacted if requested.

- Each submission received, either on the website or by post, was treated as an individual submission including any or all signatures to that submission. If, for example, a submission was received with 20 signatures it was treated as one submission. If the same submission was received 20 times, each signed individually, they were treated as 20 submissions.

- The Assembly reserved the right not to accept a submission if it was deemed offensive or inappropriate.

- In accordance with the Assembly's agreed rules and procedures, following receipt of submissions on any matter, the Assembly may have chosen to hear oral presentations from any representative group or individual to assist in its deliberations.

Chapter 6: Background to the Assembly

A. Introduction

275.   A detailed note on the Background to the Assembly, including material in relation to its predecessor, the Convention on the Constitution, the concept of deliberative democracy, together with details on the Key Principles and Rules and Procedures of the Assembly, and details of the facilitation and note-taking provided during the meetings of, and research undertaken about, the Assembly were included in the Report on the *Eighth Amendment of the Constitution*, published in June 2017. Details in relation to how the Assembly's proceedings were live streamed and the availability of Irish Sign language and simultaneous translation for the Irish language were also provided in that report together with information on the provision made by the Secretariat to allow observers to attend meetings of the Assembly in the Grand Hotel, Malahide . Anyone with an interest in these matters should consult this report as none of the content covered in those sections has changed since that report was published. This report is available on the Citizens' Assembly website.

276.   Establishment of the Assembly was approved by a Resolution of both Houses of the Oireachtas in July 2016. The Resolution of Dáil Éireann is at Appendix A.

277.   The Assembly was tasked with the consideration of five discrete topics:

- 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; and
- how the State can make Ireland a leader in tackling climate change

278.   Under the Oireachtas Resolution, the Assembly was asked to first *consider, make recommendations and report to the Houses of the Oireachtas on the Eighth*

Amendment of the Constitution. The Assembly would then consider, make recommendations and report on each of the remaining topics as soon as it had completed its deliberations on the first topic.

279.   The Resolution provided that the Assembly would consist of 100 Members, a Chairperson appointed by Government and 99 citizens entitled to vote at a referendum, randomly selected to be broadly representative of Irish society. All of the Members would be on the electoral register and would be eligible to vote in a referendum.

280.   In the interests of clarity, it is appropriate to point out that two of the matters that the Assembly was asked to consider (*How We Best Respond to the Challenges and Opportunities of an Ageing Population* and *how the State can make Ireland a leader in tackling climate change)* do not, *ex facie*, have constitutional implications.

281.   The Assembly held its inaugural meeting in Dublin Castle on 15 October 2016. Meetings were subsequently held in the Grand Hotel, Malahide, over a further 11 weekends from November 2016 to April 2018 on the five topics as follows:-

- the *Eighth Amendment of the Constitution* from November 2016- April 2017
- *How We Best Respond to the Challenges and Opportunities of an Ageing Population* in June and July 2017
- *How the State can make Ireland a leader in tackling climate change* in September/October 2017 and November 2017
- *The Manner in which Referenda are held* in January 2018
- *Fixed Term Parliaments* in April 2018

B. Membership

a.   <u>Background and recruitment of the Members</u>

282.   The Assembly consists of 100 Members – the Chairperson and 99 citizens.

283.   The representative sample of 99 members of the public and also substitutes were recruited by REDC Research and Marketing Ltd. (REDC), which was appointed following a competitive tendering process.

284. Recruitment was undertaken so that the Members, chosen at random, would be broadly representative of the following demographic variables as reflected in the Census: age, gender, social class, and regional spread. Further details on the recruitment process are provided in Chapter 7.

b. **Replacement of Members**

285. The Oireachtas resolution establishing the Assembly makes provision for the recruitment of replacement Members if required. Each of the Assembly's three earlier reports provide full details of the replacements which took place during the lifetime of the Assembly. Full details of this are provided on the Assembly website, together with the list of Members at each meeting.

286. Following the last meeting on Climate Change in November 2017 a further nine members withdrew from the process and 13 new Members were recruited in advance of the January 2018 to bring the member complement back to 99 for that meeting (the Assembly had already had four vacancies to fill).

287. Following the January meeting, an issue arose around seven of the newly recruited members. These members were then withdrawn from the Assembly and they, along with one Member who withdrew, were not subsequently replaced in advance of the final meeting in April, 2018. Full details regarding this issue are outlined in Chapter 7.

288. In summary, a total of **53 replacements** have been made to the members list over the course of the Assembly –

  - **24** replacements were made from October 2016 to April 2017 during consideration of the *Eighth Amendment of the Constitution,*
  - **13** replacements were made before and during consideration of *How We Best Respond to the Challenges and Opportunities of an Ageing Population,*
  - **3** more replacements were made before and during consideration of the third topic *- how the State can make Ireland a leader in tackling climate change,*
  - **13** replacements were made before the Assembly's consideration of the fourth topic *The manner in which Referenda are Held*, and
  - a decision was made not to replace any vacancies which arose in advance of the fifth and final topic considered by the Assembly - *Fixed Term Parliaments.* This decision was made in light of the short timeframe available between the

conclusion of the REDC audit and the next meeting, and the delays which emerged as a result of storm Emma, which are outlined below.

289.   Most of those who withdrew from the process did so for personal reasons including illness, illness of a family member, change in employment or other personal circumstances. Full details about recruitment and replacement of Members are available on the Assembly website.

c. Member Attendance at Assembly Meetings

290.   For the most part, the reasons why Members could not attend on any particular weekend were similar to the reasons why Members withdrew from the process - personal, illness, illness of a family member, bereavement, work commitments or previously planned engagements. Those who could not make a meeting were strongly advised to follow the proceedings live on line over the course of the weekend, or catch up afterwards on the Assembly website. All papers, speaker presentations, and the questions and answers sessions with experts were made available on the Assembly website following each meeting.

291.   It should be noted that the final meeting of the Assembly was due to take place on 3 and 4 March, 2018 but had to be postponed because of storm Emma and safety concerns for members, suppliers, staff and speakers. The meeting was rescheduled to 14 and 15 April but some Members could not, unfortunately, attend as they had previously made plans for that weekend on the basis that the Assembly's work programme was due to have been completed.

292.   Member packs, containing the papers for each weekend, were also available from the Secretariat afterwards, if the Member who could not attend wished to receive them by post.

C. Steering Group

<u>Background</u>

293.   The Rules and Procedures for the Assembly stated that a Steering Group would be established to support the Assembly in the efficient and effective discharge of its role and functions. The Steering Group consisted of the Chairperson, the Secretariat and a representative group of Members elected by the wider Assembly membership.

294.   The Steering Group made such decisions as were necessary for the smooth conduct of Assembly business, except in cases where it is more appropriate to seek wider Assembly approval. The Steering Group was supported by the Assembly Secretariat.

<u>Functions</u>

295.   The Steering Group's responsibilities were 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/ experts to appear before the Assembly following advice from the Expert Advisory Group and the Chairperson; and
- Evaluation of the Assembly procedures and arrangements.

<u>Commitments</u>

296.   Over the course of the Assembly's consideration of *The Manner in which Referenda are held,* participation in the Steering Group involved meeting in Dublin once for approximately two hours. In the run up to the Assembly's consideration of *Fixed Term Parliaments*, the Steering group met twice, again in Dublin, for approximately two hours on each occasion.

297.   Members of the Steering Group were also required to deal (by e-mail, phone call etc.) on an ad-hoc basis with issues as they arose during the run-up to Assembly weekends.

298.   On the issue of *The Manner in which Referenda are held* the Steering Group met once on 13 December, 2017 in advance of the January, 2018 meeting.

299.   On the issue of *Fixed Term Parliaments* the Steering Group met twice in Dublin, on 8 February and 5 April, 2018 in advance of the April 2018 meeting.

300.   Each meeting followed the following general format:

- The draft agenda for next meeting of the Assembly was discussed.
- The Secretariat and members of the Expert Advisory Group, as appropriate, gave the Steering Group an overview of the format of the weekend and the speakers' presentations.
- Any proposals by the Steering Group were subsequently discussed by the Expert Advisory Group and incorporated where possible.
- The draft agenda and speakers were ratified by the Steering Group.
- Each meeting served as an opportunity to seek the Steering Group's input before the agenda for the Assembly meeting was finalised.
- Additional meetings were sometimes convened to discuss the proposed ballot papers in advance of the Assembly weekends.

D. Expert Advisory Group

Background

301.   The Oireachtas Resolution, approving establishment of the Assembly, states that *"an Expert Advisory Group will be established to assist the work of the Assembly in terms of preparing information and advice".*

302.   The composition and focus of the Expert Advisory Group changed during the lifetime of the Assembly. In total, there were four separate Expert Advisory Groups, one for each of the first three topics and the last one covering the final two topics.

Further details on the Expert Advisory Groups on the other topics which were considered by the Assembly are available on the Assembly website.

<u>Membership of the Expert Advisory Group on *The Manner in which Referenda are held* and *Fixed Term Parliaments*</u>

303.   The Expert Advisory Group on *the Manner in which Referenda are held and Fixed Tem Parliaments* was comprised of academics/practitioners and administrative experts across a number of specific fields of interest including:

- Constitutional Law;
- Political/ Social Science including, but not limited to, deliberative democracy, electoral behaviour and political institutions; and
- Political communication.

304.   The members of the Expert Advisory Group were chosen by applying the following criteria:

- Relevant expertise and experience;
- Impartiality/ objectivity on the topics before the Assembly about which they were assisting; and
- Willingness/ availability to participate.

305.   The members of the final Expert Advisory Group for these two topics were:

Oran Doyle, Trinity College Dublin

Oran Doyle is an Associate Professor and Head of the School of Law in Trinity College Dublin and his principal research interest lies at the intersection of constitutional law and legal theory. Professor Doyle was also a member of the Expert Advisory Group on the Eighth Amendment of the Constitution.

Robert Elgie, Dublin City University

Robert Elgie is Paddy Moriarty Professor of Government and International Studies at Dublin City University, Ireland and a Member of the Royal Irish Academy (MRIA). He has published extensively on political leadership. He has a particular specialism in French politics. His research focuses on how institutions can be designed so as to deliver better governance. In January 2013 he was asked to give an expert presentation to the Convention on the Constitution for the proposed reforms to the Presidency of Ireland.

John Garry, Queens University Belfast

John Garry continued as the Assembly's advisor on Deliberative Democracy. He is Professor of Political Behaviour at Queen's University Belfast and one of his principal research interests is in the area of deliberative democracy and the design of Citizens' Assemblies. Professor Garry was a member of the Expert Advisory Group on each of the topics considered by the Assembly.

Professor Kevin Rafter

Kevin Rafter is Head of the School of Communications at Dublin City University. He is also Chairperson of the Compliance Committee of the Broadcasting Authority of Ireland and a board member at Dublin Bus. His academic research interests are in the areas of Irish politics and political communication. Recent coedited books include Political Advertising in the 2014 European Parliament Elections (London, 2017), The State in Transition (Dublin, 2015) and The Irish Presidency: Power, Ceremony and Politics (Dublin, 2014).

Dr Theresa Reidy

Theresa Reidy is a political scientist in the Department of Government and Politics at University College Cork. Her research interests lie in the areas of electoral behaviour, party politics and political institutions.

Rachael Walsh, Trinity College Dublin

Rachael Walsh LLB, LLM, PhD, BL is Assistant Professor at the School of Law in Trinity College Dublin, teaching and researching in the areas of constitutional law and theory and property law. She is co-editor on the fifth edition of Kelly: The Irish Constitution, to be published in 2018 by Bloomsbury Professional Publishing. Professor Walsh was also a member of the Expert Advisory Group on the Eighth Amendment of the Constitution.

306.   The main roles of the Expert Advisory Group established for each topic, include the following:
- 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/ experts to appear before the Assembly;
- Recommending names for the specialists/ experts to appear before the Assembly, for ratification by the Steering Group; and
- Working with the Chairperson and Secretariat to select speakers from civil society and advocacy groups.

307.   As has been the practice throughout the Assembly process, none of the members of the Expert Advisory Group made any public comment on their work for the Assembly while the work on the relevant topic was ongoing.

Selection of specialists/ experts to appear before the Assembly

308.   The Expert Advisory Group assisted the Chairperson in devising a structure for the two weekends on which the Assembly considered the fourth and fifth topics.

309.   The Expert Advisory Group used the following criteria as the basis for proposing the names of experts/ specialists for consideration by the Steering Group and, where appropriate, the wider Assembly:
- Demonstrated expertise in the field, e.g. 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 on one side or another of the issue at hand; and
- In the case of issues where expert views are contested (i.e. 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.

Role of Expert Advisory Group at Assembly Meetings

310.   In order to best allow the Expert Advisory Group to provide this support, where possible, members of the Group attended the Assembly meetings in the Grand Hotel in Malahide. Their role at those meetings was as follows:

- To observe proceedings and reflect on how the material presented was received by the Members;

- Where appropriate, and at the discretion of the Chairperson, the Group also provided clarification on questions from the Members, with answers being provided in plenary session; and

- As at other meetings, for the January and April 2018 meetings of the Assembly on the fourth and fifth topics, when the Members considered and voted on the Ballot Papers, members of the Expert Advisory Group answered questions from the Members on issues arising during the questions and answers and feedback sessions which were live streamed.

Meetings of the Expert Advisory Group

311.   The Expert Advisory Group met regularly prior to the January meeting on *The Manner in which Referenda are held and* prior to the April meeting on *Fixed Term Parliament.* Four meetings were held in advance of the January meeting and three meetings were held in advance of the April Assembly meeting.

E. Engagement of the Public with the Assembly

312.   Engagement by the public on the issues of *T h e Manner in which referenda are held* and *fixed term parliaments* occurred through various means:

- The submissions process (which was dealt with in Chapter 5);
- Written correspondence with the Secretariat – by post and email;

- Phone calls to the Secretariat; and

- Meetings with various interest groups.

313.   The Chairperson of the Assembly, through the work of the Secretariat, has
continued the administrative work associated with arrangements for and running of
the Assembly meetings, development of a work programme, management of the
submissions process, contacts with Members, all correspondence and contacts with
the public and the maintenance of and updates to the Assembly website.

314.   To put the level of contact with the public into perspective, during a five
month period from November 2017 to March 2018, the Secretariat responded to in
the region of 650 emails and letters from members of the public, advocacy and
representative groups and members of the Oireachtas. This was in addition to the
submissions received on both topics.

315.   Queries ranged from requests to observe at the meetings of the Assembly to
specific questions about submissions made on *the* M*anner in which referenda are
held* and on *fixed term parliaments*.

The Assembly Website

316.   All papers, presentations (by the Chairperson, Secretariat and invited
speakers) at public sessions, and other documentation provided to the Members,
are available to read on the Assembly's website. Detailed speaker biographies are
also available. All press releases made to the media can be viewed and footage of
the Assembly's proceedings can be watched back there.

317.   Papers and presentations were made available online to the public on a
rolling basis throughout the course of each weekend meeting. They were uploaded
as the meetings progressed in the interests of allowing viewers at home to access
the material being considered in real time. When relevant, details of what was
decided during private sessions of the Assembly were published on the website.

318.   The website was the most popular mechanism for receiving submissions
on these topics. As mentioned previously in this report, the vast majority of

submissions received on these topics were submitted online.

319.   Between 13 November and 22 December 2017, the period during which submissions were accepted on *the manner in which referenda*, the Assembly website received 17,055 views. It is however likely that many of these views were in respect of other topics. The submissions received page on *the manner in which referenda* received 1,909 views during this period.

320.   Between 8 January and 23 February 2018, the period during which submissions were accepted on *fixed term parliaments*, the Assembly website received 27,635 views. As above, it is however likely that many of these views were in respect of other topics. The submissions received page on *fixed term parliaments* received 589 views during this period.

Chapter 7: Issue with recruitment of Assembly Members in advance of January 2018 meeting

Background to recruitment of Assembly Members and agreed methodology

321.   As recorded earlier, following a public tendering process, REDC was engaged to select the 99 citizen Members and 99 substitutes for the Assembly.

322.   The Members were initially recruited in September and October, 2016, but additional recruitment was undertaken as the need for substitutes arose.

323.   The recruitment was carried out by a team of highly professional recruiters from REDC across 15 broad regional areas throughout the country. The sampling points were selected on a random basis in accordance with Census 2011 data and Quarterly National Household Survey (QNHS) population estimates conducted by the CSO to ensure that they were nationally representative in terms of geography. This did not mean however, that each county was necessarily represented. The process used by REDC was designed to ensure that the Members are broadly representative of Irish society including the urban/ rural divide.

324.   The Members were chosen at random and are broadly representative of demographic variables as reflected in the Census. The quotas each interviewer had to reach in their allocated District Electoral Division (DED) were based on a number of demographic variables – gender, age and social class.

325.   The social class of respondents is graded on their own occupation. Occupations are then classified into different class groups, and interviewers have been trained to be able to ask further questions to ensure they are classifying people correctly.

326.   On recruitment, Members were clearly informed that no personal information would be made public about them beyond their name and their general area of residence. This information was made available on the website and was updated as membership changed.

327.   Direct applications from Members of the public to take part in the Assembly were not accepted. Similarly, interviewers were not allowed to recruit friends or family together.

328.   Prior to the commencement of the recruitment process for Members of the Citizens' Assembly, it was decided that members of advocacy groups on the topics to be considered would be excluded from membership of the Assembly. The rationale for this decision was based on the fact that interest groups had been invited to make submissions on the matters concerning them.

329.   In order to establish this information, during the recruitment process all potential Members were asked if they currently were, had been, or intended to act in an advocacy role for any interest or lobby group campaigning on any of the issues to be considered by the Assembly. This was asked of potential Members again during the follow up validation interview. Any potential Member who answered yes to any of these questions was excluded from the process.

330.   Citizen Members who had previously expressed views on any of the issues before the Assembly were not excluded from participating in the Assembly which, by the random nature of it's make up, would be likely to include Members who have views on either side of a debate. However, the Chairperson of the Assembly did ask that Members refrain from publicly commenting on issues while they are being considered as a mark of respect to their fellow citizen Members and to protect the integrity of the Assembly process.

331.   A detailed note on methodology prepared by REDC was made available on Assembly's website at the beginning of the process and is included as Appendix F to this Report.

Issue with recruitment of Assembly Members for January 2018

332.　　As referred to in the Chairperson's introduction and in Chapter 1, following the conclusion of the January meeting of the Assembly when it considered *The Manner in which Referenda are held,* the Chairperson was made aware that seven of the new members who were present and voting at that weekend had been recruited in a manner which did not comply with the agreed methodology for recruitment of Assembly members.

333.　　This matter was brought to the attention of the Chairperson, following a randomised check of the agreed recruitment methodology by the Assembly Secretariat. The matter was then raised with REDC, which was responsible for the recruitment of Assembly Members, and which conducted an extensive audit.

334.　　This was the only weekend of the Assembly that these individuals were present, and they did not take part in earlier Assembly meetings.

335.　　These seven individuals were recruited over the Christmas period in December 2017 and January 2018, to replace Members who had withdrawn from the Assembly following the conclusion of the Assembly's consideration of *How the State can make Ireland a Leader in Tackling Climate Change.* The recruitment of replacement members is specifically provided for in the Oireachtas resolution establishing the Citizens' Assembly.

336.　　The methodology for identifying potential members agreed by REDC and the Assembly Secretariat states that REDC interviewers recruit participants by cold calling door-to-door to households in the allocated geographic area which is issued to them by REDC. No other method of recruitment was agreed.

337.　　The seven individuals in question were contacted by phone in December 2017, rather than being recruited door-to-door, and were identified as potential members through friends and family of the recruiter. All seven individuals were recruited by the same recruiter.

338.　　When this information came to light, REDC conducted an extensive internal audit at the request of the Chairperson of the recruitment practices used by REDC on behalf of the Assembly since the commencement of the project. The purpose of

the audit was to determine the extent to which the agreed methodology had been complied with in the most recent recruitment and to make certain that all previous recruitment by REDC on behalf of the Assembly was done in full compliance with the agreed methodology for recruitment of Assembly members.

339.   The extensive audit prepared by REDC was furnished to the Assembly Secretariat. A copy of the audit is available on the Assembly's website. The Management at REDC have confirmed to the Assembly that they are satisfied that this is an isolated incident.

340.   In the course of the audit process each of the seven individuals was contacted by REDC as set out in the audit. Each of the seven individuals was also contacted by the Secretariat and informed that, as a result of the irregularity in recruitment they could play no further part in the Assembly.

341.   In considering the implications of this development on the outcome of the weekend meeting on *the Manner in which Referenda are held*, the Chairperson of the Assembly reflected on the impact on the voting and recommendations. The Oireachtas resolution establishing the Assembly states that "all matters before the Assembly will be determined by a majority of the votes of the members present and voting".

342.   In reviewing the outcome of the weekend meeting on *The Manner in which referenda are held,* because of the fact that seven members were not recruited in compliance with the agreed methodology, as recorded in Chapter 1, the majority view of the Assembly cannot now be determined in respect of four questions on the Ballot Paper. Full details of this are provided in Chapter 1.

