



# Referendum Commission

Report on the Referendums on the

*Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011*

*and the*

*Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011*

## Foreword

Pursuant to Section 14(1) of the Referendum Act 1998, I hereby present to the Minister for the Environment, Community and Local Government the report of the Referendum Commission on the performance of its functions in respect of the referendums on the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011 and the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011.

On 5 September 2011, the Minister established the Referendum Commission on the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011 by order to carry out the functions conferred on it by the Referendum Act 1998, as amended by the Referendum Act 2001, in respect of the referendum.

On 13 September 2011, the Minister established the Referendum Commission on the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 by order to carry out the functions conferred on it by the Referendum Act 1998, as amended by the Referendum Act 2001, in respect of the referendum.

Following my nomination by the Chief Justice, I became Chairman of each Commission, the other four members being the specified *ex officio* appointees. While there were legally two separate Commissions with separate budgets, the Commissions were able to effect efficiencies in performing their functions as there was considerable overlap and the timetable for both was the same. To reflect this reality, it is proposed in this report to use "the Commission", in the singular, although in reality there were two Commissions at all times each dealing with its own statutory remit. The work of the two Commissions on the two referendums is covered in this single report.

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Retired Judge of the High Court  
Chairman  
Referendum Commission

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# Chapter 1 Introduction

## *Establishment of the Referendum Commissions*

Under the Referendum Act 1998, on each occasion that a referendum falls to be held, the Minister for the Environment, Community and Local Government may, at his discretion, establish a Referendum Commission. A Commission is established by means of an Establishment Order made by the Minister in respect of the proposed referendum. The Act of 1998 provides that the Chairman of the Commission shall be a former judge of the Supreme Court or the High Court or a judge of the High Court.

On 5 September 2011, the Minister made an Establishment Order in respect of the referendum on the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011. Dr Bryan McMahon, a retired judge of the High Court, accepted the nomination of the Chief Justice to act as Chairman of the Referendum Commission established by the Minister.

On 13 September 2011, the Minister made an Establishment Order in respect of the referendum on the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011. Dr Bryan McMahon, also accepted the nomination of the Chief Justice to act as Chairman of this Referendum Commission.

The other, *ex officio*, members of the Commission are:

- Mr Kieran Coughlan, Clerk of Dáil Éireann,
- Ms Deirdre Lane, Clerk of Seanad Éireann,
- Ms Emily O'Reilly, Ombudsman,
- Mr John Buckley, Comptroller and Auditor General.

On 26 September 2011, the Minister for the Environment, Community and Local Government, by order, appointed Thursday 27 October 2011 as the date on which the referendums would be held.

## *Role of the Referendum Commission*

Since 2001, the Commission's primary role has been -

- a) to prepare one or more statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate;
- b) to publish and distribute those statements in such manner and by such means including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned;

- c) to promote public awareness of the referendum and encourage the electorate to vote at the poll.

The Commission is satisfied that it has fully performed that role and has remained independent and neutral throughout the process. The Commission wishes to acknowledge, however, that there is some continued public misapprehension as to its role. Some still believe that it is obliged to or ought to advance the “yes” and “no” arguments in relation to each referendum proposal. A change in the law in 2001 no longer permits the Commission to represent the issues in this manner.

#### *Funding of the Referendum Commission*

The Commission in respect of the referendum on the Twenty-Ninth Amendment of the Constitution (Judges’ Remuneration) Bill 2011 was allocated a budget of €0.75 million by the Department of Justice and Equality. The Commission in respect of the referendum on the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 was allocated a budget of €1.5 million by the Department of Public Expenditure and Reform bringing the total budget to €2.25 million for the joint information campaign. This compared with a budget of €5 million for the first Lisbon Treaty campaign and €4.2 million for the second Lisbon Treaty campaign.

An audit of the accounts of the Referendum Commission confirmed that proper financial procedures were followed. The audit identified no weaknesses in the Commission's systems of control and confirmed that proper books of account were kept. Procedures for procurement were also found to be in accordance with Department of Finance Public Procurement guidelines.

As a result of its campaign strategy, and the short period available for the campaign, the Commission ran a very cost-effective campaign which resulted in the return of nearly €1 million of its budget to the funding Departments. A breakdown of the expenditure incurred in the referendum campaign is given in Appendix 1.

The secretariat to the Referendum Commission was provided by staff from the Standards in Public Office Commission and the Office of the Ombudsman. These staff costs were borne by the Office of the Ombudsman and the Standards in Public Office Commission and were not paid out of the budgets for the information campaign. Neither the Chairman nor the other members of the Referendum Commission received any payment for Commission work.

## Chapter 2 Information Campaign Strategy

### *Procurement*

The Referendum Commission has no ongoing legal existence and only comes into being once established by Ministerial order. During 2010 there were reports that there might be referendums in early 2011. Having regard to previous experience relating to the late establishment of Referendum Commissions, the four "ordinary" or *ex officio* members of the Commission and the Secretary designate of the Commission decided that it would be appropriate to put provisional arrangements in place to facilitate the smooth running of any future referendum campaign having regard to the provisions of EU Regulations and Directives relating to procurement. As it would be likely that any future Referendum Commission would require the services of marketing/project management/communications consultants to advise and assist it in the planning and execution of a public information advertising and media campaign, and as there was no contract then in place, it was decided that the Office of the Ombudsman would publish a Prior Information Notice which would have the effect of reducing the period contractors would have to tender for the service if such tenders were sought. Accordingly, on 26 October 2010, the Office of the Ombudsman published a Prior Information Notice.

