

**Opening Speech for Chair for Joint Oireachtas Committee on the Eighth
Amendment**

Wednesday, 20 September at 2pm

Introduction

Good afternoon everyone.

May I begin by expressing my gratitude to the Chair of the Committee, Senator Catherine Noone, and the members of the Joint Oireachtas Committee on the Eighth Amendment for the invitation to speak here today at the Committee's first public session. I would also like to take the opportunity to thank the Clerk of the Committee, Mr. Ted McEnery for his assistance in making the necessary preparations for today's meeting.

I am joined this afternoon by the Secretary to the Assembly, Ms. Sharon Finegan and the Deputy Secretary, Ms. Gráinne Hynes.

The Citizens' Assembly received its mandate from the Houses of the Oireachtas and it is therefore appropriate that I appear before you to discuss the Assembly's deliberation on the *Eighth Amendment of the Constitution*.

In these introductory remarks I aim to provide the members of the Committee with a clear account of the processes underpinning the work of the Assembly: how we approached the task and structured our work programme which led to the formulation of recommendations contained in the Report which was submitted to the Houses of the Oireachtas on 29th June 2017 (the Report).

In appearing before the Committee today I am anxious to provide you with any further assistance required as you commence your role.

Assembly Set-up

I was appointed Chair of the Assembly on 29 July 2016 and work began on the set-up of the Assembly in August 2016.

Following public tendering processes, suppliers were selected to provide the necessary services required to carry out the logistical arrangements required for an exercise such as the Assembly.

The Oireachtas Resolution stipulated that the Assembly would be made up of 99 members of the public chosen at random to represent the views of the people of Ireland, and be broadly representative of society as reflected in the Census, including age, gender, social class, regional spread etc. Red C Research and Marketing Ltd were contracted to provide this representative sample of 99 members and substitutes members.

A representative sample frame was developed by Red C. Detailed demographic quotas were set to ensure the sample was representative of all adults based on both Census 2011 and the Quarterly National Household Survey population estimates. This is the standard methodology used for establishing a geographical spread in a national sample. Full details about the recruitment of the Members are contained in Chapter 2B of the Report.

This process yielded a varied cohort of citizens young and old, who travelled from all corners of the country to attend each meeting. I am satisfied that the method used delivered a representative sample of modern Irish society, within the confines of what is possible with a sample size of 99 as stipulated by the Oireachtas Resolution.

Work Programme

Across five weekends between November 2016 and April 2017 we met to consider the first topic set out in the Resolution - *the Eighth Amendment of the Constitution*. Full details of the work which was undertaken are provided in the Report.

This topic is one of the most divisive and difficult subjects in public life in Ireland. The importance of structuring a discussion, which was balanced, fair and above all

informative and evidence based, was the guiding principle with which I undertook all of our work at the Assembly. I want to make clear to the Committee members here today that our work was at all times undertaken in good faith with these guiding principles.

I was assisted in devising the work programme by the Secretariat and the Expert Advisory Group which was established pursuant to the Oireachtas Resolution. The Expert Advisory Group had an integral role in advising me on the formation of a work programme and the selection of potential speakers.

I had initially hoped that the Assembly would be able to conclude its work on the Eighth Amendment over four weekends. However, in January 2017 it became clear to me that, given the complexity of the topic, in particular in relation to the law, it would be necessary to dedicate a further weekend solely to the preparation of recommendations. As Chairperson, I wanted to be satisfied that the Members would have all of the required information to allow them to make fully informed decisions on the core issue for their recommendations to the Oireachtas.

The Resolution provides that our recommendations must be “determined by a majority of the votes of Members present and voting”. I also wanted to be satisfied that enough time would be dedicated to exploring a ballot paper and incorporating Members input. I wanted to ensure the voting process was not rushed in a single half-day session. For these reasons I decided to dedicate a fifth and final weekend to the issue.

We began our consideration of this topic by looking at the current position with regard to the Eighth Amendment: tracking the history of the development of the law in Ireland and considering the current legal situation arising from Article 40.3.3. and the Protection of Life During Pregnancy Act 2013 and how this is implemented by the medical profession and by the HSE Crisis Pregnancy Counselling Service.

In the second and third weekends, we responded to the requests of the Members and provided the information to them based on facts and expert testimony.

Specifically, Members were given expert testimony on fatal foetal abnormalities, rape, international abortion trends and the experience in the UK, including the experience of Irish women who travelled to the UK. The Members also received a number of presentations on how laws are made and changed.

At the beginning of the fourth weekend, before we heard directly from women affected by the Eighth Amendment and Advocacy Groups, Members were also given information on the legal implications of the Eighth Amendment in medical and parental decision-making, beyond the termination of pregnancy, and any rights of the unborn, beyond the right to life. The final expert presentation addressed the legal consequences of the various options in relation to the Eighth Amendment: retention, repeal, or amendment.

Subject to an exception in one area, each speaker was chosen on the basis of his/her expertise and my view of his/her ability to give impartial and relevant fact-based information to the Members. The exception relates to the ethical perspectives, in respect of which it was considered appropriate that both pro-life and pro-choice perspectives were presented to the Members, after they had been presented with an overview of ethical reasoning. The Members heard ethical arguments relating to the moral status of the foetus and reproductive autonomy.