343.   In the interests of transparency and in keeping with the principles of the Assembly, the Chairperson published the full audit report and associated appendices on 21 February 2018.

344.   Having reflected on the content of the audit, the Chairperson is satisfied that this had no impact on the work of the Assembly on previous topics or on its final topic, Fixed Term Parliaments.

Introduction

345.   In the Assembly's First Report presented to the Oireachtas on 29 June 2017, which addressed the Assembly's consideration of the Eighth Amendment of the Constitution (the First Report), it was recognised that the Assembly is an exercise in deliberative democracy. It was also recognised that an institution which preceded it, the Convention on the Constitution (the Convention), which was established by a resolution of both Houses of the Oireachtas in July 2012, was also an exercise in deliberative democracy.

346.   There are a number of differences between the mandate and structure of the Convention, on the one hand, and of the Assembly, on the other hand. Firstly, each of the matters considered by the Convention was framed by reference to a possible requirement for a Constitutional Referendum. Two examples illustrate this. One of the matters was "provision for same-sex marriage", which was recommended by the Convention and which resulted in a successful referendum. Another matter was "removal of the offence of blasphemy from the Constitution", which the Convention recommended but in relation to which a referendum has not yet been held.

347.   In contrast, two of the matters on which the Assembly was convened to consider, namely, the matter in relation to the ageing population and the matter in relation to climate change, *ex facie,* did not point to any requirement to amend the Constitution. As it has transpired, having regard to the voted recommendations of the Assembly, on each of those matters, the result of the deliberation on each does not require an amendment of the Constitution.

348.   Secondly, the structure of the Convention differed from that of the Assembly, in that, while it consisted of 100 persons, the membership comprised, in addition to a

Chairperson to be appointed by the Government and 66 citizens selected in the same manner as the 99 citizen Members of the Assembly, the remaining 33 members were either members of the Houses of the Oireachtas or members of the Northern Ireland Assembly.

349.   Another difference between the Convention's mandate and the Assembly's mandate was that the Convention was not expressly mandated to appoint an Expert Advisory Group. I will return to the implications of this distinction later in this chapter.

350.   In the Convention's ninth and final report to the Oireachtas entitled 'Conclusions and final recommendations' there was a section entitled 'the Convention model' which provided an assessment of some aspects of the operation of the Convention based on Member feedback. At the end of a process such as this, such an assessment is very beneficial, and the information contained therein was very helpful to myself and the Secretariat as we began preparations for this Assembly back in August 2016.

351.   However, more significantly, it is useful to recall that in holding these two exercises in deliberative democracy mandated by the Irish Parliament, Ireland is in the vanguard in relation to this innovative form of citizen engagement. No other country has convened two of these processes back to back. Furthermore, following the outcome of the referendum on the thirty-sixth amendment of the Constitution (which resulted from the Assembly's consideration of the eighth amendment of the Constitution), Ireland is now the only country where such an exercise has led to two changes to the Constitution being approved by the electorate (the first being the thirty-fourth amendment in relation to marriage equality).

352.   The Assembly Secretariat has observed throughout the process that the level of interest in the process, its structures, and its outcomes from international audiences; media, academics and other agencies and representatives from foreign Governments have been very high. While some of the foreign media interest, particularly in the early stages of the process related to the Assembly's consideration of the topic of abortion, it appears that most of the interest has, in fact, been in relation to the process itself.

353.   It is therefore essential in my view, that at the end of this process, both I, as Chairperson, and indeed the Members, should give reflections on the process and

how it has operated. The remainder of this Chapter is broken into two sections: firstly, an overview of the reflections from the Members; and secondly, my own reflections on the process. In relation to the latter, in some cases my views were echoed by the Members of the Assembly and I have so indicated where this is the case.

354.　　It is hoped that these observations will be of some assistance to the Oireachtas in the event that a third exercise such as this is to be pursued. Some of the more detailed recommendations made are designed to be of use to a future Secretariat.

Members' reflections

355.　　At the final weekend meeting of the Citizens' Assembly on 14 and 15 April 2018, the Members were asked to complete a final reflective exercise. There were five questions posed which sought to ascertain the Members' views on the wider Assembly process and their personal experiences as Members. A copy of this exercise is included in Appendix H.

356.　　In response to the first question:
　　"Do you think that Citizens' Assemblies are useful and should be continued in the future? Please explain your answer",
the vast majority of Members who responded identified the usefulness of the Assembly model and believed it should be continued in the future. The Members felt that it was a great opportunity for a cross-section of ordinary citizens to air their views and opinions on matters of national importance that could be fed back to politicians and policy makers. Many acknowledged it was personally a great learning experience and it was a valuable space for the presentation of expert information in relation to the particular topic. There was a divergence in opinion on whether the general public benefit from the availability of the expert evidence. The non-political nature of the decision making was a strong argument given for the continuance of citizens' assemblies.

357.　　In terms of suggestions for things that could have been done differently, the following question was posed:
　　"If the Oireachtas decided to convene a Citizens' Assembly again would you

recommend that anything be done differently, based on your experience?"
Some of the Members suggested that longer periods of time be assigned to consider topics. Some suggested a change in membership for each topic. Another suggestion was possibly having Assembly meetings in different parts of the country to generate interest outside of Dublin.

358.   When asked in the third question what the best part of being a Member of the Citizens' Assembly was, the majority of Members spoke about broadening their own knowledge and understanding on topics through access to quality factual information from expert speakers, discussing the topic with, and listening to the opinions of, their fellow Members who might have a different perspective. The opportunity to influence a tangible output to shape future national policy making was also frequently mentioned.

359.   When asked in the fourth question about the worst part of being a Member of the Citizens' Assembly, many found the time commitment a challenge. Many felt they sacrificed family events and occasions to attend the Assembly weekends. For those who live in different parts of the country, the travelling, in addition to the length of the weekends, featured heavily. Quite a number of Members mentioned the Ballot Paper formation process as being tedious at times.

360.   The fifth question asked:

"What other issue, if any, do you think it would be useful for a future Citizens' Assembly to consider and make recommendations on?",
A wide range of topics were suggested by the Members to be considered by a future Assembly. Many of those topics feature in the media frequently and some were topical at the time of the meeting. The topics that were mentioned most frequently included the health service, housing and homelessness, mental health/suicide, the education system (including funding and the religious ethos of schools) and euthanasia.

Chairperson's reflections

361.   Over the course of the Assembly's 18 month life span issues emerged, both in public commentary about the Assembly and in the Assembly's own workings, which may not be readily visible in the public domain, which it is now appropriate to

reflect and comment upon.

362.   I should make it explicitly clear that none of these matters prevented me as Chairperson from the full execution of my work or the work of the Assembly. These reflections are instead, offered as insights, on what is a unique and novel process. It is hoped that they will be of benefit not only to the political system, but to others involved in exercises such as these in other jurisdictions.

363.   In each of the nine sections below, I describe the issues encountered by the Assembly, outlining any commentary and discussion which emerged in public in relation to each matter. In some cases I make observations in response, but more frequently make direct recommendations for the Oireachtas to consider in the future before embarking on a third exercise similar to the Assembly. All those observations and recommendations are produced in **bold** text for ease of reference.

I.   Importance of Transparency

364.   The Assembly has at all times operated on the principle of maximum openness and transparency. This has manifested itself in a number of ways as follows:

- Live streaming of all public aspects of the meetings and maintaining an archive of video footage available after each meeting;

- Making all papers presented to the Members available online to the public immediately; and

- Making all policy decisions available to the public, together with, where appropriate, the rationale for same, examples of which include the Assembly's rules and procedures, recruitment guidelines, guidelines for facilitators and note takers, voting arrangements and procedures.

365.   It is worth noting that this level of transparency was not required by the Oireachtas resolution, but was rather a decision which I took at an early stage to ensure that the legitimate questions and concerns raised by onlookers about the process could be immediately answered and addressed.

> **In light of the experience of the Assembly, and the positive impact which this transparency has had on the process, such transparency should be a hallmark of any future Assembly and should be specifically stipulated in the Oireachtas resolution.**

II.   Membership of the Assembly

366.   The 99 citizens who, apart from the Chairperson, are members of the Assembly, in accordance with the requirement of the resolution of the Houses of the Oireachtas have been randomly selected so as to be broadly representative of Irish society and the substitutes, who have been appointed to date to replace Members who have withdrawn, have been selected on the same basis.

367.   At the outset, following a competitive tendering process, REDC was appointed to recruit the Members and the replacements. To comply with the resolution, the recruitment was undertaken so that the Members, chosen at random, would be broadly representative of the following demographic variables as reflected in the census: age, gender, social class and regional spread.

368.   The recruitment process has been outlined in the First Report of the Assembly and a comprehensive document compiled by REDC, which explains the methodology used to determine the demographic quotas of individuals required, is included as Appendix F to this report. In Chapter 7 of this report there is outlined in detail an issue with recruitment which emerged after the meeting of the Assembly in January 2018, in which 7 Members were recruited in a manner which did not comply with the agreed methodology. The remaining sections of this part of the Chapter therefore do not address that aspect, but are based on my observations on the correct recruitment mechanisms employed throughout the process.

369.   It goes without saying that in any future incarnation of a Citizens' Assembly, a strict adherence to the recruitment criteria laid down by the Oireachtas is essential. The contract in place with the recruitment tenderer, the methodology agreed and the verification procedures used by both the successful company and by the Secretariat should be as robust and meticulous as possible to ensure that this is the case and to ensure that any anomalies are discovered as soon as possible, as they were in the case of this Assembly.

370.   In order to assist with this, and to ensure that the tenderer is in a position to tender for the recruitment contract with the full knowledge of what is required, the Request for Tender (RFT) should detail as many of the requirements for Member recruitment as possible.

Based on experience from this process, any future RFT should include the following details, over and above those included in the RFT for the current Assembly:

- **A requirement that, as part of the tendering process each tenderer would outline the validation procedures proposed to ensure that the recruitment guidelines are fulfilled and adhered to.**

- **A requirement that all potential Members recruited by the company should be asked to sign the recruitment questionnaires upon completion at the initial face-to-face interview.**

Geographical spread

371.   There are other areas in relation to the recruitment of Members which require further consideration in advance of another iteration of the Assembly being considered.

372.   Since the beginning of the Assembly's recruitment process began, some

members of the public and the Oireachtas have expressed concerns that the recruitment process was not truly representative because some counties were not represented from the outset.

373.   The recruitment was carried out by a team of recruiters from REDC across 15 broad regional areas throughout the country. The sampling points were selected on a random basis in accordance with Census 2011 data and QNHS population estimates to ensure that they were nationally representative in terms of geography. These 15 broad regions were used as they were deemed to be the best way to ensure a meaningful geographic spread, and to be preferable to a county by county breakdown in that regard. The process used by REDC was designed to ensure that the Members are broadly representative of Irish society including the urban/ rural divide.

374.   Clearly there is a choice facing the Oireachtas in the future to specify that the Membership should be devised on alternative geographical grounds which does seek to ensure that each county is represented. While I am not a statistician, I do understand that such an approach may potentially lead to a less representative sample than the methodology which was selected in the case of the Assembly.

Given the amount of commentary which the geographical dispersal utilised generated, it would be useful if the Oireachtas considered this point explicitly prior to a future iteration, and that, if the Oireachtas should consider it necessary to have a representative on the Assembly from every county, this would be made clear in advance of the Assembly commencing recruitment. Conversely, if the Oireachtas is satisfied that the geographic spread as employed by this Assembly is appropriate, then it would be useful if this could be stated explicitly.

375.   In the detailed recruitment methodology prepared by REDC, which is available at Appendix F and on the Assembly's website, it was acknowledged that the fact that a financial incentive was not offered to encourage participation might result in a group of citizens that would have a stronger civic interest than a truly representative sample. This is an issue which has arisen in relation to Citizens' Assemblies in other jurisdictions.

376.   By way of background and context, in an analysis of the random selection process conducted in British Columbia in 2004, where the first Citizens' Assembly took place, Graham Smith of the University of Southampton in his book entitled "Democratic Innovations Designing Institutions for Citizens' Participation" refers to a "sampling problem", which relates to the element of "self selection" in the recruitment process, in that citizens are under no obligation to participate, so that those who are invited can choose not to participate. Smith observes that the element of self selection does appear to have some effect, citing that in the British Columbia Citizens' Assembly participants tended be more politically knowledgeable and civically active than the general population. It is conceivable that a failure to offer a financial incentive could exacerbate this dynamic.

377.   The research on the work of the Assembly being conducted by David Farrell from UCD and Jane Suiter from DCU, which I refer to in some detail in Section VI below, will provide some analysis as to whether this issue has arisen in relation to this Assembly. However, common sense would suggest that it is a factor at play.

378.   One potential way to address this in the future is to offer Members participating in a deliberative democracy process a stipend for their attendance. At present, the Members are not paid to attend and the only payments which are made to them are to cover the costs of travel, plus any childcare costs which arise as a result of participation. Their food and accommodation costs at the venue are also covered. Childcare costs were explicitly included in the Assembly on advice from the Secretariat of the Convention on the Constitution, which had experienced difficulties in retaining women between the ages of 25 to 40. This decision has proved very beneficial in the retention of both women and men with young children at the Assembly.

379. It is noteworthy that Citizens' Assemblies in operation in other jurisdictions have offered a stipend to participants. There have been a number of recent examples of Citizens' Assemblies in the United Kingdom, operated by academics and a public participation charity and more recently initiated by the UK Parliament.

380. In each of these recent cases in the UK, in order to encourage and support participation, participants are provided with an honorarium payment or stipend. The stipend at the Citizens' Assembly on Brexit, which took place in September 2017 and was organised by a team of academics and democracy advocates, led by Dr Alan Renwick from the Constitution Unit at University College London, was £200 per participant per weekend, amounting to £400 per participant in total. For the most recent Citizens' Assembly on Social Care (May 2018), which was commissioned by the Parliamentary Health and Social Care Select Committee and the Housing, Communities and Local Government Select Committee as part of their joint enquiry into the long term funding of adult social care, the stipend is £150 per weekend amounting to £300 in total. A Citizens' Assembly is also planned in Northern Ireland in autumn 2018, and a stipend is planned, the amount of which has not yet been set.

381. During the preparation of this report the Secretariat contacted the organisers of these Assemblies to better understand the rational for offering a stipend. In response the reasons cited include the following:

- It provides a more representative sample of participants. Although organisers may be able to recruit a demographically diverse assembly without a stipend, there is likely to be a fair degree of self-selection in who takes part. Specifically, those who participate are likely to be predisposed to a more communitarian world view, and less to an individualised one. An extrinsic motivation can help to encourage a greater range of people to participate, who aren't immediately motivated by the topic or opportunity.
- It helps with enabling the participation of those with less secure circumstances, who cannot give that level of time commitment freely. Those could include unemployed people, carers, people on low incomes, and parents.
- Finally, it is offered from a point of principle. Assembly members give a significant amount of time to engage, which an honorarium helps to recognise. Other "decision-makers" are compensated (to a much higher value) for their

time and the organisers are paid for organising, so it is important that assembly members are as well.

382.   There are, however, some potential disadvantages in making payments available for participation, which have to be balanced against the advantages. One potential disadvantage is the possibility that some individuals may only agree to participate because of the financial incentive to do so and therefore will not be truly committed to the process.

> **In light of these considerations, I believe that in advance of any future Assembly, the Oireachtas should give explicit consideration as to whether the participants should be paid, and that the views of the Oireachtas on this matter should be clearly reflected in the Resolution providing for establishment.**

Length of service for Citizen Members

383.   When recruitment for the Citizens' Assembly commenced in August 2016, potential members were informed that the process would run for 12 months and membership of the Assembly would involve attendance at up to 10 meetings.

384.   In fact, owing to the decisions to have five meetings on the Eighth Amendment and two meetings each on Climate Change and an Ageing Population, and the necessity to seek two extensions to the timeframe, one of those as a result of Storm Emma, the Assembly in fact held 12 meetings over 18 months (October 2016- April 2018).

385.   During this period the Assembly membership rotated. This rotation was anticipated and provided for in the Oireachtas resolution, which states the following in relation to the recruitment of substitutes: *"substitutes may be appointed subject to the selection criteria above, who will be entitled to contribute to the proceedings and vote in their own name".*

386.   During the 18 month period of the Assembly some 152 members were recruited and served as part of the Assembly, being the 99 members initially

recruited, together with 53 others who replaced Members as they became unavailable throughout the process. Some 61 Members served throughout the entire 18 month period, with 26 of these Members having attended every single meeting. This is an outstanding example of public service, and one which is perhaps overlooked by those on the outside examining the process.

387.   It is clear from feedback from the Members that, while many were proud to serve for the entire period, this level of commitment took a considerable toll on their personal lives. It is also clear that during the 18 month period, some of the Members who withdrew from the process did so as their circumstances and availability had changed, which is, perhaps, inevitable over such an extended period. What is unknown is the number of potential Members who turned down the chance to take part in the Assembly because of the level of commitment involved. This in itself may represent a real deterrent to potential members participating.

388.   It is also likely that these issues had a knock on impact on attendance levels at each weekend meeting. At each weekend meeting, the Assembly is comprised of 99 Members and the Chairperson and, in accordance with the Oireachtas resolution establishing the Assembly, the recommendations of the Assembly are determined by the majority of those Members 'present and voting'. This wording, which replicates the wording in Article 15.11.1° of the Constitution regarding determination of questions in the Dáil and Seanad, envisages and allows for the possibility that not all Members of the Assembly would be present at every meeting and, in particular, at the meetings when the Assembly voted on its recommendations.

389.   In the event that a Member of the Assembly notified the Secretariat that he/she was unavailable for a meeting, this was recorded as an apology and a replacement Member was not sought. However, if a Member was scheduled to miss two meetings in a row, or did not attend two meetings in a row, the Secretariat informed the Member that he/she could no longer be considered as Member of the Assembly and would be replaced from the substitute panel.

390.   Each of the Assembly reports has provided details of the actual attendance at each meeting. This is repeated in the table below for completeness and ease of reference. In the table it can be seen that the Assembly has never had its full attendance of 99 Members.

Citizens' Assembly Weekend Meetings	Topic	Member complement at date of meeting	Members in Attendance at the meeting
15 October, 2016	Inaugural meeting	99	71
26/27 November, 2016	Eighth Amendment	98	76
7/8 January, 2017	Eighth Amendment	99	81
4/5 February, 2017	Eighth Amendment	99	89
4/5 March, 2017	Eighth Amendment	96	86
22/23 April, 2017	Eighth Amendment	95	92
10/11 June, 2017	How we best respond to the challenges and opportunities of an ageing population	98	73
8/9 July, 2017	How we best respond to the challenges and opportunities of an ageing population	99	80
30 September - 1 October 2017	How the State can make Ireland a leader in tackling Climate Change	98	83
4/5 November, 2017	How the State can make Ireland a leader in tackling Climate Change	95	80
13/14 January 2018	The manner in which referenda are held	99	87
14/15 April, 2018	Fixed Term Parliaments	91	73

391.   Thus, it could be argued, that the length of Assembly's term played a role in Member attendance, as well as Member turnover. It is worth noting that this view was expressed by many of the Members in their feedback at the final Assembly weekend.

392.   There are other factors to consider in relation to the length of time that

individual participants spend as Members. For example, when the Members of the Assembly are chosen initially to participate in the process, they, generally speaking, have no prior knowledge of the process and are therefore representative of the general public. However, individuals who are Members for more than one topic become familiar with and engaged in the process and this could potentially dilute their representativeness.

> **In light of the information provided above, the Oireachtas should consider imposing a maximum length of service by Assembly Members. In this context, I would suggest that a six month maximum be considered. The construction of the work programme would have to be developed in accordance with the this limitation.**

III.   Work Programme for the Citizens' Assembly

Topic Selection

393.   In the case of the Convention, eight specific matters were outlined. In addition, it was provided that following completion of the reports on the eight specified matters, the Convention could consider – "such other relevant constitutional matters or amendments that may be recommended by it".

394.   In the case of the Assembly, five specific matters were outlined. Of significance, in my view, is the fact that, while a recommendation in relation to three of those matters could involve a constitutional amendment, the Assembly was not given authority to consider other relevant constitutional amendments that might be recommended by it, as the Convention had been given. The scope of the Assembly's role and functions was extendable only by the Oireachtas referring "other matters" to it, which did not happen. Accordingly, concerns which have been expressed about deliberative democracy processes and, in particular, in relation to the possibility of certain individuals or groups having excessive influence over the process certainly could not arise in relation to the Assembly, because of the clear limitation on the scope of its functions.