Following the general election in February 2011, it became apparent that there would be a number of referendums during 2011 and it became clear that these would likely be held in conjunction with the Presidential Election on 27 October 2011.

Therefore, on 5 August 2011, the Office of the Ombudsman, on behalf of possible future Referendum Commissions, published on eTenders a request for tenders for a communications consultant/project manager. Closing date for receipt of tenders was Friday 2 September 2011. If a future Referendum Commission decided to distribute an information guide to households, it could revive a 2009 contract with An Post for that purpose. Accordingly, it was not necessary to tender for this service.

After the Minister established the Referendum Commission in respect of the referendum on the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011 and in respect of the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011, with the same Chairman, it was agreed to run a joint media campaign giving equal coverage to both referendums. Following a selection process, a consortium led by Murray Consultants (public relations), and including Chemistry (advertising) and Carat Ireland (media planning/buying), was selected to assist the planning and execution of the public information advertising and media campaign.

### *Strategy*

The time available for the information campaign was extremely short. This was not a situation of the Commission's choosing, but reflected the reality that there was a very brief period between the passage of the final proposals through the Oireachtas and polling day. For example, in the case of the Oireachtas Inquiries Referendum, the final wording only became available on 23 September, less than five weeks before polling day.

The strategy adopted was to be centred on the Guide to the referendums, delivered to all voting homes in the State, in which the Commission sought to give a general explanation of

the referendum proposals. The Guide gave the main points of the proposals, and for those who wanted more detailed information there were fuller explanations of the proposals available on the Commission's website, information that would be posted to voters on request.

This Guide was supported by an advertising campaign giving very basic headline accounts of what the referendum proposals were about, and directing people towards the Guide and website for more information. A third important element was media engagement whereby the Chairman and other Commission spokespersons gave a large number of interviews to national and regional radio stations to explain the referendum proposals.

The aim of the strategy was simple but ambitious: to try to ensure that, despite the tight timescale, voters would know by 27 October that the referendums were taking place, would understand the two referendum proposals and would recognise the importance of using their vote.

The Commission decided that it would:

1. Prepare and distribute to all voting homes a Guide to explain as factually and clearly as possible what the electorate was voting on in the two referendum proposals to change the Constitution.
2. Publish this material as well as an extended explanation of the two referendum proposals and other background material on a dedicated website.
3. Hold a press conference to announce its plans.
4. Run a national advertising campaign on television, radio, press, and online, with a variety of executions and texts, to give headline detail of the two referendum proposals and to direct voters to where more information could be obtained.
5. Offer spokespeople to be interviewed about the role of the Commission and the content of the proposals to national and regional radio. The Chairman of the Commission did two interviews on RTE's Morning Ireland programme, a lengthy interview on the Pat Kenny Show and was also interviewed on several regional radio stations.
6. Target younger voters by taking advertising on a range of popular websites including social networking sites such as Facebook.
7. Focus the advertising message in the final week on encouraging people to vote.

## **Chapter 3 The Commission's Information Campaign**

### **The Guide for all homes**

The Commission determined that, to fulfil its mandate, direct communication with every voting home should be a central part of the campaign. This is because research carried out by the last Referendum Commission after the 2009 Lisbon Treaty campaign referendum showed that 77 per cent of voters said they recalled receiving the Guide on the Lisbon Treaty, with 81 per cent of these saying they had read all or some of it. Some 57 per cent had found this Guide to be helpful. The Commission therefore decided to produce a short guide consisting of 12 A5 pages.

In line with the Official Languages Act, the Guide was published in English and Irish under the same cover. It was published in Braille and audio tape for persons with a sight disability and these versions were distributed through the National Council for the Blind. In addition, the Commission produced a special sign language video of the handbook for distribution via DeafHear and the Irish Deaf Society. This video was also available on the Commission's website.

The Commission decided, on cost grounds, to deliver the Guide through An Post's Publicity Post Service rather than using the more expensive method of having a copy of the Guide addressed and posted to each individual voter on the electoral register.

Given the extremely short timescales, drafting, translating, designing, printing and distributing the Guide to every home in the State posed a significant challenge. The latest date on which distribution of the Guide could begin if there was to be any prospect of its being delivered to all homes in time was 10 October. For this to happen it had to be written, translated, checked legally, designed and sent to the printers by 28 September, just two working days after the final wording of the Oireachtas Inquiries referendum became available.

Distribution of the Guide began on Monday 10 October, a process which the service provider - An Post – expected would be completed at the latest by Friday 21 October – only six days before polling day. In the event some Guides were not delivered by this date and a small number of voters reported that they never received the Guide. Our post-campaign research, referred to later in this report, bears this out.