This factual grounding provided to the Members was given without commentary as to the perceived advantages or disadvantages of the Eighth Amendment. By approaching the work programme in this way, and by hearing from neutral expert witnesses, Members were able to listen to the content presented and were not burdened with having to consider if the information they were hearing was driven by subjectivity or personal views.

Each speaker was chosen because of their expertise and their impartiality on the topic. The quality of the material put before the Assembly is self evident. All of that material is available in Appendix E of the Report and is available on the Assembly website.

I believe that the consideration given by the Members of the Assembly is unique on this topic in an Irish context. The Assembly is an exercise in deliberative democracy, meaning that, I, as Chairperson, listened to the requests of my fellow Members when devising our work programme. Throughout the weekends, we had open feedback sessions when we heard from the Members about what they wanted to hear to allow them make informed decisions about the Eighth Amendment of the Constitution. What a Citizens' Assembly format allowed us to do was to respond to the needs of the Members, a representative sample of ordinary members of Irish society, about what questions they wanted to have answered and who they wanted to hear from.

Role of Advocacy Groups and Personal Stories

As I mentioned earlier, the remainder of the fourth weekend was dedicated to hearing testimony and opinions brought to the Assembly via the submissions process.

We began by hearing the personal stories of six women directly affected by the Eighth Amendment. In listening to their testimony the Assembly had the benefit of hearing real lived experiences across a spectrum of circumstances. The women were first selected from women who wrote directly to the Assembly. In order to ensure that a broad range of circumstances was presented, in relation to one situation, a representative group was contacted to assist with the identification of women who might be willing to tell their stories. The selection of the voices to be included in this session was done with the assistance of professional guidance, and full details of this process are included in Chapter 3 of the Report. Transcripts of each of the recordings are also included in Appendix E of the Report, and they are also available on the website.

The final day of the fourth weekend was dedicated to hearing from advocacy and other representative groups who had made submissions to the Assembly. We extended the proceedings on that day to allow the Members to hear from as broad a range of groups as possible. However, in spite of this extension, because of the

large number of groups which sought to participate it was inevitable that some groups were going to be disappointed, when I made the selection about who to invite. In making the decision I took into account the views of the Members and was further informed by the following:

- The extent to which the submissions provided by a group addressed the Eighth Amendment of the Constitution
- The extent to which the submissions covered new material not previously considered by the Assembly;
- The need to ensure balance on either side of the debate, on the day, over the course of the weekend and across the work programme of the Assembly in its entirety.

In total 17 Groups were invited and accepted an invitation to address the Assembly. Each group was invited to prepare a 5 page paper, to make a presentation to the Assembly and then to make themselves available for a questions and answers session with the Members. Individuals representing the groups were permitted to have an additional representative join them on stage for the questions and answers session if they so wished.

Submissions

Another important aspect of our work programme was the submissions process.

We witnessed an unprecedented level of public engagement, receiving in excess of 13,000 submissions both online and by post.

We took a number of steps to assist the Members to meaningfully engage with the submissions including;

- Publishing all of the submissions received on the Assembly's website.
- Prioritising the publication of the submissions received by advocacy groups, representative groups and academics,
- Preparing a random sample of all of the submissions received and setting aside dedicated time on the agenda to consider these; and

- Highlighting for the Members all of the personal stories received to allow them to have access to first hand perspectives on the Eighth Amendment;

The submissions played an important role in contributing to the work programme of the Assembly- we had a session dedicated to their discussion and much of the fourth weekend was based on them.

I am satisfied that every effort was made to facilitate access of the submissions and the feedback from the Members has been very positive in this regard.

Voted Recommendations

I will now focus on the recommendations of the Assembly as contained in my Report submitted to the Houses of the Oireachtas on the 29 June 2017.

It is important to note that the issues which the Members voted on were framed by reference to Article 40.3.3° rather than the terminology used in the Resolution of the Oireachtas "*the Eighth Amendment of the Constitution*".

Due to the inextricable link which the Thirteenth and Fourteenth Amendments have with the Eighth Amendment, which are in relation to the right to travel and the right to information respectively, it was felt that it was more accurate to discuss Article 40.3.3°, rather than the Eighth Amendment in isolation.

The Assembly's recommendations were determined through four distinct Ballot Papers, which were sequential in nature; meaning that later ballots were dependent on the outcome of earlier ballots. Depending on the votes on earlier ballots, not all later Ballot Papers were going to be reached.

In summary, the Citizens' Assembly made the following recommendations by a majority vote:

- That Article 40.3.3° should not be retained in full. (87%)
- That Article 40.3.3° should be replaced or amended. (56%)
- That Article 40.3.3° should be replaced with a constitutional provision that explicitly authorises the Oireachtas to legislate to address termination of

pregnancy, any rights of the unborn, and any rights of the pregnant woman.
(57%)

Put simply, the Members voted that they wanted to remove Article 40.3.3° from the Constitution, and for the avoidance of doubt, to replace it with a provision in the Constitution, which would make it clear that termination of pregnancy, any rights of the unborn, and any rights of the pregnant woman are matters for the Oireachtas. In other words, it would be solely a matter for the Oireachtas to decide how to legislate on these issues.