> **Having been involved in, and having observed the work of, the Assembly over a year and a half, I am of the view that it is appropriate that the Oireachtas should retain control over the topics to be considered in a deliberative democracy process.**

Suitability of topics for an Assembly

395.   I have mentioned above the differences in the type of topics selected for the Convention and the Assembly. As I noted, in the case of the Assembly, it was tasked with considering two topics which did not, ex facie, have any Constitutional implications; an ageing population and climate change. In considering the appropriateness of the topics selected, I believe it is important to revisit the purpose of the Assembly. The clearest function is that laid down by the Oireachtas resolution: "To consider the following matters and to make such recommendations as it sees fit and report to the Houses of the Oireachtas"

396.   In fact, having been Chairperson over the process, which has considered five discrete topics, I am now of the view that the Assembly also has a second important function: to inform the public and increase overall awareness of the topic being considered. Both the first and third topics considered by the Assembly performed both of these objectives well. In the case of the Eighth Amendment and climate change, each of the Assembly's meetings received extensive media coverage and the Assembly received a high level of engagement with the public, both within and outside the submissions process. In relation to the Eighth Amendment, many of the public sessions were broadcast live by RTÉ and syndicated and live streamed by many other news and media outlets. The consequential expansion of the audience of the proceedings beyond the 99 Members and those observing in the room, allowed for much better value for money for the taxpayer. The Report on the Eighth Amendment was considered by a Joint Oireachtas Committee and it was clear from proceedings in that forum that many members had considered the evidence presented to, and the proceedings of, the Assembly in some detail.

397.   As such, if the topics selected by the Oireachtas have historically suffered from a lack of public engagement, or, if there is a desire to raise awareness or public

comprehension of a topic, the Assembly process can have additional value beyond its core function. This was clearly seen with the topic of climate change, where the media engagement with the content of the two weekends' deliberations was very high and no doubt served to raise the profile of the issue in the public consciousness.

398.   Based on my experience of the Assembly, it is clear to me that some topics are not absolutely suited to the Assembly process and that consideration of some categories of topics would not optimise the use of the Assembly's time or indeed taxpayer's money. Moreover, it is recognised by political scientists that an essential feature of a deliberative democracy process which will result in the participants coming to a considered judgment, is that the matter to be considered should be clear. On the basis of my experience of the deliberations on the final topic, fixed term parliaments, I am of the view that the Oireachtas should have obtained advice on the framing of the topic for consideration in a manner which would give clarity as to the type of recommendation which would be in the interest of the Oireachtas.

> **In light of these observations, I am of the view that further thought should be given to the types of issues which are conducive to discussion in this format. I suggest that the views of experts, including experts in the area of the proposed topic, should be sought in determining if it would be in the public interest that the topic be considered in a deliberative democracy process and how it might be framed to be clear.**

399.   While each potential topic must be considered on its own merits, and decisions must be taken on a case by case basis, I would suggest that the following basic principles should apply when considering the suitability of topics:

> **Topics may be suitable if:**
>
> - **They seek to establish the national mood on an issue.**
>
> - **They seek to begin a conversation about a topic of national importance.**

> **Topics may not be suitable if:**
>
> - **They have already been the subject of extensive consideration by the relevant public bodies.**
>
> - **They are complex policy issues involving multiple actors with competing demands on the public finances.**
>
> - **There is no discernible strong interest from the public on the topic.**

<u>Time available for topics</u>

400.   Over the course of the Assembly's proceedings, it considered different topics over varied time spans. The Eighth Amendment was considered over five weekends, and the topics of an ageing population and climate change were each considered over two weekends. In my view, those periods at the very least, were essential to the proper deliberation of the complex issues which had to be considered. The manner in which referenda are held and fixed term parliaments each were deliberated on over just one weekend. The issues which had to be considered on each of those weekends were unquestionably narrower and more focussed than the topics addressed on the earlier matters. Nonetheless, on the basis of my own experience, the time allotted for giving the members the opportunity to be fully informed of, and have adequate discussions about the issues which arose, to have ownership of the process and, in particular, to have input on the questions to be voted on was very tight.

401.   When considering the appropriate amount of time to be dedicated to a topic, there are two important features of the deliberative democracy model which need to be borne in mind, which were present at the Assembly process.

402.   Firstly, when developing the work programme for consideration by the Assembly, the direct input of the Members was always sought, either through feedback sessions following deliberation, or through the use of reflective exercises, where Members were asked for their personal feedback in writing. The Steering Group also played an important role in this regard. These mechanisms have proven extremely beneficial in giving agency to the Members and ensuring that they have a

sense of ownership over the process. It has also allowed me, as Chairperson, to satisfy myself that the work programmes have been robust and wide ranging and do, in fact, include the material which ordinary Members feel is important for them to understand before reaching any conclusions and providing recommendations to the Oireachtas.

403.   Secondly, the Members must be given sufficient time to make a direct input into the content of the Ballot Papers on which they vote. In the instances when the Assembly considered a topic over more than one weekend, this allowed the Secretariat to take a number of steps to establish Members views and gain their input. In these instances, before the final weekend the Members were asked to outline in writing what they wished to vote on at the final weekend, and a draft ballot paper was developed based on this feedback. This draft Ballot Paper was then provided to the Members in advance of the voting weekend, and feedback was sought, both in advance of and over the course of the voting weekend.

404.   For the two topics which were considered over one weekend only, these features were available only to some extent. As such, the work programme for these weekends was developed by me in conjunction with the Expert Advisory Group, Secretariat, with input from the submissions process and Steering Group, as appropriate. The Ballot Papers were developed following Member input at the weekend in question, but this necessitated a very quick turn-around, and placed enormous pressure on the Secretariat and the Expert Advisory Group. While I do not believe it materialised in the case of this Assembly, the time limitation at least had the potential to reduce the level of voice given to the Members.

405.   Member inputs are essential for the deliberative democracy model to work effectively, and, in particular, to ensure that the process overall does not, and cannot, be taken over by the views of a Chairperson, Secretariat and/ or any other single actor in the process. The views of the Members are central to the process and the time available for each topic must allow for this.

As such, each topic selected for consideration by the Assembly should have, as a minimum, two weekends for deliberation. Any timelines laid out by the Oireachtas for an Assembly in the future should take account of this.

IV. Expert Advisory Group

406.   The Oireachtas resolution mandated that –
"an Expert Advisory Group will be established to assist the work of the Assembly in terms of preparing information and advice".

407.   On the basis of my experience, it was undoubtedly in the interest, and for the benefit of, the Assembly that it be required to have an Expert Advisory Group to assist it in the terms specified.

408.   In conjunction with the Secretariat, I established four Expert Advisory Groups to assist the Assembly in relation to the five topics. Given the wide range of topics which the Assembly had to consider, I would not have been able to perform the task I undertook as Chairperson without the assistance of each of these groups, I considered it of particular importance that a separate Expert Advisory Group was constituted for each of the first three topics. The fourth and fifth were conjoined because their consideration required similar knowledge and expertise.

409.   The identity of the members of the relevant Expert Advisory Group has been made public on the Assembly's website from the outset, and they have been identified in all of the reports of the Assembly completed to date. Moreover, the reports set out the terms of reference of the Expert Advisory Group, including advising on the criteria for selecting specialists/experts to appear before the Assembly and recommending potential speakers for consideration by the members of the Steering Group. The role of the Expert Advisory Group at the meetings of the Assembly was also decided on in advance and is set out in the reports of the Assembly completed to date.

410.   The assistance provided to the Assembly by each of the members of each of the Expert Advisory Groups has been one of the distinguishing features of this process. On each occasion the Assembly has benefited from the most expert, and most knowledgeable advisors on the issues arising, who have given of their time so generously. The State owes each of them a debt of gratitude and I truly believe that their involvement in the process and in helping myself and the Secretariat navigate through some of the most complex and challenging issues facing Irish society is one

of the most noteworthy features of this process.

> **The engagement of, and the collaboration with, academics, professionals, administrators and other experts through, where appropriate, a separate Expert Advisory Group for each topic, is something which should be replicated in any future Assembly.**

V.   Engagement with the Oireachtas and path for Recommendations

411.   In relation to the Assembly's duty to report on the first specified matter under the Oireachtas resolution, the Eighth Amendment of the Constitution, the resolution directed that on receipt of the Assembly's report the Houses of the Oireachtas would-

"refer the report to a Committee of both Houses which will in turn bring its conclusions to the Houses for debate".

412.   The relevant report of the Assembly was delivered to the Houses of the Oireachtas at the end of June 2017 and by December 2017 the Committee of both Houses which had been established brought its conclusions to the Houses for debate.

413.   I believe that the mechanism used in respect of the first matter and how it was implemented has meant that the work of the Assembly was taken seriously and was given due consideration by the legislature. Since then, the Assembly has produced two further reports: the report on an ageing population was published on 8 December 2017; and the report on climate change was published on 18 April 2018. In the case of both of these reports, it is unclear how and when they will be considered by the Oireachtas, although I am aware of reports that a special committee on climate change maybe established and as part of its work programme would consider the Assembly's report. Such a development would be most welcome.

> **The imposition of a time limit for, and, stipulating the format of, the process which will follow receipt of a report and recommendation from a deliberative democracy process should be considered by the Oireachtas. This would make it more encouraging for a potential Chairperson or potential members to participate in the process, in that it would give some assurance in relation to the fate of the recommendation.**

VI.   Research on the Assembly and its work

414.   In November 2016, the Irish Research Council, at the request of the Assembly Secretariat, issued a call for proposals for a research leader. The purpose of this was to secure a suitably qualified academic with relevant and applicable research experience to assist the Secretariat in gaining a better understanding of the perceived deliberative quality of the Assembly and its modus operandi. It was also intended to provide a mechanism whereby the Secretariat could receive feedback from the Members to contribute towards ongoing development and improvements.

415.   The call was issued on the Irish Research Council's website. The documentation issued and application details are also available on the Assembly's website. The closing date was 11 November 2016.

416.   On the 23 November 2016, the evaluation team awarded the contract to Professor David Farrell from University College Dublin. Professor Farrell is working in collaboration with Dr Jane Suiter from Dublin City University on this research.

417.   The research was carried out through the use of survey forms, which were completed by the Members, typically at the start and end of each weekend meeting. After each weekend the research team analysed the data gathered and prepared a report for the Secretariat. Further information about how it was used by the Secretariat in relation to facilitation is provided in Section VII below.

418.   I consider the work undertaken by Professor Farrell and Dr. Suiter, which is continuing, to be of the utmost importance. Its outputs will be of particular interest to the Oireachtas, should it consider convening another Assembly in the future.

419.   At least one international observer, either from the media or academia, attended each weekend meeting of the Assembly. What is particularly noteworthy is that in almost every case they were there to learn about the deliberative democracy process and to observe it at first hand, as opposed to a specific interest about the topic being discussed. This contrasts with domestic observers and media who usually attended because of an interest in the subject matter.

420.   This lack of engagement from the domestic audience in relation to the process as distinct from the topics under consideration, has been surprising, particularly given that Ireland is in the vanguard in this area, being the only country in the world to have run two processes such as these in a row. The absence of this external engagement makes the research work initiated by the Secretariat in collaboration with the Irish Research Council all the more important.

> **In light of this, if a further Assembly is to be considered, the Oireachtas should specifically mandate that research should be conducted to gain a better understanding of the perceived deliberative quality of the Assembly and its modus operandi. Furthermore, the Oireachtas should consider what further steps could be taken to objectively evaluate if these processes have been valuable and it should undertake to share these insights with the international community.**

VII.   Facilitation

421.   The main opportunity the Members have to discuss the issues under consideration at a particular weekend meeting is at the so called Roundtable Discussions. What happens on the floor is that the Members sit in groups of six or seven, depending on the attendance, at 14 round tables. Each table has a facilitator and a note-taker. The appointment of facilitators and their role is described in detail in each of the reports delivered to the Oireachtas and in the "Practical Guide to Facilitation at the Assembly", which is also appended to this Report. At the public sessions, the facilitator speaks for a Member who does not wish to speak in public.

422.   Across all of the weekend meetings of the Assembly, the Secretariat worked to ensure that each of those tables represented a mix of Members and that each table was in itself a microcosm of the demographic variables to the greatest extent possible. While this approach has clear limitations, it was very important to the success of the Assembly that, where possible, at each weekend, Members were mixed, and that the same table formations were not repeated. Consequently Members had the opportunity to hear from a wide variety of fellow citizens.

423.   The Secretariat experienced a very positive working relationship with the company which provided the facilitation service, Roomax Ltd. It was the view of the Secretariat and the company personnel alike, that this positive working relationship was crucial to allowing them to collectively deal with any issues with the facilitation service as it arose. I mention this, as with a process such as this, where human reactions and interactions are a central component, there will always be a requirement to make adjustments to the service and the personnel who deliver it.

In light of this experience, it is my view that in any contract for facilitation services for a future Assembly, the Secretariat should explicitly reserve the right to make any changes as required to protect the integrity of the process.

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424.   The Secretariat's capacity to continuously evaluate the facilitation service was made possible through the surveys which the Members participated in throughout the process. As outlined in the call for proposals document from the Irish Research Council for a research leader for the Assembly, the Secretariat sought a professional research leader to design and run these surveys to allow the Secretariat "to engage with the membership throughout the lifetime of the Assembly to gain a better understanding of the perceived deliberative quality of the Assembly work programme and modus operandi." The research team subsequently prepared aggregate analyses of these surveys and they were made available to the Members and published on the Assembly website. A complete set of all of these reports from November 2016- April 2018 is available on the Assembly website.

VIII.   Submissions from the Public

425.   The Assembly invited submissions in relation to each matter it has considered, as it was authorised to do by the resolution of the Houses of the Oireachtas. With the exception of the final topic, fixed term parliaments, there was a very high rate of response to the request for submissions. To assist the Members in considering the submissions in relation to the relevant topic, the Secretariat undertook a number of different steps, depending on the scale of submissions and complexity of the issues.

426.   In relation to the first topic, the Eighth Amendment, the Assembly received in excess of 13,500 submissions. To assist Members in making best use of the submissions, the Secretariat compiled a random sample of 300 submissions. This random sample produced 185 online submissions and 115 postal submissions. These submissions were discussed by the Members at the Assembly meeting on 4 February 2017. At the request of the Members, the Secretariat also highlighted the submissions received from advocacy groups, political parties and other interest/representative organisations as well as the personal stories from individuals with experience of the Eighth Amendment.

427.   In relation to the second topic, the Assembly received 129 submissions. To assist the Members on this occasion, the Secretariat created a summary document to outline some of the key issues and some possible solutions indentified by individuals, non-government organisations, and professionals. This was provided to the Members in advance of the second meeting on the topic on 8 and 9 July 2017.

428.   In relation to the third topic, the Assembly received approximately 1,200 submissions. On this occasion the Secretariat provided a "signpost document" which aimed to identify, in order of popularity, the key issues/topics/themes which were presented in the submissions. The Secretariat grouped them into broad thematic areas and attempted to present a selection of the perspectives which were received. This was provided to the Members in advance of the second meeting on the topic on 4 and 5 November 2017.

429.   In relation to the fourth topic, the Assembly received 206 submissions. Once again the Assembly developed a Signpost Document aimed at identifying the key

issues/topics/themes which presented in the submissions. This was provided to the Members in advance of the meeting on 13 and 14 January 2018.

430.   For the final topic, as the Assembly only received eight submissions, there was no requirement to prepare a summary or signpost document.

431.   These steps taken by the Secretariat were of great benefit to the Members and ensured that the submissions were given due consideration in the deliberation process. They were however a considerable drain on the resources of the Secretariat and required significant additional assistance, which was gratefully received from staff from the Department of the Taoiseach.

432.   However, in retrospect, it is possible that with some forward planning and collaboration with academics and researchers, even greater use of the submissions process could be achieved, particularly in the circumstance where there is a large volume of submissions, as was the case with the Eighth Amendment.

> **As such, it would be prudent for a future Secretariat to consider partnering with academics and researchers, both in relation to the design of the online form for submissions, and consideration of the ways in which the submissions could be analysed for the benefit of the Members of the Assembly and the wider public. This could be done, for example, via a further collaboration with the Irish Research Council.**

IX.   Impact of Social Media

433.   In accordance with the Rules and Procedures of the Assembly, with the exception of observers referred to below, members of the public did not have access to the meetings of the Citizens' Assembly but the plenary sessions were streamed live on the website.

434.   The Assembly used the social media platform, Twitter, during each weekend to reach out to the online audience and to keep the public informed of developments. At each weekend, the Assembly used the hash tag #CitizensAssembly to further promote proceedings. The Assembly was the top trending topic on Twitter in Ireland

during the discussions on the first four topics. As was evident from the very low participation in the submissions process, public interest was low on the final topic, *Fixed Term Parliaments.*

435.   This engagement through social media was an important aspect of the Assembly's bid to communicate with a wider audience beyond the 99 Members taking part.

436.   In addition to those watching and taking part in the online discussions, it was recognised that certain organisations/ individuals might have had a legitimate interest in being present at the meetings to observe proceedings first hand. In light of this, a facility was made to allow a small number of observers to attend in person at each meeting. Representatives from advocacy groups, non Governmental organisations and religious groups, embassies, political parties, as well as academics, and social partners were permitted to be present at the plenary sessions of the meetings of the Citizens' Assembly.

437.   All observers were provided with the rules and Procedures for attendance at meetings of the Assembly which included the following:

-   All instructions from the Chairperson directed at observers should be adhered to by observers.
-   While the names of the Members and general areas from where they came are available on the Assembly website, other personal details of the members must be treated in strictest confidence.
-   Any individual or organisation which attempts to contact a member to try to influence their views on a particular topic would be automatically excluded from attending Assembly meetings.
-   Observers may be present for the plenary sessions and must leave the venue for the private sessions.
-   All observers must remain silent throughout the sessions and be respectful of the members and the Assembly proceedings at all times.
-   The use of mobile phones was not permitted.
-   Failure to observe these rules and procedures would result in automatic exclusion from all Assembly meetings.

438.   The potential influence of social media on proceedings in the Assembly is

worthy of further consideration. Just as we have seen in other forums, there is a latent capacity for social media to allow those outside of the process to directly impact on the proceedings within. In anticipation of this, mobile phones were prohibited at the tables, while discussions and deliberations were ongoing at the Assembly. In addition, under the Assembly's Rules and Procedures, Members were asked to refrain from media interviews or public commentary while the Assembly was actively considering a topic, and this restriction also applied to social media. However, as topics extended beyond one weekend and when voting and the deliberation on the wording of ballot papers can go on for extended periods, it is clear that Members can and will have access to their mobile phones, and, therefore, commentary on social media, at potentially significant times. The potential implications of this are particularly relevant where those on social media may not have heard all of the material presented to the Members or may not understand the full details of what is being discussed.

It is simply not practical to suggest that Members of the Assembly do not have access to their phones during extended periods. However, it is recommended that a future Assembly would develop a specific policy or set of guidelines in respect of social media to limit the impact of external parties on proceedings, and that these would be strictly adhered to for the duration of the Assembly.

Appendix A

Resolution of Dáil Éireann approving establishment of the Citizens' Assembly

Resolution Approving Establishment of the Citizens' Assembly

"Go ndéanann Dáil Éireann:

a cheadú go ndéanfar Tionól Saoránach a ghairm chun breithniú a dhéanamh ar na nithe seo a leanas agus chun cibé moltaí a dhéanamh is cuí leis agus chun tuairisciú do Thithe an Oireachtais:

    (i) an tOchtú Leasú ar an mBunreacht;

    (ii) conas is fearr is féidir linn tabhairt faoi na dúshláin agus na deiseanna a bhaineann le daonra atá ag dul in aois;

    (iii) parlaimintí ar théarma seasta;

    (iv) an modh ina seoltar reifrinn; agus

    (v) conas is féidir leis an Stát a chinntiú go mbeidh Éire ina ceannródaí maidir le dul i ngleic leis an athrú aeráide; agus

a thabhairt dá aire:

- gur 100 duine mar a leanas a bheidh i gcomhaltas an Tionóil:

    - Cathaoirleach a bheidh le ceapadh ag an Rialtas; agus

    - 99 saoránach atá i dteideal vótáil i reifreann, arna roghnú go hamasach sa chaoi go mbeidh siad ionadaitheach do shochaí na hÉireann i gcoitinne;

- féadfar ionadaithe a cheapadh faoi réir na gcritéar roghnóireachta thuas, agus beidh na hionadaithe sin in ann páirt a ghlacadh sna himeachtaí agus vótáil faoina n-ainm féin;

- comhaontóidh an Tionól a rialacha nóis imeachta féin d'fhonn a ghnó a sheoladh go héifeachtach ar shlí a bheidh chomh heacnamúil agus is féidir;

- sa chéad ásc, tabharfaidh an tionól tuarascáil, agus déanfaidh sé moladh, do

That Dáil Éireann

approves the calling of a Citizens' Assembly to consider the following matters and to make such recommendations as it sees fit and report to the Houses of the Oireachtas:

    (i) the Eighth Amendment of the Constitution;

    (ii) how we best respond to the challenges and opportunities of an ageing population;

    (iii) fixed term parliaments;

    (iv) the manner in which referenda are held; and

    (v) how the State can make Ireland a leader in tackling climate change; and

notes that:

- membership of the Assembly will consist of 100 persons as follows:

    - a Chairperson to be appointed by the Government; and

    - 99 citizens entitled to vote at a referendum, randomly selected so as to be broadly representative of Irish society;

- substitutes may be appointed subject to the selection criteria above, who will be entitled to contribute to the proceedings and vote in their own name;

- the Assembly will agree its own rules of procedure for the effective conduct of its business in as economical a manner as possible;

- the Assembly will first make a report and recommendation on the matter set out at (i) above to the Houses of the

Thithe an Oireachtais ar an ní a leagtar amach ag (i) thuas, agus ar an méid sin a fháil tarchuirfidh Tithe an Oireachtais an Tuarascáil lena breithniú chuig Coiste den Dá Theach, ar Coiste é a dhéanfaidh a chuid tátal a chur faoi bhráid na dTithe chun díospóireacht a dhéanamh orthu;

- tuairisceoidh an Tionól do Thithe an Oireachtais agus déanfaidh sé moltaí dóibh ar gach ní eile a luaithe a bheidh a phléití críochnaithe aige agus, in aon chás, tráth nach déanaí ná bliain amháin ó dháta an chéad chruinnithe den Tionól;

- iarrfar ar an Tionól freisin breithniú a dhéanamh ar cibé nithe eile a tharchuirfear chuige;

- bunófar Gasra Comhairleach Saineolaithe chun cabhrú le hobair an Tionóil, ó thaobh faisnéis agus comhairle a ullmhú;

- féadfaidh an Tionól aighneachtaí a iarraidh ó chomhlachtaí leasmhara agus glacadh leo agus lorgóidh sé cibé comhairle shaineolaíoch is dóigh leis is inmhianaithe;

- déanfar gach ní a bheidh os comhair an Tionóil a chinneadh trí thromlach de vótaí na gcomhaltaí a bheidh i láthair agus a vótálfaidh, seachas an Cathaoirleach a mbeidh vóta cinniúna aige nó aici i gcás comhionannas vótaí; agus

- tabharfaidh an Rialtas freagra i dTithe na Oireachtais ar gach moladh a dhéanfaidh an Tionól agus, má tá sé chun glacadh leis an moladh, cuirfidh sé an creat ama in iúl ar lena linn atá sé ag brath aon reifreann gaolmhar a sheoladh;

Oireachtas, which on receipt will refer the report for consideration to a Committee of both Houses which will in turn bring its conclusions to the Houses for debate;

- the Assembly will report and make recommendations to the Houses of the Oireachtas on each remaining matter as soon as it has completed its deliberations, but in any event not later than one year from the date of the first Assembly meeting;

- the Assembly will also be asked to consider such other matters as may be referred to it;

- an Expert Advisory Group will be established to assist the work of the Assembly in terms of preparing information and advice;

- the Assembly may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable;

- all matters before the Assembly will be determined by a majority of the votes of members present and voting, other than the Chairperson who will have a casting vote in the case of an equality of votes; and

- the Government will provide in the Houses of the Oireachtas 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."

July 2016
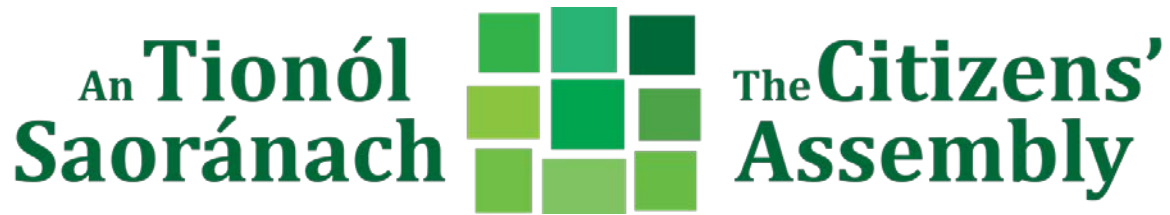
Appendix B

Citizens' Assembly Rules and Procedures

The Citizens' Assembly

Rules and Procedures

1. Timing, Frequency and Openness of meetings

Meetings of the Assembly will generally take place in a hotel at weekends (Saturdays and Sundays) during 2016 and 2017. Full details of the proposed dates for these meetings are available on www.citizensassembly.ie. Members of the public will not have access to the meetings but the plenary sessions will be streamed live at www.citizensassembly.ie.

2. Role and duties of the Chairperson

The Chairperson shall be the sole judge of order and shall be responsible for the smooth running of the Assembly in accordance with these rules and the terms of the Resolution of the Houses of the Oireachtas of July, 2016. She shall engage such support services as are necessary for the effective administration of the forum and, from time to time, make such recommendations to the Assembly on the management of business as she sees fit.

3. Work Programme

The work programme shall be agreed by the Assembly on foot of a proposal by the Chairperson. The programme shall be reviewed regularly but any subsequent changes shall only take effect with the agreement of the Assembly.

4. Steering Group

A Steering Group shall be established to support the Assembly in the efficient and effective discharge of its role and functions. In practice, the Group shall assist with planning and operational issues associated with the work programme. The Steering Group shall consist of the Chairperson and a sample of the members (need to consider how these would be selected and if they would rotate) and such other representatives as the Assembly sees fit.

5. Protection of Members' Privacy

While the names and general areas where Members come from will be made available on www.citizensassembly.ie, other personal details of the Members will be treated in strictest confidence. Any individual or organisation which attempts to contact a Member

to try to influence their views on a particular topic will be automatically excluded from taking part in the Assembly.

6. Debates/speaking arrangements

The format and structure of speaking arrangements shall be agreed in advance and as a general principle, all contributions by members should be brief, respectful and non-repetitive. Any member wishing to speak should indicate and will be called upon by the Chairperson, who will endeavour to ensure fairness in the allocation of speaking time to all members. In an effort to make most efficient use of time in plenary session, members are encouraged to use the opportunity of roundtable discussions to express their views, ask further question of the experts and deliberate with one another. These discussions can be reflected in a brief report to the plenary session.

7. Tabling and Circulation of Papers

All documents received by the Assembly secretariat shall be made available to all members of the Assembly via the www.citizensassembly.ie website. Alternative arrangements will be made for those members who are not in a position to access the site. Deadlines for receipt of submissions and circulation of documents in advance of plenary meetings should be agreed by the Assembly.

8. Presentations to the Assembly

Following receipt of submissions on any matter, the Assembly may choose to hear oral presentations from any representative group or individual to assist in its deliberations. For the efficient administration of the process, the Steering Group may wish to make recommendations in relation to the selection of interested bodies to present to the Assembly. Invitations shall be issued by the Chairperson on behalf of the Assembly.

9. Voting

Votes, if required, shall be by secret ballot of the members present and voting. Votes shall be overseen by the Chairperson with the support of at least 2 members of the Assembly.

10. Expert Advisory Group

As provided for in the Oireachtas Resolution, the Assembly shall establish an Expert Advisory Group to assist with its work in terms of preparing information and advice. The Expert Advisory Group will be comprised of academics/practitioners across a number of specific fields of interest including political/ Social Science; Constitutional Law and Theory; Medical Law and Ethics; Medicine and Obstetrics. The composition and focus of the Expert Advisory Group may change during the lifetime of the Assembly.

11. Irish language facilities

A simultaneous translation service from Irish into English will be available for all plenary sessions of the forum if required.

12. Accessibility of Services and Information for Persons with Disabilities

In line with the provisions in the Disability Act 2005 and the Code of Practice on Accessibility of Public Services and Information Provided by Public Bodies, the Assembly will ensure that services and information will be accessible to all Members including those with a disability insofar as is practicable and appropriate. It is noted that all Assembly members have been selected at random to represent the views of the people of Ireland and are broadly representative of society as reflected in the Census.

13. Press and Communications

Authorised members of the media shall be permitted to attend plenary sessions of the Assembly, subject to such terms and conditions as may be laid down by the Assembly. As a general principle, the Chairperson shall act as spokesperson in relation to administrative or procedural matters.

14. Members Interaction with the Media

Members shall refrain from media interviews or public commentary while the Assembly is actively considering a topic. This shall also apply to social media.

15. Reports

Reports of the Assembly shall be published as soon as practicable after a decision has been reached at each meeting. It shall be possible to finalise the detail of the content of each report other than in plenary session, subject to the agreement of the Assembly.

16. Review of Procedures

The Chairperson shall consult with members of the Assembly and other interested parties and conduct such reviews of the procedures and administration of the Assembly as she sees fit.

17. Assembly secretariat

The Chairperson shall have direction and control over the staff of the secretariat and other supports and resources available, subject to the wishes of the Assembly.
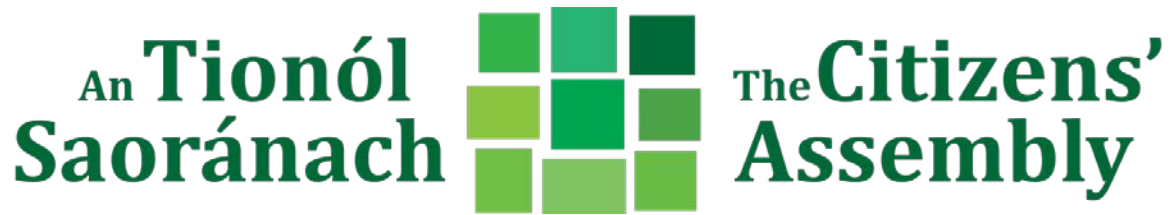
Appendix C

Practical Guide to Facilitation at the Citizens' Assembly

Practical Guide to Facilitation at The Citizens' Assembly

What's Covered in this Guide

1. Purpose of the Citizens' Assembly

The Citizens' Assembly was established by Resolution of both Houses of the Oireachtas. Its purpose is to allow a cross-section of the public to hear presentations from experts and civil society groups and to engage in rational and reasoned discussion, and to then make recommendations to the State on the options available.

The Assembly has been asked to look at the following issues:

1. the Eighth Amendment of the Constitution;
2. how we best respond to the challenges and opportunities of an ageing population;
3. fixed term parliaments;
4. the manner in which referenda are held;
5. 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.

There are 100 Members of the Assembly, including the Chairperson. Members are being chosen at random to represent the views of the people of Ireland, and will be broadly representative of society as reflected in the Census, including age, gender, social class, regional spread etc. They must also be on the electoral register to vote in a referendum.

2. The Role of the Facilitator

As facilitators, you'll provide a very valuable service to the Citizens' Assembly members, enabling the small groups to have a considered debate about very important topics of national interest.

You'll serve the meeting best by putting all of your attention into the meeting process and how the group is working, and by holding back from contributing to the meeting content. In this way, you'll create the best possible conditions for views, ideas and suggestions to emerge and ultimately to be included in the recommendations to the Houses of the Oireachtas.

It's very satisfying to be the enabler who helps to bring out other people's views and ideas. People love to be listened to and appreciate when their views and suggestions are valued. It leads to a lively, positive atmosphere, with the focus on new possibilities rather than on problems. Further tips for successful facilitation are included in Appendix I.

3. Groundrules

Healthy debate and idea generation is greatly helped by observing some simple process groundrules. The following are the guidelines for behaviour that will *encourage and support people to participate and contribute to group discussions* during the Citizens' Assembly. You are invited to share these groundrules with the people at your table and ask them if they are happy to commit to them or put forward others. If they agree, you will have the authority to make interventions in the discussion and improve the process.

o ***Share the airtime***

Every group has individuals who are more reticent and others who love to talk. It's vital to hear the views of the quieter people, both for the inherent value of those views and suggestions and to give due respect to everyone present. At this session, everyone has an equal voice.

- ***Ask participants to headline their views/suggestions; then give some background***

  To ensure that each person is heard when they speak, ask them to catch people's attention by making a headline for their argument first (the 'hook' of their view/suggestion) and then follow up with their background thinking. (We want the news headlines, not the full bulletin!)

- ***Be Respectful***

  Listen to and show respect for the opinions of others. Engage in the discussion: do not get involved in disruptive side conversations or talk over others. It's important that we have one conversation at a time. Keep your mobile phone and other devices packed away while the Citizens' Assembly is in session. There will be lots of breaks for you to catch up with the outside world!

- ***Make connections***

  New thinking and fresh ideas emerge when you allow your mind to freewheel and to make connections between seemingly unconnected things. When a group sets out to invent something new, one idea or suggestion can trigger another in surprising and productive ways. Spot the unlikely connections.

- ***Don't evaluate views/suggestions***

  It's vital that each participant is allowed (by the group) to express his/her views and alternative suggestions without fear of being dismissed. If suggestions are evaluated prematurely, they're unlikely to survive and grow. This damages the morale and courage of those present.

- ***Keep track of thoughts, views and suggestions that come to you***

  Follow the theme - stay focused and on track. In a group, it's inevitable that people have to wait their turn to contribute. To free your mind during this waiting time, jot down any ideas that come to you. Then you'll be better able to listen for connections and further ideas.

You'll be supported in your role as facilitator by the Chair, the Secretariat and the Advisory Group. The Chair will guide everyone present through each of the steps and keep you on track regarding time-keeping. Members of the Secretariat and Advisory Group will be available in the room to support you and to encourage participants to observe the groundrules if necessary. Don't be afraid to put your hand up and ask for assistance if you need it. Also in the room will be the expert speakers. These people will be available as a resource to participants to answer questions or clarify points. If your table wishes to speak to an expert, let them know that they should ask you to invite them to the table. As the experts will be in demand, please focus the question that is being put to them so that they can move to answer others' queries.

4. Facilitating the Conversations at your Table

You'll facilitate a number of conversations at your table, each of which will be kick-started by an issue for consideration by the people at your table. The Chair will introduce each issue and call an end to the discussion when the time is up. The issue (s) will be highlighted on a screen at the top of room so everyone can see them. You will facilitate the discussion around the issue in question.

Use the questions below only as guidelines as to the kind of approach you might take to get the conversation going, to explore issues and to help the participants to think in new ways. You are trying to give them the responsibility for making the conversation a success, rather than taking that responsibility on yourself.

Probe participants deeply and intently - not like a dentist or a piranha going after the bait - but like an interested friend hanging on to every detail. Maintain a demeanour of 'benign curiosity' and encourage participants to explore views and ideas with each other (rather than respond only to questions by you).

- This is what we're being asked to do. How should we start?
- Let's take the first issue … can we give that 10 minutes?
- What interests you about this topic?
- If Ireland were a 'best example' on this issue, what would we see?
- Can you tell me more about that?
- In what ways is this important to you?
- How does this issue affect you?
- What do you wish were different?
- How do you think that problem could be solved? What steps could be taken?
- What needs to change for this to work really well?

Some points to note:

- Phrase in *rapport* talk not *report* talk
- Convey positive regard and appreciation, no matter what views are expressed
- Evoke essential values, aspirations and inspirations

<u>Managing Negatives</u>

People should feel free to talk about things they believe require fixing. However, if they are allowed to focus for too long on negatives, the dynamic of the discussion will change. This can be managed in several different ways:

- ***Postponing:*** Tell them you will make a note of what they have said and keep it on record. The question *"What would you change if you could change anything about (the issue)?"* is a place to collect this 'negative' data.

- ***Redirecting:*** If you have listened sufficiently to the seemingly negative issues, find a way to redirect the person back to the task at hand. *"I think I understand some of the*

problems..." Paraphrase a few of the problems that you've heard and check with the person for clarity. *"Right now, however, I would like to focus on times when things were working at their best. Can you think of a time, even the smallest moment, when this [situation] was at its best?"* If the person says it never happened at its best, before giving up find out whether the person ever had a good experience in any context anywhere. Then ask how this good experience could be applied here.

- ***Listening:*** If someone feels real intensity about what he or she wants to say about issues, let the person say it. If it is very strongly felt, you are not going to get ideas for change until the person speaks their mind. This may mean muddling through quite a bit of manure and the biggest threat is that you will take this personally and lose sight of the goal. Pay attention to your inner feelings and try to maintain a level of detachment. You must be empathetic without taking responsibility for the person's grievance. Maintain a caring and affirmative spirit.

- ***Using Negative Data:*** Everything people find wrong represents an absence of something they hold in their minds as an ideal image. What processes if present (rather than absent), might create the ideal situation, which the negatives imply? Data is data and is a useful source of information particularly as it is conditioned by affirmative images. The trick is to focus on using the negatives as springboards for finding the ideal, and then asking the person to generate ideas as to how to achieve the ideal.

You will find additional tips on keeping the conversation on track in Appendix II.

5. Checklist

In a nutshell, here's what we'd like you to do over the weekend:
- ☐ Take your seat 10 minutes before each session begins and personally welcome participants to your table.
- ☐ Distribute surveys and ballot papers at your table and ask participants to complete them.
- ☐ Outline the ground rules that will guide the table conversations.
- ☐ Facilitate conversations at your table.
- ☐ Work with the note taker at your table to ensure objections/concerns about Rules and Procedures and ideas to strengthen them are documented.
- ☐ Work with the note taker at your table to ensure the accurate documentation of key issues and alternative proposals/amendments arising at your table in relation to each item under deliberation.
- ☐ Support the Chair at the plenary sessions by inviting relevant participants at your table to contribute their views.
- ☐ Ask a member of the Secretariat or the Advisory Group for support if you need it.
- ☐ Assist the team to count ballot papers.
- ☐ Attend the facilitators debriefing session following the meeting.

Appendix I: Tips for Successful Facilitation

1. Summarise & Assimilate Inputs
- Make sense of what is happening in the group (by observing and listening – this will help you to make the correct interventions)
- Keeping the group focused on the task and the theme or question
- Reflect back what you hear verbally and/or visually
- Pull together diverse inputs and draw connections between contributions
- State clearly your understandings or paraphrase to check understanding and make a participant feel heard

2. Observe the Mood:
- Awareness of emotional undercurrents, gleaned from tones, body language, intuition
- Ask deeper questions

3. Manage the Process
- Lead the group through the process and remind them of any ground rules (see below)
- Manage the process so that people can focus on the content
- If a conflict emerges, help each person feel heard, and seek common ground
- Help people understand each other by translating information from a participant into terms that the other participants can also grasp

4. Timekeeper:
- Keep an eye on the clock
- Warn the group well ahead of any deadlines

5. Engage Participants:
- Keep track of whose turn it is to speak

6. Stay out of the Content
- It is not your job to have a point of view about any aspect of the discussion
- Try not to be drawn into giving a view, advice or direction

Appendix II: Suggestions for Keeping the Conversation on Track

Keeping the participants on track starts with good preparation and includes the use of appropriate process intervention. Process intervention is an interruption by the facilitator of the conversation process in order to refocus the participants and/or to rebalance group interactions.

Most interventions can link back to the ground rules. As a guideline, always start with the lowest level of intervention, which is the least obvious and least threatening to the individual or group. As facilitator, your goal is to support the participants in achieving their desired outcomes by staying on track and balancing participation with results, so interventions must be supportive. Speak the intervention clearly using assertive language, with supportive tone of voice and body language.

The following are examples of the 6 most common situations requiring intervention to keep the conversation on track, with example suggestions on how to intervene in each situation.

- Side-Bar Conversations
- Staying on Time
- Never Ending Discussion
- Conflict (personal attacks)
- Returning from Breaks
- Texting, tweeting and use of mobile phones

Topic	Situation	Intervention
Side Bar Conversations	A member of the group is having sidebar conversations with other participants throughout the session	1. A friendly reminder: "Just a reminder, we agreed to 'one conversation at a time' in our groundrules for the session."
		2. Direct the reminder: Make eye contact (with Susan) and restate, "One conversation at a time please."
		3. Personalise it: "Susan do you have a clarification question?" or "Susan I can see that you have something to contribute; when Sam has finished we'll hear from you."
		4. Make a direct request: "Susan, please hold your comments until Sam has finished."
	If Susan is the only one interrupting or having side conversations.	5a. Talk to her at break, one-on- one.
	If there are many people interrupting or having side conversations.	5b. Put the process on hold and ask the group "Do we need to take a break?"

Staying on Time	The group has a lot to cover in the session, but they seem to go down rabbit holes and may veer off into other topics.	1. Invoke the "keep focused" ground rule: Suggest the concern is '**parked**' – capture items that need to be pursued, but are not the focal points for this session.
		2. Specifically re-focus on the particular topic/agenda item: "I'd just like to remind you that we are discussing question 2. Please hold discussion on other topics until we get to them."
	The discussion has continued for some time and you are running out of time for the item.	3. Attempt closure of item: "We have 10 minutes remaining for this item. We need to re-focus. What do we still need to discuss to conclude this item?" "We are almost out of time for this item, there appears to be more discussion required. Is that true?" Follow-up a 'yes' response with, "What do you need in order to close on this item?" or "Why are we unable to close on this item?" If the item is truly important and just wasn't given sufficient time for the necessary discussion and action....
		4. Give participants a choice on how they spend their time: "Is this item more important than staying with the theme we're discussing?" *Note: If so, go with the group's energy and capture the issue*

Never-Ending Discussion	**Information Barriers** Sometimes a discussion will not come to closure, usually because of information that is insufficient, inaccurate, or unreliable. Sometimes a topic leads to significant emotional reactions.	Follow the same guidelines under "Staying on Time". It may be that there is insufficient valid information to progress, in which case park the item for another meeting.
	Personal Agenda or "Hobby Horse" Whenever a particular topic comes up, an individual may begin to recount the same war stories, etc. You can often tell by reading the faces of the other participants (look for rolling eyes!). The individual, often oblivious of the reactions of others, settles into the story.	1. Gentle interruption: Once you've determined that an individual is in a familiar story mode, and what's being said does not appear to contribute to the item under discussion, gently interrupt him to ask, "John, excuse my interruption, but I'm not sure how this fits with our topic. Can you clarify for me?"
		2. Direct the enquiry: Make eye contact with John and ask, "This sounds like familiar ground; is this a recurring theme?" Then make eye contact with the

		other participants. At this point John will usually confess that this is either a war story or a favourite 'complaint.' Acknowledge him and then move on.
		3. Personalise the request: "John we agreed that this item would remain parked, has anything changed its status?"
	It is unlikely that a person will continue raising the issue. In the event that he does….	4. Firmly restate the request: You can re-state the intervention comments under either 2 or 3 and that should allow the group to continue forward without using up valuable time.