The Assembly then made further recommendations about what should be included in this legislation. Specifically, the reasons, if any, for which termination of pregnancy should be lawful in Ireland, as well as any gestational limits that should apply, were addressed.

64% of the Members recommended that the termination of pregnancy without restriction should be lawful with that voting also detailing the gestational limits, if any, which should apply as set out in page 36 of the Report.

In addition, a majority of Members recommended 12 reasons, for which termination of pregnancy should be lawful in Ireland and recommended the gestational limits, if any, in respect of each of those reasons. Those reasons and the details of the majorities which supported them are as follows:

- Real and substantial physical risk to the life of the woman (99%)
- Real and substantial risk to the life of the woman by suicide (95%)
- Serious risk to the physical health of the woman (93%)
- Serious risk to the mental health of the woman (90%)
- Serious risk to the health of the woman (91%)
- Risk to the physical health of the woman (79%)
- Risk to the mental health of the woman (78%)
- Risk to the health of the woman (78%)
- Pregnancy as result of rape (89%)
- The unborn child has a foetal abnormality that is likely to result in death before or shortly after birth (89%)

- The unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth (80%)
- Socio-economic reasons (72%)

In an additional question on the Ballot Paper, 72% of Members recommended that a distinction should not be drawn between the physical and mental health of the woman.

It is essential that the Oireachtas understands the backdrop to these decisions and the context in which those recommendations were made in this very complex area of law and in particular the ultimate formation of the ballot papers. I provide full and detailed explanation on this in Chapter 1 of the report. In addition transcripts of the weekend's proceedings are provided in an effort to be as transparent and open about the manner in which we went about our business.

Ancillary recommendations

I would like to briefly say something about the ancillary recommendations of the Assembly. I know that this committee has decided to dedicate one module of its work to their consideration.

In feedback over a number of meetings the Members made clear that they wanted to see wider policy issues, as distinct from just legal issues, reflected in the recommendations of the Assembly. At the final weekend of the Assembly's consideration of the Eighth Amendment, Members were invited to write down their comments and suggestions on further recommendations. Members were informed that these would be included and reflected as recommendations in the final report. Again in the interests of transparency, the report provides the full verbatim text of these comments from the Members and this text is included as Appendix B of the report.

The five ancillary recommendations of the Assembly based on Member feedback, are provided on pages 37 and 38 of the Report and I would be happy to discuss these further with the Members of the Committee.

Conclusion

I believe the legitimacy of the Assembly's recommendations is built upon the robust process applied to our consideration of the topic.

I am aware that the results caused surprise across some sections of society but I truly believe they were reached not by chance or accident but following a thorough and rational thought process each Member undertook as they stepped up to the ballot box.

Each vote was underpinned by expert evidence received from twenty-five professionals across eighty hours of active Assembly participation. This in turn was supplemented by hours of preparatory work on behalf of the Members reading papers and submissions.

They heard from advocates representing seventeen groups on both sides of the debate argue their case. They also heard, first hand, the personal stories of women who have been impacted by the Eighth Amendment. The six women's crisis pregnancies resulted in different outcomes, but each felt that the Eighth Amendment impacted upon their decision-making.

All of this material contributed to the recommendations you have before you today.

I would encourage each member of the Committee, the wider Oireachtas membership and the public with an interest in this topic to review the footage of the questions and answer and feedback sessions at the April weekend when the recommendations were made.

It is evidence of the diligence with which the Members approached the task, and the thoughtful and thought provoking and considered questions they asked of our experts, advocacy groups and Secretariat alike. They took to their role with the utmost seriousness and dedication and carried it out with exceptional maturity, compassion and respect which is not always present in this debate.

In the circumstances, I urge the members of the Oireachtas to view their recommendations with respect and due consideration.

Before I conclude this section, I do want to emphasise one point: the Assembly is an exercise in deliberative democracy, which places ordinary citizens into consideration of the important legal and policy issues facing Irish society today.

However, the recommendations which the Assembly has made are just that – recommendations. The Assembly does not, cannot and should not usurp the role of elected members of Dáil and Seanad Éireann. As Chair of the Assembly I do not underestimate the difficult task facing you as politicians in considering this topic further.

One of the most fundamental aspects of the Eighth Amendment is that it was introduced by the people at referendum – the only way in which our Constitution, Bunreacht na Éireann, can be changed.

The Constitution is the foundation of our legal system. Under the Constitution, the people are sovereign. The people are the ultimate decision makers in terms of what provisions are inserted in or removed from our Constitution and what changes are made to it.

I would like to take this opportunity to wish the Committee well with its work and to say that both I and the Secretariat are at your disposal if we can be of any assistance as you continue your work.

Before concluding I would like to take this opportunity to formally express my gratitude to the Members of the Assembly who willingly gave up a Saturday in October and a further 5 weekends of their busy lives from November to April to participate in the Assembly's consideration of this difficult topic.

Finally, I look forward to engaging with you during this session on the work carried out by the Assembly on the Eighth Amendment.