Conflict: Personal Attacks	**Individual Attacked** A group member takes "pot shots" at other team members. For example, Bill is taking 'shots' at Joe.	1. Apply gentle humour: observe Joe's reaction and Bill's demeanour and body language. Say nothing the first time unless you are sure that it was intentional, or make light of the first occurrence: "I hope that comment isn't an indication that we need armour for this meeting!"
	Bill takes another shot	2. Restate the ground rules: Make eye contact with Bill and say, "Our ground rules clearly state that….We welcome all ideas, comments that build or clarify ideas etc., but not negative comments."
	Once again, Bill aims another sarcastic or belittling remark at Joe	3. Confront Bill directly: firm words, supportive tone and stance. "Bill this is not the first time that you have targeted Joe with your remarks, please stop." Then redirect him with "What is the concern you have with the issue/idea? How would you modify it to improve it?"
	Bill persists with comments aimed at Joe	4. Gentle, public reprimand: In a gentle tone say, "Bill despite my reminders, you continue to make critical comments towards Joe's ideas. If there is a personal disagreement between the two of you, it is inappropriate to play it out here. Can you participate in this session productively?" (This gives Bill the opportunity to bow out. If he chooses to leave, ask the team if they can continue without him.) The same intervention could be made one-on-one with Bill at break.
Group Attacked	Bill is taking potshots at everyone.	1. Apply gentle humour:, observe their reactions and Bill's demeanour and body language. Say nothing the first time unless you are sure that it was intentional, or make light of the first occurrence: "I hope that comment isn't an indication that we need armour for this meeting."
	Bill takes another	2. Restate the ground rules: Make eye

	shot	contact with Bill and say, "Our ground rules clearly state that....We welcome all ideas, comments that build or clarify ideas etc., but not negative comments."
	Bill continues. At this point he has made several remarks to various group members and you have redirected his comments and reminded him of the ground rules.	3. Address problem directly: "Bill you have made several negative comments to group members. Is there something else going on that is interfering with your ability to participate here today?" Or throw it to the group. "Everyone, how do you feel when Bill makes this type of comment?"
		4. Personal Confrontation: If the attacks continue and the group is reluctant to say anything to Bill when discussed as in 3 above, then speak to Bill at break as in Step 4 above.

Returning From Breaks	Team members are late returning from breaks.	1. Light reminder: "Remember, you agreed to return from breaks on time because it helps the session to finish on time; it's one of your ground rules." Just before the next break remind the team to be back on time, advise them of when that is and suggest that you all synchronise your watches.
	Team members are chronically late returning from breaks. If it is the same members each time then remind them when they return.	2. Ask for input: "Out of curiosity, why do you have a ground rule that says return from breaks on time, and yet consistently several people are late returning from break each time? What do we need to do for this to work?" Members may need some flexibility from time to time to accommodate other needs – advise the group that the participant will be stepping out for a while.
Texting, tweeting and use of mobile phones	Team members are continually using their phone or other device whilst the Table Conversation is taking place.	Remind the person of the groundrule about phone usage and ask if they would defer using their phone until there is a break. Alternatively, if their need is urgent please ask them to leave the table to do their business and return when they can give the conversation their full attention.

Appendix D

Signpost Document for Assembly Members

On submissions recieved on fourth topic for consideration

The manner in which referenda are held

Submissions to the Citizens' Assembly on the fourth topic for consideration

The manner in which referenda are held

Signpost Document for Assembly Members

Key issues raised and themes covered

Contents

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Submissions Process

The submissions process for the fourth topic considered by the Citizens' Assembly (Assembly), "The manner in which referenda are held" was open from 13 November to 22 December 2017.

A number of steps were taken to encourage the public to engage with the submissions process. Advertisements were placed in a number of national newspapers on the 14 November 2017. These papers included: The Irish Examiner, The Irish Times, The Irish Independent and The Irish Mirror. A copy of the call for submissions is provided at Appendix 2.

The Assembly has over two thousand followers on Twitter (social network) and the platform was actively used to promote submissions, via the hash tag **#citizensassembly**.

In total, the Assembly received 213 submissions. Full details on the breakdown of these submissions are provided below.

Of the 212 submissions received, 209 were received online and 4 were received by post.
Of these, 206 have been published on the Assembly's website. In total 7 were not published.
Of those submissions received and not published the reasons were as follows:

- 4 submissions were not relevant to the topic;
- 1 submission was a duplicate;*
- 2 submissions were anonymous**

(*Where a submission in exactly similar terms was made more than once by the same individual this was only published once. In many cases this happened because the individual made the same submissions in multiple formats, i.e. by post, on line and by email)
(** Anonymous submissions will not be accepted. Submissions made with just a first name listed will not be published.)

The Secretariat began publication of the submissions received on 15 November 2017 and all of the submissions published have been available online since 2 January 2018.

Purpose of this Document

Purpose

This Signpost Document aims to identify the key issues/topics/themes which presented in the submissions. The full text of the 206 published submissions is available on the Assembly website (www.citizensassembly.ie). The Assembly Secretariat has grouped them into broad thematic areas and has attempted to present a selection of the perspectives which were received.

In all cases, where an individual submission is referred to, the Secretariat has provided the corresponding reference number to allow that submission to be read in full.

The Secretariat acknowledges fully that a Signpost Document such as this cannot capture the full range of issues raised in all of the submissions made to the Assembly. Instead, this document is designed to give the Assembly Members an overview of the main issues and the range of perspectives which emerge in the submissions. It is hoped that it will be of assistance to them in considering the topic before them.

Methodology

Given that there were fewer submissions received on this topic, the Secretariat had the capacity on this occasion to prepare a Signpost document which summarised the key points emerging in all of the 206 submissions published. Therefore, unlike the Signpost document prepared for the third topic, climate change, which was prepared with reference to a range of the total submissions selected (all of the NGOs, advocacy and interest groups, academics and commercial entities who made a submission on the topic, and a random sample of **100** of the total), on this occasion, the Signpost document has been prepared with reference to all 206 submissions published.

Caveat

As outlined above, the purpose of this document is to provide the Members with a high-level overview of the key issues/topics/themes, as they appear in submissions made to the Assembly.

The submissions detailed in this document contain a wide variety of views, perspectives and opinions. **Inclusion in this document does not mean that the views expressed are shared or supported by the Assembly. The Assembly does not endorse any of the assertions made in the submissions referenced in this document.** Descriptions of individual submissions are intended to give the reader an overview of the material that is contained in the longer, original submission.

Key Reference Documents

Readers of the Signpost Document should also be aware that in advance of their consideration of this topic, Members of the Assembly were invited to read the following key national documents associated with this topic:

The Constitution of Ireland 1937

Articles 27, 46 and 47 of Bunreacht na hÉireann

Legislation

- [Referendum Act, 1994](#)
- [Referendum Act, 1998](#)
- [Referendum Act, 2001](#)

The Referendum Commission

The Referendum Commission is an independent body that explains the subject matter of a referendum proposal, promotes public awareness of a referendum and encourages the electorate to vote. It is open to the Minister for Housing, Planning and Local Government to appoint a Commission any time a referendum is held. More information about the Referendum Commission is available on their website - www.refcom.ie .

Every Referendum Commission to date has published a report following the referendum. These reports are available on the Assembly's website or by clicking the links below:

- [Marriage Referendum and Age of Presidential Candidates Referendum](#) (2015)
- [Abolition of Seanad Éireann and Court of Appeal referendums](#) (2013)
- [The Children Referendum](#) (2012)
- [Fiscal Stability Treaty](#) (2012)
- [Judge's Remuneration and Houses of the Oireachtas Inquiries](#) (2011)
- [Lisbon Treaty](#) (2009)
- [Lisbon Treaty](#) (2008)
- [Irish Citizenship](#) (2004)
- [Treaty of Nice](#) (2002)
- [Protection of Human Life in Pregnancy](#) (2002)
- [Abolition of the Death Penalty, International Criminal Court, Treaty of Nice](#) (2001)

Documents Published by the Department of Housing, Planning and Local Government

The [Department of Housing, Planning and Local Government](#) (previously the Department of the Environment, Community and Local Government) has produced a number of documents in this area, including:

- [The Referendum in Ireland](#)
- [Referendum Results 1937 - 2015](#)

Copies of each of these documents are available on the Assembly's website.

Introduction

206 submissions were published by the Assembly in relation to 'the manner in which referenda are held', covering a broad range of issues from a wide variety of individuals and groups. As was the case with other topics considered by the Assembly, submissions were received from representative groups and professionals and academics with experience and expertise on the topic, with submissions also being received from individual members of the public.

The most dominant issue to emerge in the submissions was the concept of Citizen Initiated Referenda, with 156 out of the total 206 being received on this topic. However, some 132 of these were duplicate submissions with identical text being submitted from multiple individuals.

The following is a brief selection of some of the key points raised in the submissions.

It should be noted that this document is not a summary of all of the submissions received. As would be expected, many groups and individuals make similar points, and therefore this document merely attempts to bring the issues to the Members' attention. Equally, many submissions made points which covered a number of separate issues. As such, a number of submissions are referred to in the summary on more than one occasion.

1. <u>Referendum Procedure/Process</u>

The Assembly received a large number of submissions relating to the mechanics of how referendums are held in Ireland. These submissions covered a broad range of aspects of the referendum process including electronic or online voting, voting location and time available for casting your vote, the ability or otherwise to vote from abroad, how referendums are worded including suggestions around Multi-Optional Ballots, an examination of what constitutes a majority and how results are reported.

This section provides a selection of the viewpoints raised across these areas.

<u>Electronic or Online Voting</u>

A number of submissions call for greater use of technology for voting in referendums and in advance of formal referendum processes as a means of gauging public opinion.

Cormac McKay (D1-NZ4VQU6UTPMY) discusses the possible benefits of holding an online referenda. In his submission he states: *"With so many referenda to be held in the coming years, it would be more cost-effective to hold referenda online over 7-30 days like in other countries such as Estonia."*

Eamonn Blaney (D1-OONW18MDVJDY) also presents his view on the advantages of online referendums, particularly in relation to gauging public opinion stating *"Given the massive advances in technology, the government could use internet based referenda to gauge the will of the people PRIOR to launching a full blown formal referendum. As each citizen is entitled to a PPS number it would be simple to ensure that 'one person, one vote' was maintained. Regardless of how they are held, it is imperative that the voices of the people are heard on all major issues and not just by voting every five years in a General Election, in which the promises made are routinely ignored by government. Failure to ensure real democracy will ensure Irelands continued slide into an ungovernable state as the distance between those 'in power' and the people will increase."*

Jonathan Victory (D1-QDJ5AIH0XN1Z) also refers to the use of electronic voting systems. In his submission he referred to the initiative by international law expert and 2016 independent general election candidate, Roslyn Fuller. "*She has been piloting an online voting project, gauging public opinion on pressing policy issues. "E-democracy" or the use of digital platforms to deliberate and vote on policy issues is something that could become more commonplace in years to come. The Citizens' Assembly should also consider whether referendums on legislative issues and local government plebiscites could be conducted through some online platform. More information on Fuller's proposals are available on her "Fuller Democracy" website: http://fullerdemocracy.com/*".

<u>Voting location and time available for casting votes</u>

The Assembly received a number of submissions regarding proposed changes to the location where ballots can be cast in a referendum and the amount of time available for voting.

Brendan Walsh (D1-5SPUSAFP6SJY), made the following observations regarding procedure for referendums: *"There should in every Constituency be one (or more if deemed appropriate) polling place, located as near to the centre of the Constituency as possible, open from the day the Referendum becomes official to enable a voter to vote whose holiday or business arrangements precluded him/her from voting. A simple procedure could be devised whereby the voter would apply to the Voters Registration Department of his/her Local Authority giving certain information, making some form of Declaration and getting a Certificate enabling him/her to vote ahead of Polling Day. If this was thought to be too cumbersome maybe an extension of the present postal voting system could be used."*

Cormac McKay (D1-NZ4VQU6UTPMY) suggests that *"in person voting, i.e. polling stations should be in the library or tax offices, council offices or garda stations over 7-30 days."*

Michelle Rogers (D1-GULI79FOWADV) had some concerns about the location of referendums. In her submission she stated *"Referenda in Ireland are most often held in schools. 96% of these schools are religious ethos and display religious iconography on their walls. Since religious organisations often have, and promote, strong views on the substance of referenda - in line with their own religious ethos - it is inappropriate that our state referenda be held in spaces where a religious ethos is promoted by iconography and other materials on the walls, often from the minute you enter the building. This will particularly be the case for the upcoming referendum on the 8th Amendment - organisations that support the abolition of the 8th Amendment will not be allowed to display even a poster with their name; conversely, religious iconography will be allowed to be displayed on the walls of the rooms people vote in. In addition, the presence of bibles on tables for people to swear on - presumably that they are who they say they are - flies in the face of modern practice surely. Will non-religious people be allowed to swear without any props that they are who they say they are, in the absence of acceptable documentary evidence? This republic should be an Ireland of equals and in an increasingly secular republic, it is no longer acceptable that we should be asked to vote in the premises of organisations that have a specific strong stance on issues we may be voting on, and that display iconography in line with their own ideology and dogma in that space. How can that be an impartial space?"*

Atheist Ireland (D1-KF04W5RRDTOL) note *"there should be no symbols or practices in polling stations that endorses either religion or atheism, and all voters should be treated equally"*. The submission pointed to a study conducted by Stanford University in 2016 which showed that environmental cues in a polling station can influence how people vote. The submission discusses the use of religious oaths and bibles at polling stations, and in this regard made a number of recommendations. *"There should be one single test of identity for voters whose identity is being challenged.*

- *It should be capable of being applied equally to all voters, without discrimination on the ground of religion.*

- *It should not require the voter to reveal his or her religious or nonreligious philosophical beliefs, directly or indirectly. This is an established human right.*

- *It should not provide an environmental cue that can influence how people vote, particularly in a referendum where religions support one outcome."*

Andrew Doyle (D1-O6ONNNO4QBB6) makes a further observation about the use of schools as polling stations in referendums, stating *"our school regularly looses a whole day from the curriculum, and our children loose a whole days education just so that we can use one room of the school, less than 5% of its floor space, for voting."*

Voting from Abroad

John F Colgan (D1-4YZ3WFRUYWFG) notes as part of his submission in relation to Irish Citizens recently living abroad *"Irish citizens recently living abroad (like my adult children, one moved because the international body they work for is located abroad) should be allowed to vote on referenda."*

In their submission, **The Green Party** (D1-985EYHK0N20D) references the "Home to Vote" campaign which they say saw many young immigrants travel home to vote on that referendum (2015 Marriage Equality Referendum). The submission continues stating "*currently, this practice is technically outside of the law as the right to vote expires after a person has lived outside of their registered constituency for more than 18 months. However, in practice, local franchise offices have either turned a blind eye or have been unable to regulate this law. The Green Party supports the formal recognition of this practice for emigrants by extending the period for which someone may live outside of their registered Dáil constituency to five years and extending the justifications for a postal vote to include ordinary business and social activities*".

Referendum wording including Multi-Optional Ballots

A number of submissions outline the perceived deficiencies of a simple yes/no vote in determining a referendum result. In his submission, **John Baker** (D1-P689K46JZI4A) states: *"there is a strong democratic case against simple yes/no votes, particularly where there is a range of significantly different alternatives. The Borda Count system provides a procedure for dealing with multi-option voting that is clear and fair".*

In his submission **Peter Emerson** (D1-C80B3HEIA6BF) notes the difficulties with binary ballots. *"Binary ballots have often been a cause of bitterness (as in Ireland's divorce and abortion referendums), division (as in Brexit and now Catalonia), confusion and contention (as in today's region of Kurdistan in Iraq), if not violence and war (as in the Balkans, the Caucasus, South Sudan and now Ukraine)"*. The submission contrasts binary ballots to multi option ballots, stating: *"In 1982, Guam held a six-option poll, with a further blank option for anyone(s) who might have wished to (campaign and) vote for a further seventh option. None have yet used a preferential form of referendum. Here, then, is an opportunity for Ireland to lead the world in showing how preferential voting can be, not only the catalyst of more nuanced and tolerant campaigning before any subsequent referendum, but also the*

instrument by which can be ascertained a measure of the will of the people which is accurate."

Tim Spalding (D1-NBCZ7RAH550S) discusses multi-optional ballots also, stating as part of his submission that referendums should be "multi choice": *"These are known as preferendums and are promoted by the DeBorda Institute (www.deborda.org). This would allow for more nuanced and more representative and better supported outcomes than straight forward yes/no votes. It does not mean that all referendums have to be done in this way but issues that are complex lend themselves to it well. It also means that there is a more in depth debate with moves towards consensus rather than polarity."*

Philip Kearney (D1-8ZY6LX6Y0O7P) makes the observation that "*the de Borda Institute has argued for many years and in multiple submissions to the Oireachtas that a more inclusive, multi-optional, preference-based methodology is required and would allow the people, when necessary, 'to decide . . questions of national policy, according to the requirements of the common good'. The Modified Borda Count is one such method. In summary, my submission is to urge the members of the Citizens' Assembly to recommend a review and change in the law 'relating to the Referendum' as provided for in Article 46.2 of Bunreacht na hÉireann to allow for multi-optional, preferential referendums incorporating the Modified Borda Count or similar methodology.*"

Continuing in the context of the issues with Binary Ballots, **Vanessa Liston** (D1-NMHDO2VGE9BP) bases her submission on the academic research and innovations in public consultation and opinion insights developed by CiviQ. The submission states: "*As one of the major purposes of any democratic system is to accurately reflect the diversity in the public will, we can show that binary option referendums based on the majority vote do not provide the opportunity for reflecting the diversity of public perspectives on an issue. Knowledge is now available to build on new insights into public opinion and multi-option, preference-based, decision-making. This has been demonstrated in national public deliberations in Australia and The Netherlands.*"

Ann O'Connor (D1-7SMSPUB9KQQ9) states in her submission, that there should be agreement on the format of ballot papers before a referendum is held: *"Due to the recent intentional extreme ambiguity in the language used on ballot papers, It is now imperative that the public agree the wording on the ballot paper BEFORE a Referendum is held. While this may appear, at first view, to be an expensive exercise the need for same has been caused by the Government and needs to be addressed and redressed. This corrective procedure will help to obviate legal challenges."*

Similarily, **Ciarán Ó Coigligh** (D1-5XOOXNC7KZDO) states in his submission, in Irish, that a preliminary referendum should first be held to allow the public to decide whether a referendum is required. The submission goes on to note: "*Bíodh sé de choinníoll go gcaithfidh tromlach na ndaoine uile atá i dteideal vóta a chaitheamh i reifreann ar son rúin sula nglacfar leis agus ní hea tromlach na ndaoine a chaithfeas vóta ar an lá. Is cóir féachaint chuige go mbeidh an próiseas chomh daonlathach agus is féidir. Mar shampla vótáil os cionn 49% de na vótálaithe a chaith vóta i reifreann an cholscartha i gcoinne an cholscartha agus ní raibh 49% ná rud ar bith mar é den díospóireacht ar na meáin chumarsáide ná i dTithe an Oireachtais i gcoinne an cholscartha. Mar a chéile leis an*

reifreann faoin bpósadh comh-ghnéis, vótáil os cionn 38% ina choinne ach arís ní raibh 38% ná rud ar bith mar é den díospóireacht ar na meáin chumarsáide ná i dTithe an Oireachtais i gcoinne an phósta comh-ghnéis."[1]

What constitutes a majority?

A number of submissions make suggestions for changes to what constitutes a majority in a referendum.

Donal O'Driscoll (D1-8U1DUF8E1J0Y), suggests in his postal submission, regarding the winning result in referendum, "*the winning result should be at least 50% of population entitled to vote. This would obviate the situation where a small percentage of the population, perhaps without realising the consequences, may change the situation of the majority.*"

This point is also made in a submission by **Séamas de Barra** (D1-JG82X93DVZQ5) from the Alliance for the Deference of the Family and Marriage*: "we are proposing the introduction of the requirement of a Pre-Referendum to decide whether a particular Substantive Issue should be put to a Consequent Referendum. In both cases we urge that the result should be decided, not by a majority of those voting on the day, as at present, but by clearly more than 50% of registered voters."* Similar points are also made in the submission from the **Council for the Status of the Family** (D1-JPNCESPJMTXQ).

A submission made by **Michael Logan** (D1-B5IKEN2KB26Y) states: "*A minimum percentage of the electorate would have to vote, in other words a quorum would be required, for a change to be valid, perhaps 40%. Any change in the constitution should require a ⅔ majority.*"

A submission by **Nollaig M. Malone** (D1-JR9318UOQ01J) also presented the view that at least 50 % of the population must vote in an election "*a truly democratic referendum should require at least a fifty percent plus turnout of the populace and not less than that for it to be binding. The questions should be simple and direct, not vague and confusing. The outcome should be over fifty percent of that fifty percent plus. The truth has every right to be heard in the buildup to each referendum.*"

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[1] There is a lack of democracy in the way a number of referenda on the question of divorce and the Lisbon Treaty and a referendum on same-sex marriage were forced on the public. There should first be a pre-referendum which would give the public a say on whether or not they wish to vote on a particular question in the form of a referendum. It should be a condition that the majority vote, in order to carry a motion, should be based on the number of people entitled to vote in a referendum as opposed to the number of people who vote on the day. The system should be as democratic as possible. For example 49% of voters who cast their vote in the Divorce referendum voted against the introduction of divorce. However the debate in the media and in the Houses of the Oireachtas against divorce was no where near 49%. Likewise regarding the same-sex marriage referendum, more than 38% voted against the motion but the debate in the media or in the Houses of the Oireachtas against same-sex marriage was no where near 38%. Therefore it is essential that the two sides are treated equally when any question is asked of the public in a referendum.

<u>Reporting on results</u>

The submission made by **PJ Murray** (D1-PTPYWMQR7EIR) suggests "*The votes at a referendum is given constituency by constituency. I believe only the overall result should be announced. The way it is now it gives a rural urban breakdown of results. A referendum is for all the Irish citizens to decide, how we arrive at the decision should be of no interest. A referendum is not an opinion poll for the benefit of statisticians.*"

2. Legal challenges in respect of referendums and their impact, including the 'McKenna Principles'

A significant number of submissions referenced the case taken by Patricia McKenna in 1995 (*McKenna v An Taoiseach (No. 2)* [1995] 2 IR 10) where she challenged the constitutionality of spending public money in a one-sided fashion in the 1995 Divorce Referendum. Following an appeal to the Supreme Court, Ms. McKenna won her case and the Court laid down the "McKenna principles" setting out the rights of Irish citizens to fairness, equality and democracy in constitutional referendums.

There are also references made to a number of other significant cases including *Coughlan v Broadcasting Complaints Commission* [2000] 3 IR 1, *McCrystal v Minister for Children and Youth Affairs* [2012] 2 IR 726, and *Jordan v Minister for Children* [2015] IESC 33.

Below is a selection of some of the points raised in the submissions in respect of these legal developments and their perceived impact on the conduct of referendums in Ireland.

A number of these submissions referenced the importance of the Constitution and of ensuring that the system for effecting changes accurately reflects the will of the people and is robust. In some cases submissions urge caution in suggesting any changes to the current regime.

Some submissions also cautioned against any change to the current system. A submission made by **Teresa McDonnell** (D1-P32IS4B3YQS), states: "*We are one of the few countries that hold Referendums to let the people decide on very important issues. I think the process should be left as it is.*" The submission continues: "*If groups decide, such as the Citizens Assembly that do not speak for me (sic). Then it will be the loudest voices are heard. It is marvellous to have a debate on any subject but when the majority of one voice at such a meeting overtakes a minority it is anything but fair. The majority/minority can be manipulated as I have observed is not a fair way for everyone to have their voice heard. Even this process of submitting our opinions is flawed as only certain people have computers or know how to use them. There is an option to write in but many people do not bother. These submissions will not give a true picture of how the country stands on any issue. Our Referendum process allows everyone to have a voice. Voting in Referendums in Ireland should be left as it is presently.*"

Donal O'Driscoll (D1-8U1DUF8E1J0Y) states: "*the constitution is to be complied with, not circumvented. Once elected a government of the day may see it as stumbling block and may have an interest in changing the Constitution of politician's own advantage. An increase in the power of legislature may be at the expense of a decrease in power of the people.*" The submission continues "*the McKenna principles, enunciated by the Supreme Court in 1995, give further details of the position of the Constitution, and the role of citizen in making changes, which will be necessary from time to time*".

A number of further submissions go on to describe the perceived importance of the McKenna principles in ensuring fairness during referendum campaigns.

Anthony Coughlan (D1-4TJW2JQXURBK) states: "*The key principle here was the Supreme Court's judgement that the expenditure of public funds in a one-sided fashion to obtain a particular result in Irish referendums was unconstitutional, undemocratic and inherently unfair to the country's citizen-voters*".

Mr. Couglan goes on to discuss the McCrystal case: "*The first breach of the McKenna principles by an Irish Government occurred in the 2008 Lisbon Treaty referendum. On that occasion the then Brian Cowen-led Government issued a booklet through the Department of Foreign Affairs with the title 'EU Reform Treaty' which it sent to all households in the State... These partisan Government "information campaigns" using public money unconstitutionally were not challenged in the Courts at the time of the 2008 and 2009 Lisbon Treaty or the 2012 "Fiscal Treaty" referendums. They were however successfully challenged by Mr Mark McCrystal in the 2012 Children's Rights referendum. On the eve of that referendum the Supreme Court ruled unanimously that the booklet, advertisements and web-site issued by the Government on that occasion were in breach of the Court's 1995 judgement in McKenna. There were factual inaccuracies in the Government information booklet such that it had to be withdrawn. In giving its judgement the Supreme Court strongly reaffirmed the McKenna principles. Irish Governments could certainly spend public money in informing citizens of the main arguments for and against particular referendum propositions, but any partisan presentation was a violation of citizens' rights to fairness, equality, and democracy on these occasions.*"

In a submission to the Assembly **Patricia McKenna** (D1-3473BCKLXXTZ) states: "*with regard to the criticism directed at the concept of a fair referendum process in Ireland it would seem from this analysis(earlier in the submission) that this criticism in predominately motivated by the belief or fear that equal treatment of both sides in a referendum campaign makes it more difficult to get proposed constitutional amendments adopted in referenda. However, this is not a convincing enough argument for rejecting such principles and as the result in the Good Friday Agreement referendum shows, people can decide to support change even when they have been given both sides of the argument. The assertion that the Supreme Court decision in McKenna wrongly inhibits the ability of the democratically elected Government to persuade voters on how they should vote overlooks the fact that in a referendum to amend the Constitution the People are sovereign. They are directly legislating and this sovereignty is undermined if those subject to their authority interfere with their decision. Furthermore, it is clear from a close analysis of the McKenna judgment that the claim that this decision constrains Government and political parties is exaggerated as the only constraint involved is in regard to the use of public funds to influence the voters' decision in a referendum and both logic and international best practice point to this being a just and fitting rule for any democratic State.*"

A number of submissions reference decisions made by the Courts since McKenna and outline their view that in some cases these cases have undermined the decisions taken by the court in 1995.

In his submission, **Colm Callanan** (D1-4YRWA3OXCUOR) references the Supreme Court decision in 2012 (2 IR 726) in connection with the Children's Referendum and states: "*the Supreme Court...sought to undermine [the McKenna] principles. In not intervening, it decided to ignore the illegal expenditure by Government, and to ignore misstatements made by the Government. The people are entitled to depend on the judiciary for the upholding of law*".

In his submission, **Kieran Fitzpatrick** (D1-OCTL96HX288E) calls for a number of amendments to the Referendum Act to *"better ensure that referenda are conducted in a fairer manner and in compliance with democratic principles"*. In order to achieve this he recommends the following:

"*1) Amend the Referendum Act to give explicit permission to a court to delay a referendum for a period of up to three weeks, and to issue an order to government to mitigate the effects of any violation of the McKenna-2 principles.*

2) When a McKenna-2 principles violation has been found by a court, the burden of proof should be reversed (and placed on the government), such that the government must convincingly show that the interference could not have altered the result.

3) Provide a system of costs protection for referendum challengers, such that an application can be made to the court for a costs-capping-order, such that any failed applications should not burden applicants with costs in excess of €1500, and such than any Cost Protection Cap (issued on foot of the grant of such a Costs-Cap, to pursue the substantial case) should not exceed €5000. Both caps should be made reducible by the court (in advance), to €100 for persons of low wealth. Additionally, third parties should be allowed to provide Amicus Briefs to the court19, without being threatened with adverse costs. Third party funding of legal actions should be permitted.

4) If the evidence of a breach of the McKenna-2 principles, only clearly emerges after a referendum vote, allow the courts to demand a rerun of the referendum, in cases where the vote in favour of amendment is less than 60% of the votes cast in the referendum.

5) Give express powers to the Referendum Commission to initiate the legal actions outlined above, of its own initiative, or on foot of complaints from the public."

3. Information provided to the Electorate prior to a referendum

<u>Key Concepts</u>

Many submissions mentioned the importance of ensuring that the electorate is well informed prior to voting in a referendum.

Patricia McKenna (D1-3473BCKLXXTZ) states: *"The People have a right to a fair and impartial source of information prior to voting on any proposed constitutional amendment. This source of information should be fully independent and voters should have full confidence in its impartiality and reliability."*

John F Colgan (D1-4YZ3WFRUYWFG) made a submission stating: "*Your assembly should consider recommending user-friendly information on the back of voting papers, to augment the vague legalese. The Constitution needs a total revamp, probably using the Whitaker Commission's report (ca 1996) as a starting point. Why? It encountered ca 19 changes made by Dail during the transition period, then a middle period of negligible change, followed by the current period of regular changes - its progress followed the "bathtub curve" known to reliability/quality engineers. The Assembly should consider how extensive changes might be made.*"

Anthony Coughlan, (D1-4TJW2JQXURBK) states: "*The Council of Europe's Code of Good Practice in Referendums states further that in order to encourage a well-informed citizenry on these occasions: "The best solution is for the authorities to provide voters with an explanatory text setting out not only their viewpoint or that of the persons supporting it, but also the opposing viewpoint in a balanced way, or to send voters balanced campaign material from the proposal's supporters and opponents." Clearly the Council of Europe's Code of Good Practice in Referendums should from now on be the template for good democratic referendum practice in Ireland as in other modern countries.* "

<u>The role and status of the Referendum Commission</u>

A number of submissions made reference to the role of the Referendum Commission with many calling for changes to its status and functions.

Hugh McDowell (D1-OM7B09OS0DLD) submits: "*without adopting a position in relation to the concept of an Electoral Commission, it is submitted that the establishment of the Referendum Commission as a permanent body would (sic) is a common-sense proposal and one which should be recommended by the Citizens' Assembly. Further consideration should also be given to expanding the powers of the Referendum Commission, increasing its budget, and allowing for greater flexibility in its membership so as to allow the Referendum Commission to procure the services and assistance of experts and professionals.*"

Anthony Coughlan (D1-4TJW2JQXURBK) argues that the original functions of the Referendum Commission as laid out in Section 3(1) of the 1998 Referendum Act, where one of its principle functions was "*to prepare and publicise a statement or statements setting out*

the arguments for and against the proposal", should be restored. In his submission he states: "*The principal democratic value of the Referendum Commission having to set out the main pros and cons of any proposed constitutional change fairly and impartially was that false, irrelevant or extraneous arguments on the pros and cons of the referendum proposition had necessarily to be excluded from the Commissions' advertisements and other information material.*"

This point is made in a number of other submissions, including by **Patricia Mc Kenna** (D1-3473BCKLXXTZ) who states: "*I would argue that if a permanent Referendum Commission with expanded functions that included the role of providing the Yes and No arguments was established, then, it would go a long way to upholding the interests of democracy and the constitutionally enshrined sovereign right of the people. This matter should be addressed before any further constitutional amendments are put to the Irish People.*"

John F Colgan (D1-4YZ3WFRUYWFG) made the following observation regarding material supplied by two referendum commissions "*(1) that on the abolition of capital punishment - which omitted mention of the cost of "life" imprisonment, and recidivist rates of the alternative to capital punishment, in its public information; and (2) that on the so-called children's referendum - The information provided on its web site was unfair; it failed to mention two existing Constitutional rights, namely (I) the right to free primary education and (ii) the right of any child attending any school in receipt of public funding, not to be indoctrinated in a religion and that these rights are met, in practice, by a denial of them, thus essentially confirming that the proposed changes would not be worth the paper they were written on, and were substantially politically motivated - "to appear to do something beneficial", hence the low turnout. *"

The Green Party (D1-985EYHK0N20D) notes in their submission that they believe "*an independent Electoral Commission should assume control of all matters relating to the proper running of elections and referendums. This includes managing the electoral register, ballot paper design, engaging in voter education, regulating posters and referendum literature, as well as measuring voter satisfaction with the referendum process.*"

4. Broadcasting and Social Media

<u>Broadcasting</u>

The Assembly received a detailed submission from the **Broadcasting Authority of Ireland (BAI)** (D1-1WW5UF2DY63B) which included a briefing note on the BAI's regulations in respect of coverage of referenda, together with copies of the most recent referendum guidelines, and the overaching regulations guiding news and current affairs coverage.

A number of submissions addressed these rules which apply to broadcasters during a Referendum, with many making suggestions for changes.

Colum Kenny (D1-KH1ZZ8OF45CK) suggests that *"The concept of fairness in public debates is under attack from right, left and centre, with people convinced that those on the other side of an argument are unreasonable and do not deserve to be heard as much as the righteous do (left, right or centre). Commercial interests also wish to see the constraints that require fairness and balance weakened. The Assembly should resist this strongly. The existing requirements for broadcasters and others to be fair during debates about political and constitutional issues are a vital protection for freedom of speech and for society. We need more not fewer means of facilitating the democratic process and keeping media excesses in check. The Citizens' Assembly should resist all calls to weaker existing requirements for fairness and balance."*

Hugh McDowell (D1-OM7B09OS0DLD) made a submission which deals at some length with some of the issues regarding how the rules regarding broadcasting are applied following the McKenna and Coughlan decisions. In his submission he discusses *"several necessary changes to the regime for broadcasters during referendum campaigns".* Discussing the *Coughlan* decision he states: "*It is submitted that the requirement of equal airtime is undesirable and an unnecessary intrusion on the democratic process by the legal system, for reasons set out below. It should be noted that, in respect of all of these concerns, it is at least arguable that RTE is in a separate and unique position. The constitutional right to free speech is less applicable where an organ of state is concerned. Furthermore, issues surrounding the guarantee of equality contained in the Constitution are of greater relevance in circumstances where RTE is the national broadcaster, receives a subvention from the State, and, critically, receives a large proportion from (sic) its income from the mandatory television licence fee.*"

A number of submissions also referred to the role that the media has more broadly in a referendum campaign. **Gearóid Duffy** suggests in his submission that the media has the ability to "*dictate the debate*". This can be done, he argues: *"where those we might admire or be led by are excluded from the debate"* and *"by exclusion of points of view and by limiting the public debate to well known articulate speakers and those who are willing to organise as groups, for the purpose of the Referendum".*

Gearóid R Ó Dubhthaigh (D1-7KGRJ5LQVK23**)** made the observation, as part of his submission that more recent debates have become embroiled in an national narrative repudiating the values held by previous generations and in continuing this narrative states: "*In this regard it should be noted that when the regulation of non-RTE radio stations was undertaken some decades ago, no provision was made for any Catholic orientated stations,*

even though about 90% of the public claimed to be Catholic at that time. Indeed the then minister with responsibility for broadcasting made it clear that the Catholic Church would never have a radio station. This was in stark contrast to other countries. For example Italy has almost 100 Catholic radio stations. Today there are two Evangelical Christian stations on my radio dial, but no Catholic, Church of Ireland or Muslim lead ones. All the rest are in one way or another commercially driven, dependent upon making all their programming interesting, entertaining and compliant with the need to service an advertising led outlook on life. It is through this commercial filter that the electorate are informed-misinformed or deflected from the core issue at the heart of any Referendum change proposed. Those locked out of the broadcast perspective feel disenfranchised, excluded and frustrated in their inability to articulate what is important to them, hearing their views continually misrepresented, and hence they feel misunderstood themselves." The submission also examines the BAI guidelines and proposes a number of potential improvements.

<u>Social Media</u>

Hugh McDowell (D1-OM7B09OS0DLD) included in his submission a section on the difficulties presented by the role that social media plays. In his submission he states: *"Consideration should be given to imposing reporting restrictions on social media operators in Ireland. This might include disclosure of the spending levels of various advocacy groups during referendum campaigns and, having due regard for the confidentiality of the political and marketing strategies adopted by these groups, some limited or summary-level disclosure of the nature of spending on social media and the types of 'targeted' advertising which might be employed. Notably, most major global social networks have a permanent corporate presence in Ireland, which may facilitate enforcement and compliance-monitoring by SIPO. Alternatively, an obligation could be placed on social media platforms to ensure that any advertising related to a referendum includes a clear statement of the identity of the person or group who paid for the advertisement."*

The Green Party (D1-985EYHK0N20D) notes an anomaly in advertising "*In Ireland, there is an anomaly in that paid political advertising is prohibited on broadcast TV and radio yet the same material can be advertised online. The Green Party believes that the Electoral Commission should look at mechanisms to regulate online political advertising, in line with broadcast media and print media, and to examine the activities of so-called "fake news" websites and "bots", especially during election and referendum periods.*"

5. People Initiated Referenda

The Assembly received a very large volume of submissions from an organisation called 'one-year-initiative' (1Yi) which advocates the launch of a new People's Assembly. It envisages that such an Assembly would meet for a period of one year to devise modern versions of Articles 47 & 48 that were in the 1922 Irish Constitution. It notes that as it stands, only the Government can initiate referenda to bring matters to the Irish People. These new mechanisms would "*put People-Initiated Referenda into the Irish Constitution and political system*".

Of these submissions the majority included the same text, which is quoted below. This particular submission is made by **David Lloyd** (D1-YWVCY5KF8DZ9):

"To whom it may concern, Article 6.1 of the Constitution which states: "All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good." However, the Irish people only get the opportunity to have the final say when the Government deems it necessary for them to do so using a referendum. As a result, the Irish Constitution does not provide an adequate mechanism for ongoing citizen participation in the legislative process with a view towards the shaping of national policy in accordance with the common good. This belief and desire was clearly illustrated when eighty three percent (83%) of delegates to the 2012 Constitutional Convention (Citizens' Assembly) voted in favour of people-initiated referenda with the appropriate safeguards. A change in Irish politics is necessary, a change where Irish citizens are the beating heart of Government. Therefore I propose the Citizens' Assembly considers the benefits of people-initiated referenda as a key part of a reinvigorated, renewed and fairer political system. Currently, only Government can initiate referenda in Ireland. This is a proposal to provide the Irish public with a mechanism to petition and initiate referenda also. This single mechanism will subsequently enhance and complement our representative democracy as well as introducing additional checks and balances. The Citizens' Assembly could decide a new mechanism for people-initiated referenda or it could recommend the implementation of the One Year Initiative (1Yi). This initiative is a specific process to achieve the objective of putting people-initiated referenda into the Irish Constitution. Firstly, a new Citizens' Assembly would be established. The assembly would have one year (hence the name 'one-year initiative') to formulate a mechanism for people- initiated referenda for citizen initiatives and citizen veto. After the year when the mechanism has been formulated, the mechanism would be presented to the Irish people to decide by referendum if they want the mechanism put into the Irish Constitution. I am proposing this approach to ensure citizens participate in both devising the mechanism as well as ensuring all citizens ultimately decide as to whether the mechanism is added to the Constitution. It's also important to note that people-initiated referenda are currently available to citizens in no less than one third of European countries such as Switzerland, Italy and the Netherlands. They also were available in the 1922 Constitution within Articles 47 & 48 prior to the introduction of the 1937 Irish Constitution. I sincerely hope you take this opportunity of doing something magnificent – indeed, unprecedented – for Ireland. Please see this exhortation for what it is: a chance to be remembered as another

assembly who strove to reform an ineffectual political system and, in doing so, to make history and enhance democracy for Ireland".

The Assembly also received a number of other submissions concerning the question- 'who initiates referendums?' Some suggested that such citizen-led initiatives may help to solve perceived weaknesses in representative democracy currently.

A submission made by **Alan Lawes** (D1-GSRINYVHOBLZ) states: *"Representative Democracy is not working not only in Ireland but all over the world".* The submission goes on to say: *"The Irish people didn't vote for a Bank Bailout costing Billions but that's what we got. The Irish people didn't vote for a health crisis with people dying on waiting lists and trolleys but that's what we got. The Irish people didn't vote for a housing and homeless crisis with people living in B+B's and dying on our streets but that's what we got."*

The submission outlines how a people initiated referendum could have avoided these issues stating: "*We need a system that holds all politicians account. We need a system of People's initiated referendums. This would give the Irish people the ability to call a referendum of their choosing, For example the Irish people could have called for a referendum on any of the above, stopping the giveaway of tax payers money to cover €Billions in Banks gambling debts and Billions to the Apple corporation. We would have the ability to call a referendum on building a massive amount of social houses to meet the homeless emergency".*

Colin Walsh (D1-37DI81ROIEAN) makes an observation about democracy in his submission stating: *"The system of democracy we operate at the moment is really a system designed to give the illusion of democracy, it has been captured since its inception by a small portion of society. We need to trust that the total citizenship of the nation should contribute to its governance in a meaningful way. People initiated referendums are positive first step on the path to true democracy".*

Barry Walsh (D1-Q8747Q3GJBCJ) echoes this opinion in his submission stating: "*as a member of society I deserve the right to exercise my opinion on matters that I feel are of national importance for my country and its people. It is only right and logical that all people of a society should have the means to be heard. People initiated referenda is one such mechanism that should be used by all who wish to do so*".

Eoin Ward (D1-R55XEFIVN2P8) recommends reinstating Article 48 of the 1922 Constitution stating: *"I am appalled at the recent governments attempts to degrade the Irish people, to label anything that doesn't fit their agenda as populism. I refer to the referendum on water infrastructure and disgusting attempts of the main political parties to privatize an essential right to life. Enough is a enough, IF anything has been proven in Ireland since our "Republics" foundation is that successive Irish governments and all of it's institutions are not acting and have never acted to protect its citizens. Indeed any honest man or women that stands up is beaten down. The political structures are broken and only accommodate the corrupt and the wealthy... Re- institute articles which deal with peoples Initiative in line with the aims of the 1 Year Initiative and Reinstate 48 campaign."*

Dave Lanigan (D1-AZ1CF9LNK93U) writes: *"Referendums should be able to be triggered by a petition of an agreed percentage of the population, for too long we are at the mercy of some representatives who have shown themselves unworthy of the trust we give them".* In

his submission he continues, *"Allow citizens an opportunity for self determination. Agree a percentage point to trigger a referendum that is neither too low to allow frivolous or lobbied referendums, nor too high to make achieving consensus too difficult."*

Hugo Wilhare's *(D1-DY565XOF2L2Z)* submission reflects this view, and continues stating *"I believe the citizens should have the right to call a referendum on any given subject, when the required number signatures are collected in order to do so. I also believe when that point is reached, the government CANNOT veto, block or water down the decision in any way. Nor should the government be allowed any attempt at changing the wording chosen by the citizens."*

The above thread continues in a submission made by **Jonathan Victory** (D1-QDJ5AIH0XN1Z) who states: "*There should be a referendum as soon as possible on allowing citizens to petition for referendums on legislative or constitutional change. Please have the Citizens' Assembly lay the groundwork for this by determining appropriate guidelines on the following issues; 1. The minimum number of signatures required to call a referendum 2. The geographical spread required from signatures e.g. from no less than 4 different constituencies 3. The maximum word count for proposals 4. A 'cooling-off' period before the referendum is held e.g. 6 months? 1 year? 2 years? 5. Allowing the Government the chance to form a counter-proposal addressing the concerns raised by petitioners to go through the Oireachtas instead (this can be accepted or rejected by the activists) 6. Requiring support from a threshold of Oireachtas members 7. Allowing for multiple-choice 'preferendums' so as to not limit voter options 8. A moratorium on repeating referendums within a specified timeframe e.g. 5 years? 9. Which matters should be exempt from this mechanism? e.g. Matters of national finance, any proposal that would restrict human rights etc. 10. A process for vetting petition signatures and the viability of initiative proposals*".

A submission by **Shay Gallagher** (D1-RMY05Q8JY3FV) states simply: *"We need a referendum on the one year initiative whereby the people can hold the government to account every year if they do not keep their promises."*

Dr. Roslyn Fuller (D1-Y1J7OCSUK6AW) proposes two possibilities for change to the current mechanisms: "*1) citizen-initiated referenda, whereby we specify that a certain percentage of the population must petition to hold a referendum, or 2) by institutionalizing the Citizens' Assembly as a permanent body with an ever-rotating (somewhat larger) randomly selected membership that prepares a referendum agenda based on the submissions made to it by ordinary citizens. While the second option sounds more convoluted, it may actually prove more workable (indeed this is very similar to how democracy worked in ancient Greece). Under this variant, the Citizens' Assembly, rather than the government, would prepare and call referenda.*"

Colm Callanan (D1-4YRWA3OXCUOR) states: "*Citizens Assemblies are sometimes set up to make recommendations to an Oireachats Join Committee. As has already been remarked this is a totally undemocratic course, shielding public representatives from their proper role. The views of Assembly members, and the reason for such views should be made known at the outset*".

The Green Party (D1-985EYHK0N20D) would not seem to agree with this opinion stating: "*The Green Party welcomes the positive role that the Citizens' Assembly, and its*

predecessor, the Constitutional Convention, have played in reforming the manner in which referendums are held in Ireland. We have actively and vocally supported both bodies as ways for citizens to deliberate and make recommendations for referendums on important and difficult issues affecting Irish life and politics. The work the Constitutional Convention did in deliberating marriage equality and that this Assembly has done on the Eighth Amendment stand out in particular."

Brett Hennig (D1-P9VPFC7KU2CM) recommends holding a Citizen's Assembly before every referendum. The submission states: "*we should not be governed by raw opinion but by considered opinion*". The submission goes on to say: "*This submission proposes that a law be passed requiring a Citizens' Assembly before every referendum in Ireland. The randomly selected, representative sample of citizens should meet and deliberate on the proposed topic and produce a considered, informed recommendation. This recommendation should then be widely publicised and distributed to every household before the referendum, and a brief summary of the recommendation should be handed out with the ballot paper at every voting booth.*"

James Smith (D1-0VOUOI3ESHNR) refers to Switzerland which holds regular referendums. In his submission he states: "*Switzerland is a neutral country with a policy of referendums, decentralised power in cantons and direct democracy and where the Parliament positions are voted by all their peers for the portfolio they will hold. They have regular referendums each year within a criteria e.g. 500,000 people must support a referendum to start the process. I hope the assembly has this detailed in full and it maybe one of the key speakers. In an Irish context, we do not trust those in power, we fear them. We must feel value when voting and confident in our voting processes with it overseen by third parties outside of Ireland due to the fact we are such a small local island with very few polling stations.*"

Donal Ó'Brolchain (D1-AH7UFCHS6TTF) made a submission regarding article 6.1 of the Constitution. In his submission, he notes: "*we are the source of all governmental authority and power in this Republic, as set out in Article 6.1 of our Constitution "Why is that the Dáil can "close the door" against the "guardians of the Constitution"? The Irish state has slipped, quite unselfconsciously, into being a 'referendum democracy'"* To widen the scope for the development of a "referendum democracy", I propose the number of signatures needed to have an issue presented to the people, directly, for decision in a referendum be set a 1% of the Total Valid Poll at the preceding general election. As the TVP is the means by which we give authority to TDs, it is important to keep the link between this well-established institution and the creation of a new organ of state, which is what bringing in direct democracy into our way of governing ourselves would mean. This link would reinforce the complementarity of direct democracy to our evolving representative democracy. A well-designed and carefully implemented form of modern direct democracy would promote greater understanding of issues which we face. "…Referendums are not redundant, as the liberal model of democracy claims, but can serve as important instruments for correcting misrepresentation in specific political issues..." I ask this Assembly to continue the movement to build direct democracy into our way of governing ourselves by recommending new organs of state that make it easy for us to assert our rights as citizens, rather than be governed on the basis that we only have the liberties of subjects.*"

In a submission **John Roden** (D1-U4QP5H7QQHU7) submits that "*that a referendum can be initiated by a group of citizens with a limited delay before it is presented to voters for approval. 2. That citizen-initiated referenda could be used (1) to amend the Constitution; (2) to propose a new law; (3) to prevent a Dail act being signed into law*".

The Green Party (D1-985EYHK0N20D) believes the Citizens' Assembly should deliberate and make recommendations on what adequate safeguards there should be for citizens initiatives in Ireland and provided an illustration. "*Examples of the possible safeguards described in that document include the number of signatures required to initiate a referendum, the kinds of topic that a referendum may be called on, restrictions on repeated referendums, and the requirement for a minimum turnout to protect against referendums passing through lack of interest. These are the kinds of safeguards that exist in other states that provide for citizen-initiated referendums. The Green Party is open-minded about the kinds of safeguards that may be necessary for citizen initiatives. We have produced this document to spark discussion here rather than to lead it in a particular direction.*"

6. Other Issues

The Assembly received submissions on a number of other topics including super referendum days, repeat referendums, campaign finance law and the Irish language. The sections below briefly outline the issues that emerged in these submissions.

<u>Super Referendum Days</u>

In his submission **Anthony Coughlan** (D1-4TJW2JQXURBK) poses the question, "*should several different referendums be held at the same time?*" In response he states: "*There seems no good reason why they should not be as long as none of the proposed constitutional amendments is particularly contentious or divisive*". However he goes on to qualify this by suggesting that "*if a proposed amendment is socially divisive it should be voted on its own*".

Margaret Clare Flynn (D1-Q9LDGM8ZCKAZ) made a submission regarding changes to the Constitution. She states: *"a number of changes must not be put to the people at the same time. Neither should changes be proposed at the same time as to any other matter or general, local or individual elections or other matters".*

Donal O'Brolchain (D1-HYMPVYMJXE5E)made a submission regarding referendum days "*Referendum days are a normal part of life for the 8m+ people who live in Switzerland. They do not have to wait for politicians to decide on issues to be put to a vote of all the people. There have been five referendum days in Switzerland since Damien English TD, Minister of State moved the Dáil motion setting up this Citizens' Assembly, eighteen months ago. Eleven issues were voted on. Of these eleven referendums, • 3 were mandatory; • 3 arose from popular initiative; • 4 were optional; • 1 was a counter-proposal.*"

<u>Repeat Referendums</u>

In his submission **Anthony Coughlan** (D1-4TJW2JQXURBK) poses the question, "*should repeat referendums be allowed on the same issue?*" In response he suggests that they should, "*but only after a decent interval of time has passed, say five years or more*". He goes on to say that *"for a Government to institute a repeat referendum on exactly the same item on constitutional legislation within a year or two of an earlier referendum in order to obtain a different result is an abuse of the democratic referendum process and shows a fundamental lack of respect for citizen-voters in their role as legislators."*

A submission made by **Michael Logan** (D1-B5IKEN2KB26Y) states: "*The government would not be permitted to put the same or substantially the same change without getting a new mandate from the electorate i.e. a General Election and no sooner than two years after the first vote.*"

Gearóid R Ó Dubhthaigh (D1-7KGRJ5LQVK23**)** made a submission entitled *"The Conduct of Referenda: Shutting Down Debate".* Part of the submission discusses how *"money dictates who gets heard and who gets complementary comments in the press*". Under this heading the submission states: "*A case in point here is that of the so called 'Children's Referendum'. Leaving aside the merits of the issue then under consideration, it was glaringly obvious that one side had all the resources, posters, etc. while the other side struggled against impossible odds to connect. Each political party and NGO interested in children's welfare had posters. One might say that they vied with one another to gain credit for getting this Amendment passed. However we ought not to forget that all these organisations were in receipt of state funding. Of course they said that none of this taxpayer's money was used in the campaign – taxes obtained from tax payers; both those inclined to support and those inclined to oppose the Referendum. But it is difficult to see how the overheads involved, the fund-raising staff, the media presence, etc. of these organisations was not underwriting, subsidising and making their campaigns possible. In the case of some political parties their major source of funding was the tax payer.*"

Hugh McDowell (D1-OM7B09OS0DLD) included in his submission a section on campaign finance in referendums. He discussed the current regulatory framework, areas of concern, and comparisons with the United Kingdom. He concludes the section with proposals for reform.

Dr. Roslyn Fuller (D1-Y1J7OCSUK6AW) suggests that *"if we want to ensure that referenda are reasonably fair (and I think we should want that), we should enforce an absolute ban on foreign contributions to referenda, and severely limit spending by profit-oriented entities (including umbrella associations)."*

Anthony Coughlan (D1-4TJW2JQXURBK) poses a number of questions in his submission about funding for referendum campaigns, as follows: "*should there be public funding for umbrella groups on each side as in the UK?"* and *"should foreign funding be allowed in referendums"*. In relation to the first question he notes a number of practical issues with implementing such an approach including: *"there may well be no such umbrella groups for some referendums, especially if the issues are non-contentious", "who would do the designating and the associated allocation of public money".* In relation to the second question he states: *"Foreign money should not be allowed to seek to influence or affect the votes of citizens as they legislate directly on an amendment to the Constitution, any more than TDs or Senators should be allowed to take bribes to vote in a particular way on Oireachtas legislation".*

The Irish Language

Dr Seán Ó Conaill (D1-AVE8ARDE0YFD) made a submission on issues of language and terminology.

With regards to the use of language he notes: *"The fact that our bilingual constitution offers us two versions of the text to examine and interpret is most welcome and, one would expect, contributes to a greater understanding of the true intentions of the people, should they choose to accept the proposed amendment."* The submission continues to discuss the use

of language. This portion of his submission concludes stating: *"Whilst our bilingual legal order presents us with a number of challenges, it gives us a unique opportunity to ensure that, in the sphere of constitutional amendments in particular, we can attain greater clarity and certainty through well thought-out and well drafted texts. Recent developments in Europe with regards to the status of Irish and an increased focus on Irish language legal training would mean that there would be no shortage of qualified lawyer linguists available to carry out this work."*

The submission progresses to discuss terminology use and notes: *"When we turn our attention to the future referendums the terminology used might present presents us (sic) with a problem. Using the most recent referendum as an example by terming the referendum the 'Marriage Equality Referendum' in the last referendum was the Government making a value judgement on those who did not intend to support the proposal? Is the title perhaps a loaded one?"*

Submissions made by Advocacy Groups and Professionals

The following submissions were made by Advocacy groups and academics.

In the table below, you will find the name of the person who made the submission and details of their organisation.

The third column in the table contains a reference number. You can use the reference number or person's name in the first column, to find the submission on the Citizens' Assembly website via the search function.

Find the submission you would like to view. Visit http://citizensassembly.ie/ and then select 'submissions' from the navigation menu.

You can also visit this short URL to take you directly to this page http://goo.gl/8o9ajz

If you are an organisation that made a submission to the Assembly and are not on this list please contact us at info@citizensassembly.ie.

Name	Organisation	Reference
Séamas de Barra	Alliance For The Defence Of The Family And Marriage	D1-JG82X93DVZQ5
Michael Nugent	Atheist Ireland	D1-KF04W5RRDTOL
Michael O'Keeffe	BAI (Broadcasting Authority of Ireland)	D1-1WW5UF2DY63B
Hugh McDowell B.L.	Barrister and author	D1-OM7B09OS0DLD
Vanessa Liston	CiviQ	D1-NMHDO2VGE9BP
Peter Emerson	Director, de Borda Institute	D1-C80B3HEIA6BF D1-K5LTNRJGSP66
Colum Kenny	Emeritus Professor, B.C.L., Dublin City University, Barrister-at-Law,	D1-KH1ZZ8OF45CK
Oliver Moran	Green Party	D1-985EYHK0N20D
Patricia McKenna B.L.	Former member of the European Parliament	D1-3473BCKLXXTZ
Donal O'Brolchain	Political Advocate	D1-YNWN6SBFNTBW D1-H4RT3SFTK1WA
John Baker	Political theorist	D1-P689K46JZI4A
Brendan Walsh	Retired Solicitor and former Sheriff of Dublin City	D1-5SPUSAFP6SJY
Brett Hennig	Sortition Foundation and new Democracy	D1-P9VPFC7KU2CM
Lelia O'Flaherty	The Council for the Status of the Family	D1-

		JPNCESPJMTXQ
Mark McAuley	The One-Year Initiative Campaign	D1-XG1GGUOJY21C
Anthony Coughlan	Associate Professor Emeritus in Social Policy, Trinity College Dublin	D1-4TJW2JQXURBK
Dr Seán Ó Conaill	University College Cork	D1-AVE8ARDE0YFD

Call for Submissions

Appeared in: The Irish Times, the Irish Independent, The Irish Examiner and the Mirror on 14th November 2017.

<u>English Text</u>

The Citizens' Assembly was established following a Resolution passed by both Houses of the Oireachtas. The Assembly is an exercise in deliberative democracy, placing the citizen at the heart of important legal and policy issues facing Irish society today.

The Citizens' Assembly is inviting submissions on the fourth topic the Assembly will consider, the manner in which referenda are held. Submissions can be made online or by post to Citizens Assembly, 16 Parnell Square, Dublin 1, to arrive no later than 22 December 2017.

All documents received by the Assembly secretariat may be listed on the website, in order of date received and displayed with a name/name of organisation, and the title of the submission.

For more information on the Assembly or to make an online submission visit www.citizensassembly.ie

<u>Irish Text</u>

I ndiaidh do dhá Theach an Oireachtais glacadh le Rún is ea a bunaíodh an Tionól Saoránach. Is ionann an Tionól is pléghrúpa daonlathach a chuireann an saoránach i gcroílár ceisteanna tábhachtacha dlí agus beartas atá roimh phobal na hÉireann sa lá inniu.

Fáiltíonn an Tionól Saoránach roimh aighneachtaí ar an ceathrú hábhar atá le breithniú ag an Tionól – An tslí a reáchtáiltear reifrinn. Is féidir aighneacht a dhéanamh ar líne nó tríd an bpost chuig An Tionól Saoránach, 16 Cearnóg Parnell, Baile Átha Cliath 1, tráth nach déanaí ná an 22 Nollaig 2017.

Is féidir doiciméid a fhaigheann rúnaíocht an Tionóil a liostú ar an láithreán gréasáin, de réir na ndátaí a bhfuarthas iad, agus a thaispeáint mar aon le hainm/ainm na heagraíochta, agus teideal na haighneachta.

Chun tuilleadh eolais faoin Tionól a fháil nó chun aighneacht ar líne a dhéanamh, téigh chuig www.citizensassembly.ie

Appendix E

Complete set of submisions recieved on fifth topic for consideration

Fixed Term Parliaments

Submissions to the Citizens' Assembly on the final topic for consideration

Fixed Term Parliaments

Full text of all Submissions Received

Contents

1. Submissions Process

The submissions process for the final topic considered by the Citizens' Assembly (Assembly) "Fixed Term Parliaments" was open from 8 January to 23 February 2018 at 12pm.

A number of steps were taken to encourage the public to engage with the submissions process. Advertisements were placed in a number of national newspapers on the 8 January 2018. These papers included: The Irish Examiner, The Irish Times, The Irish Independent and The Irish Mirror. A copy of the call for submissions is provided at Appendix 1.

The Assembly has over two thousand followers on Twitter (social network) and the platform was actively used to promote submissions, via the hash tag **#citizensassembly**.

In total, the Assembly received 9 submissions. Full details on the breakdown of these submissions are provided below.

Of the 9 submissions received, all were received online.
Of these, 8 have been published on the Assembly's website. In total 1 was not published. The reason for this is as follows:

- 1 submission was not relevant to the topic

2. Purpose of this Document

Given that there were fewer submissions received on Fixed Term Parliaments than all previous topics, on this occasion, it was decided to prepare a complete submissions document. This document contains all submissions received on the topic. In some cases those making submissions provided attachments. The material contained in these attachments is also provided in full.

Past Consideration of the Issue

Constitution Review Group
The Constitution Review Group chaired by T.K Whitaker considered the issue of fixed term parliaments in terms of the articles of the Constitution that would require amendment should fixed term parliaments be introduced. The articles affected would be Articles 13, 16 and 28. The relevant extracts from the Report of the Constitution Review Group 1996 are as follows:
- Article 13: The President
- Article 16: Dáil Éireann
- Article 28: The Government

Thirty-fifth Amendment of the Constitution (Fixed Period for the Duration of Dáil Éireann) Bill 2015
This Private Members Bill was introduced in Dáil Éireann in October 2015 by Deputy Shane Ross T.D., now Minister for Transport, Tourism and Sport.

The Bill passed the first stage in the Dáil but it did not progress any further.

Links to all these documents are available on the Assembly's website.

3. Submissions

A. Sergei Jouk (E1-92X8VYRRI9FU)

"I saw yesterday on PBS WNED channel the Focus on Europe show re the work of Irish Citizen's Assemblies and decided to submit my proposal on Parliament Work as an Article 4 of my recent internet publication: "Proposal for a 21st Century Constitution for Country with Mixed (Electronic Direct and Representative) Democratic System". This is a grassroots view on Universal Liberal/Libertarian Constitution that might be of interest to many young Europeans, Americans, and Canadians. I have no affiliation to any political party, organization or group. My only goal is to make my own contribution to growing e-direct democracy movement, start open discussion on Constitutional Changes among Generation Z, and return the real political power to the peoples of Free World. I am a Canadian Citizen, but I was born in the USSR, and this new Marxist and Fascist waves in the USA, Russia, and Europe makes me very angry. If you are interested in my proposal on improvement of western democratic system please go to Article 4 in the: http://issuu.com/sergeijouk/docs/constitution_21.docx/1 Please note that this article is very far from Canadian and US mainstream. That is, probably, the reason why neither Canadian nor US Libertarian Parties commented on it."

B. Peter Emerson (E1-MO783NG60LBV)

"Political stability would more likely be achieved were governance based on all-party coalitions. Such an administration would be more likely if it were accepted that binary voting is inadequate and often inaccurate, and that the will of parliament could more accurately be identified if decisions therein were based on preferential ballots analysed by a modified Borda count, MBC."

Attachment to Peter Emerson's submission:

FIXED TERM PARLIAMENTS

and

ALL-PARTY COALITION GOVERNMENTS

Many Irish citizens, not least those who wrote the 1996 Constitution Review, think that, "Democracy works on the basis of a decision by the majority." (*Op. cit*.: 398.) Hence the ubiquitous use of (simple or weighted) majority voting, not only in the Dáil but also in many other parliaments abroad. The Danes sometimes use plurality voting; the Norwegians have provision for two-round voting; while the Finns and the Swedes sometimes use serial voting when debating amendments.

Elsewhere, however, in nearly every elected chamber, nearly every decision is based on a binary ballot.[1]

Hence the supposed need for a majoritarian form of governance. In countries which enjoy a form of PR, this is often problematic.[2] Germany has already spent over 100 days in trying to form a majority or grand coalition. In 2017, the Dutch parliament needed over 200 days. One year earlier, it took the Spanish two elections and a total of 300 days and more. And so it goes on, with the world record held by Belgium which in 2011/11 required in excess of 400 days. Ireland too sometimes finds it difficult, as in 2016 when the Dáil spent 70 days in sorting something out.

If, however, democracy worked on the basis of a more inclusive decision-making process such as the modified Borda count, MBC, which of course is non-majoritarian, there would be no further justification for majority rule. In which case, the people could elect the parliament as at present, and then the parliament could elect the government, as with a matrix vote. (This was demonstrated two years ago in a joint de Borda/*Irish Times*/DCU public meeting: http://www.deborda.org/home/2016/12/10/2016-16-let-the-dail-elect-the-government.html). Such stability is maintained even in the event of a resignation or death of a minister, for the matrix vote count could then be resumed with any votes in favour of the said former minister being transferred as per the relevant TDs' preferences.

In such a political structure, with open and transparent elections for parliament in the country at large followed by equally open and transparent elections in the parliament for an all-party power-sharing coalition government, there could indeed be fixed-term parliaments. For as long as the Dáil operates within a majoritarian milieu, however, when so much can depend on the sometimes fickle behavior of a very small majority, moving to a fixed term might not be so wise.

Peter Emerson (currently in the Caucasus)

19.1.2018

Director, the de Borda Institute

www.deborda.org

Submission Ends

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[1] Democracy, however, was meant to identify that option which would cater for "the greatest good for the greatest number." The democratic process, therefore, should be not comparative but superlative. So the vote should be not dichotomous but multi-optional

[2] Some countries like Italy and Greece have a system of bonus seats… but that can mean that the final outcome of the PR electoral system is no longer proportional.

C. Cormac McKay (E1-0IO4FAWSE3DI)

"There definitely should not be any fixed term, the government of the day should be sackable! In fact there should be be a mechanism where the general public can call for the sacking of a government through the process known as recall election https://en.m.wikipedia.org/wiki/Recall_election"

D. Ken Byrne (E1-V4WDJ4QBSAP8)

"Dear Citizens Assembly I am in favour of a complete overhaul of the current parliamentary system, whereby both Seanad and Oireachtas needs to be modernised to make it a true democracy. Direct election to Seanad by the people, not a handout for party favours and all terms to be reduced to two years. We are controlled by the EU commission and parliment, we need to be more flexible nad nimble in our electiuons and dogmatic principles cannot be allowed to progress over a 5 year period, which are out of date within 18 months of election, Reduce term to 2 years."

E. Kieran Fitzpatrick (E1-XSD7IEMNY31H)

"One way of disrupting an effort to "run to the electorate" would be to mandate, that if a Taoiseach were to seek advantage by "running to the electorate", in the first 4 years of a five-year cycle, then the sitting Taoiseach could be excluded from re-appointment (or Tánaiste role) , for a period of 12 months post the subsequent election – this would provide a sufficient disincentive. This might be a viable option. But, I still don't see this reform to be a pressing issue."

Attachment to Kieran Fitzpatrick's submission:

Public Consultation on Fixed Term Parliaments

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Submission to the Citizens' Assembly

From: Kieran Fitzpatrick

Category of contributor - Member of the public

Deadline = no later than — February 2018.

Submissions may be uploaded at - https://www.citizensassembly.ie/en/Submissions/Fixed-Term-Parliaments/Make-a-submission/

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Fixed term parliaments-

The main argument in favour appears to be that a Taoiseach can fast-track an election, prior to the end of a maximum 5-year term, and can gain an advantage in doing so, and that disrupting that advantage would be fairer.

I contend that the advantage is not the most serious problem with Irish democracy; in fact, if one were to draft a list of problems, this would likely be at number 70, or so, on such a list.

The recent experience of Theresa May in the UK, when in seeking to take advantage of her lead in the polls, the move backfired, makes any Taoiseach less likely to seek to rely on such a perceived advantage.

One way of disrupting an effort to "run to the electorate" would be to mandate, that if a Taoiseach were to seek advantage by "running to the electorate", in the first 4 years of a five-year cycle, then the sitting Taoiseach could be excluded from re-appointment (or Tánaiste role) , for a period of 12 months post the subsequent election – this would provide a sufficient disincentive. This might be a viable option.

But, I still don't see this reform to be a pressing issue. We need to deal with issues around free-speech, white-collar-crime, inaccessible civil justice and other hurdles to accountability much more urgently.

Fixed term parliaments work in the USA, but that is because the Executive is NOT elected by the parliament. In a parliamentary system, the parliament is sovereign, and if it is not happy with a Taoiseach seeking an early dissolution of the Dail, then, it should be able to petition the president to NOT DISSOLVE the Dail (/Seanad), if it can appoint another Taoiseach (if it has the "numbers").

Article 13 of the constitution says –

2 1° dáil Éireann shall be summoned and dissolved by the President on the advice of the taoiseach.

2° the President may in his absolute discretion refuse to dissolve dáil Éireann on the advice of a taoiseach who has ceased to retain the support of a majority in dáil Éireann.

3° the President may at any time, after consultation with the council of state, convene a meeting of either or both of the houses of the oireachtas.

An harmonious interpretation of these provisions means that the President can Refuse to heed a Taoiseach's request to dissolve; in other words, 13.2.1 is attenuated by 13.2.2 and 13.2.3 .

Hence, the president can REFUSE to dissolve the Dail, if he/she forms the view that the Taoiseach does not enjoy the support of the majority, in seeking the dissolution.

Hence, the question boils down to whether, the President should enjoy that discretion.

If the Dail cannot elect a new Taoiseach, then an election will have to be called. If the Dail wants to dissolve, it needs to be allowed to dissolve, as there is no point having a Dail that no longer wants to remain in office.

During the 1980s, there was a controversy which spilled over into the 1990 presidential election, regarding the late Brian Lenihan snr's efforts to lobby President Hillary to not dissolve the Dail.

President Hillary did not think it improper to lobby him[3], and I entirely agree.[4] <u>The President, as a servant of the people, should be capable of being petitioned by all citizens, including opposition party TDs or leaders.</u>

I submit, that the current system is not sufficiently problematic to warrant the inevitable cost of reform, especially as there is no example in history where the President used his/her discretion inappropriately. (The President has few powers already, and should enjoy some role).

Perhaps, if the constitution were to be revised entirely, at some point in the future, certain provisions could be added, such as the 12-month limitation suggested above.

I therefore submit that this proposed reform[5] be put on hold.

Kieran Fitzpatrick   8 February 2018

Submission Ends

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[3] Logbook details controversial FF calls to Hillery', (May 28, 2012) Deaglan De Breadun The Irish Times, https://www.irishtimes.com/news/logbook-details-controversial-ff-calls-to-hillery-1.524382

[4] The Lenihan fiasco appears to have been a constitutional storm in a teacup, apart from the unnecessary later denial.

[5] I would mention, that the wording of the current draft amendment, as posted on the citizensassembly.ie website, appears somewhat perplexing and is incomprehensible to me as to its exact meaning.

F. Colm Mcloughlin (E1-VYV4SL4V1NHN)

"*I believe all parliaments should be for a maximum of 4 years. I believe all terms of parliament should be based on the mandate proposed by the elected candidates. This can be decided by negotiations for a coalition or support by independent individuals If it apparent that the mandate by the elected is not achieveable be it for any reason and at any stage during its lifetime the it should be mandatory they go back to the people for re-election. It's also my belief that all elected candidates should be accountable to the electors once elected and party alliegence takes a secondary role. If they rescind or fail to acknowledge their responsibilities to their communities then they should be demoted and a new locally elected candidate installed. Sincerely Colm McLoughlin.*"

G. Ingrid Masterson (E1-E9TG79K8JIBB)

"*As our Dail /Parliament is one of the weakest in Europe in its function of holding the Government to account, any measure that reduces the excessive power of the governing Party over the political PROCESS in Dail Eireann, including the power of the current Taoiseach, is to be welcomed. Allowing the Taoiseach to 'play around' with the timing of the next election, in choosing a date which favours his/her party, through focussing on their achievements and minimizing the exposure of their failures, grants an unfair and irrational advantage which distorts the reality of their contribution to the public good. The political PROCESS should be set in transparent structures which are totally impartial in order to fairly allow equal and undistorted judgement by the public of the merits of each party prior to an election. Therefore I would argue that one way towards ensuring this would be in setting the Dail term for a fixed period.*"

H. The Green Party (E1-NV4U43KCHJLO)

The submission included two documents, the first contains their submission and the second a proposed amended to the Constitution.

"*The Green Party supports the holding of a referendum for a fixed term Dáil, similar to the recent reforms in the United Kingdom, so that the date of general elections is not decided by the Taoiseach.*"

Green Party submission to the Citizens' Assembly on fixed-term parliaments

February 2018

Fixed-term Dáil

Article 13.2.1 of the constitution currently grants the Taoiseach the right to dissolve the Dáil and call a general election. This right is an absolute one so long as the Taoiseach has the confidence of Dáil Éireann.

The essence of this power is that it allows the Taoiseach to set the time of the next general election, but in political terms it enables the Taoiseach to call a snap election at time that suits the Government. It also provides the Taoiseach with a tool to keep Opposition parties (and even Government supporters) guessing.

This was demonstrated in the run-up to the 2016 general election, when the then Taoiseach was widely seen as toying with the power, as described by Fiach Kelly in the Irish Times[6]:

> There is one man who will ultimately decide the date of the general election. His confidant on that momentous call is a football.
>
> In his usual homespun, slightly mawkish fashion, Enda Kenny has been telling people who inquire after the timing of the poll about a football in the boot of his car.
>
> This football has a number of dates written on it and in his quieter moments, the Taoiseach kicks it into the air and waits for it to drop into his arms. The date which ends up looking up at him could be, at that moment in time, the date for the election.
>
> Kenny's yarn, told with a smile, deflects queries away from the question everyone in and around politics is asking: will the election be next spring, or will the Taoiseach cut and run after the October budget, and go to the polls in November?

The Green Party believes this absolute power of the Taoiseach to call election should be removed. The Taoiseach should not be able to call an early election simply to secure maximum political advantage or be able to toy with other TDs (and the electorate) in this way.

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[6] See for example this humour article by Fiach Kelly in the Irish Times: Fiach Kelly, "Enda's call: Should he stay or should he go?", Irish Times, 15 July 2015

We believe that the Dáil should sit for a fixed five-year term. Any early election should only come about if the Taoiseach has lost the confidence of the a majority of members of Dáil Éireann and the President does not believe that an alternative Government can be formed.

UK example

The Green Party supports the holding of a referendum for a fixed term Dáil, similar to the recent reforms in the United Kingdom, so that the date of general elections is not decided by the Taoiseach.

Under the UK system, the date of the next election is set five years in advance. However, the Dáil could still call for an early general election in one of two circumstances:

1. If a motion of no-confidence in the Taoiseach was passed and no new Taoiseach was elected within two weeks. In our proposal, the decision whether to call an early election would fall to the President after this two week period, as per the current constitutional arrangements. The President may decide an election is needed or may decide to give political parties in the Dáil more time to form a government.

2. If there was a vote of two thirds of TDs calling for an early election. This would allow for the calling of a early general election when there was substantial agreement that one was needed or desirable.

The example of the UK general election in 2017 gives a practical example of how a general election can be called early in this circumstance. In that case, an early general election was called with the agreement of the Conservative Party, Labour Party, the Liberal Democrats and the Green Party, representing more than two thirds of MPs in the UK parliament.

The Green Party are working on a draft bill to amend the constitution to enable a fixed-term Dáil along these lines, which we have submitted along with this document. However, this would need to be supported by more detailed legislation amending the current Electoral Act and setting out the exact way the date of the next general election would be decided after five years has passed.

Constructive vote of no confidence

The Green Party is opposed to a constructive vote of no confidence in a Taoiseach as an alternative approach to a fixed-term Dáil.

A constructive vote of no confidence is one where the Opposition is required to put forward an alternative Taoiseach before they can bring down the Government. Only if the

alternative Taoiseach has sufficient support can the government be replaced. This approach was recommended by the Constitution Review Group.

The Green Party is opposed to a constructive vote of no confidence in a Taoiseach as an alternative approach to a fixed-term Dáil because it addresses only circumstances where the Opposition causes an early election by bringing down the government. It does not address the unfairness of the power of the Taoiseach to unilaterally call an early election.

Attachment to Green Party Submission: Proposed Amendment to the Constitution:

THIRTY-XXX AMENDMENT OF THE CONSTITUTION (DURATION OF DÁIL ÉIREANN) ACT 2018

An Act to amend the Constitution.

WHEREAS by virtue of Article 46 of the Constitution any provision of the Constitution may be amended in the manner provided by that Article:

AND WHEREAS it is proposed to amend Article 13 and 28 of the Constitution:

Be it therefore enacted by the Oireachtas as

follows: Amendment of Article 13 and 28 of the

Constitution

1) The following Articles of the Constitution are hereby amended as follows:

   a) In Article 13—

      i)   section 2 of both the Irish text and the English text shall be repealed, ii)   the sections, the text of which is set out in Part 1 of the Schedule to
            this Act, shall be inserted before section 3 of the Irish text,
      iii)   the sections, the text of which is set out in Part 2 of the Schedule
            to this Act, shall be inserted before section 3 of the English text.

   b) in Article 28—

      i)   section 10 of both the Irish text and the English text shall be repealed, ii)   section 11 and 12 of both texts shall be numbered as section 10 and
            11 respectively.

SCHEDUE

PART
1

...

PART
2

2 1° Dáil Éireann shall be summoned and dissolved by the President in accordance with law and the provisions of this Constitution.

2° The President shall dissolve the Dáil upon a resolution supported by not less than two-thirds of the total membership of Dáil Éireann requesting him to do so.

3° The President may in his absolute discretion dissolve Dáil Éireann if the Taoiseach, for a period of not less than two weeks, has ceased to retain the support of a majority of the members of Dáil Éireann.

4° Unless otherwise provided for by this Constitution, the President shall not dissolve Dáil Éireann before a period of five years has passed from the date of the last general election for Dáil Éireann.

5° The President may at any time, after consultation with the Council of State, convene a meeting of either or both of the Houses of the Oireachtas.

Appendix 1: Call for Submissions

The Citizens' Assembly was established following a Resolution passed by both Houses of the Oireachtas. The Assembly is an exercise in deliberative democracy, placing the citizen at the heart of important legal and policy issues facing Irish society today.

The Citizens' Assembly is inviting submissions on the final topic the Assembly will consider, <u>Fixed term parliaments</u>.

Submissions can be made online or by post to Citizens Assembly, 16 Parnell Square, Dublin 1, to arrive no later than 12pm 23 February 2018.

All documents received by the Assembly secretariat may be listed on the website, in order of date received and displayed with a name/name of organisation, and the title of the submission.

For more information on the Assembly or to make an online submission visit
www.citizensassembly.ie

I ndiaidh do dhá Theach an Oireachtais glacadh le Rún is ea a bunaíodh an Tionól Saoránach. Is ionann an Tionól is pléghrúpa daonlathach a chuireann an saoránach i gcroílár ceisteanna tábhachtacha dlí agus beartas atá roimh phobal na hÉireann sa lá inniu.

Fáiltíonn an Tionól Saoránach roimh aighneachtaí ar an deiridh hábhar atá le breithniú ag an Tionól – <u>Téarmaí seasta Oireachtais.</u>

Is féidir aighneacht a dhéanamh ar líne nó tríd an bpost chuig An Tionól Saoránach, 16 Cearnóg Parnell, Baile Átha Cliath 1, tráth nach déanaí ná an 12pm 23 Feabhra 2018.

Is féidir doiciméid a fhaigheann rúnaíocht an Tionóil a liostú ar an láithreán gréasáin, de réir na ndátaí a bhfuarthas iad, agus a thaispeáint mar aon le hainm/ainm na heagraíochta, agus teideal na haighneachta.

Chun tuilleadh eolais faoin Tionól a fháil nó chun aighneacht ar líne a dhéanamh, téigh chuig
www.citizensassembly.ie

Appendix F

Recruitment of the 99 Citizen Members and Substitutes of the Citizens' Assembly: Note on Methodology

REDC

Recruitment of the 99 Citizen Members and Substitutes of the Citizens' Assembly

Note on Methodology

Following a competitive tendering process, RED C Research and Marketing Ltd was appointed on 22 August 2016 to provide a representative sample of 99 members and substitutes for the Citizens' Assembly.

The target set for the sample is to be representative of the population registered to vote, derived from 2011 Census data and QNHS population estimates. The demographic targets for the sample were as follows:-

	BASE TARGETS (Based on CSO 2011 and QNHS Pop. Estimates)
TOTAL	99
Male	48
Female	51
18-24	10
25-39	29
40-54	28
55+	32
ABC1	45
C2DE	48
F	6
Dublin	28
ROL	25
Munster	27
Conn/Ulster	19

As provided for in the Resolution approving the establishment of the Assembly, the 99 citizens and substitutes must also be registered to vote in a Referendum.

Policy decisions and exclusions

- A financial incentive was not offered to encourage participation. It is acknowledged that this may result in a group that have a stronger civic interest than a truly representative sample.

- As the Assembly will be discussing five separate predefined topics, it was agreed that members of advocacy groups on these topics (should they be randomly approached), will be excluded from membership of the Assembly. The rationale for this decision is based on the fact that interest groups will be invited to make presentations/submissions on the matters concerning them.

- With regard to the inclusion of politicians (should they be randomly approached), it was agreed that T.Ds and Senators should be excluded as they will have an opportunity to debate the issues when the Assembly reports to the Houses of the Oireachtas. Other politicians and elected officials were not excluded (should they be randomly approached).

- Those working in market research were excluded on the basis that they will have a high familiarity with the process and therefore this could potentially bias their position in the Assembly. Journalists were also excluded to ensure the confidentiality of the Assembly and to make sure no undue influence could be exerted either directly or indirectly on other potential Assembly members.

Methodology for identifying potential Members
- 99 full members and 99 substitutes were recruited in September/October 2016. RED C Interviewers recruited participants by cold calling door-to-door to households in their allocated DED area which was issued to them by RED C. No other method of recruitment was permitted.

- A detailed random multi-level approach was used for development of a representative sample frame that could be used for the recruitment of both full members and substitutes to the Assembly. The approach used was in line with best practice Market Research standards.
    - Sampling points were selected on a random basis in accordance with Census 2011 data and QNHS population estimates to ensure that they were completely nationally representative in terms of geography, i.e. ensuring we had the correct number of points in different locations based on population.
    - In order to do this, the first step of the process involved the stratification of the sample by region across 15 broad areas representative of the Urban/Rural split within the four main regions of Dublin, Rest of Leinster, Munster and Connaught/Ulster.
    - Using this area stratification, it was determined how many points would be needed within each broad area to be representative of the national population. Based on the number of points needed in each, individual points were then chosen by selecting every nth DED point from the census list for that area.

o Detailed demographic quotas were also set to ensure the sample was representative of all adults based on both Census 2011 and QNHS population estimates. Quotas were set based on gender, age and social grade based on current working status.

- In each DED area, interviewers were asked to recruit half of their participants to be full members and half to be substitutes for the Assembly. The quotas for substitutes closely matched those for the full members in each DED.

- Each interviewer was issued with a quota sheet from RED C which specified the quotas which can be categorised as follows:
  - DED area
  - Gender
  - Age breaks
  - Social class

- Interviewers selected a start address at random within the DED allocated to them. They then tried to complete interviews at every nth house within that specific location. Within each household a random selection process was used to identify the person to try and recruit if more than one person was available.

- Direct applications from members of the public to take part in the Assembly were not accepted, as the members of the Assembly had to be chosen at random to ensure a completely unbiased approach and be broadly representative of all citizens using demographic variables as reflected in the Census. Similarly, interviewers were not allowed to recruit friends or family together.

- For quality control purposes, validation checks were conducted after recruitment by RED C's Call Centre in order to verify participant's details, confirm that they had been recruited properly and that they were definitely willing to attend.

- During the recruitment and validation process each member confirmed that they were entitled to vote at a referendum, and confirmed that they have not been nor intend to be acting in an advocacy role for any interest or lobby group currently campaigning on any of the issues to be considered by the Assembly.

- An information booklet was provided to all participants on recruitment outlining key information about the Citizen's Assembly and briefly summarising what participation entails.