Had time permitted, delivery of the Guide would have taken place earlier and these issues would probably not have arisen. It is the Commission's view that the time provided to the Commission to fulfil its mandate was highly unsatisfactory in this regard.

## **Website**

The Commission established a dedicated website for the two referendums called [www.referendum2011.ie](http://www.referendum2011.ie). The website was available in English and Irish and complied with all of the best practice accessibility standards.

The core content of the website was the text of the printed Guide which explained the two referendum proposals. More detailed background information relating to both was also published on the website.

The Guide was available to download off the website.

Additional features included a link to ‘check the register’ website so that a voter could check to see if he or she was registered to vote.

The site had over 55,500 unique visitors and 235,724 page views in the course of the campaign.

## **Other means of obtaining information**

The Commission Secretariat, which was provided by the Secretariat of the Standards in Public Office Commission, was available by phone or email to answer any queries raised by members of the public. In addition to the Referendum Commission's own dedicated phone number and email address, the Commission established a lo-call number. Voters could call either of the phone numbers, or email the Secretariat, if they wanted a copy of the Guide posted to them, or if they wanted further information. The Commission advertised these numbers and the email address in the Guide sent to all homes. Unlike in previous referendums, the Commission managed the lo-call phone line directly, responding immediately to queries raised.

A total of 525 phone calls, through the direct line and lo-call number, and 200 emails were received in the course of the campaign. This relatively small number is possibly due to the fact that the radio, TV and print advertising directed people to the [www.referendum2011.ie](http://www.referendum2011.ie) website and the content of the proposals was relatively straightforward to understand. It is also possible that because of the absence of any serious debate in the Oireachtas or in the media, and bearing in mind the lively Presidential campaign being conducted at the same time, the public had not become engaged with the issues until shortly before the voting date.

Just 12% of calls or emails requested a copy of the Guide to be posted to them. 30% were from people who were seeking further information on the proposals and 43% were voters enquiring about polling times, eligibility to vote and how to check the register.

## **The Advertising Campaign**

The Commission’s advertising campaign was designed to be simple, straightforward and easy to understand. The content focused on clearly explaining the content of the two referendum proposals, with the television and radio advertising using a humorous “surprise” element to maximise viewers’ attention and recall.

## **TV advertising**

There were two versions featuring ordinary ‘real’ people (a waiter and a mother) each explaining the basic concepts behind the referendum proposals. In addition to this information content, the approach was designed to stimulate citizens to inform themselves fully about referendums to change the Constitution. The TV advertising was broadcast on RTE, TV3e, TG4, Sky Group, E4 and Setanta.

## **Radio advertising**

The radio advertising involved three versions that featured a cashier, a farmer and a waiter at their workplace. Each explained the content of the two referendum proposals with some humorous content at the end of the advert to ensure that voters engaged with it and found it memorable. These adverts were broadcast on national and local radio.

## **Free-to-Air Advertising**

As has been the practice in recent referendums, the Commission was allocated all available “free-to-air” time by broadcasters in relation to the Referendums.

For the purposes of these referendums the Commission chose to record a one minute long broadcast which featured one of the main television advertisements, with a single actor then delivering a script emphasising the legal significance of the Constitution and urging the citizens to vote.

The Commission received excellent co-operation from all broadcasters in relation to the provision of free airtime at peak viewing and listening periods for these broadcasts and wishes to express its thanks to them.

## **Print advertising**

The print advertising also used “real” people to inform the reader about the content of the proposals. These advertisements were published in the national press.

## **Online advertising**

The online advertising was designed to be clear and simple. It asked if people knew about the two referendums and offered the opportunity for voters to click through various advertisements so they could be redirected to the [www.referendum2011.ie](http://www.referendum2011.ie) website. The online advertisements featured on websites such as independent.ie, irishtimes.com, facebook.com, eircom.net and TheJournal.ie.

## **Engagement with the Press**

The Referendum Commission launched its campaign on Tuesday 11 October 2011. It held a press conference in Dublin to unveil the detail of the information campaign and to outline clearly the content of the two referendum proposals. A press statement containing this information was also circulated to all national news desks and regional media outlets. See Appendix 2 for the press statements issued by the Commission.

At the launch of the campaign the Chairman of the Commission Dr Bryan McMahon, responded to questions from journalists and conducted a number of interviews with National broadcast media. He also did an interview with UTV news which was syndicated to regional radio stations around the State.

The launch of the campaign positioned the Commission as a credible and reliable source of information and the media coverage generated as a result was substantial and positive.

During the course of the campaign the Chairman appeared on RTE's Morning Ireland on two occasions. In his first appearance the Chairman explained the 29th Amendment to the Constitution (Judges' Remuneration) Bill 2011 and during the second he explained the 30th Amendment to the Constitution (Houses of the Oireachtas Inquiries) Bill 2011. On 25 October, the Chairman did an extended interview on the Pat Kenny morning radio show on RTE Radio 1.

On Tuesday 25 October the Commission issued a statement urging the electorate to vote on 27<sup>th</sup> October. A similar statement was issued regionally the week before. The 'call to vote' release received widespread coverage in national and regional media.

During the course of the campaign 18 interviews were conducted with regional radio stations across the country.

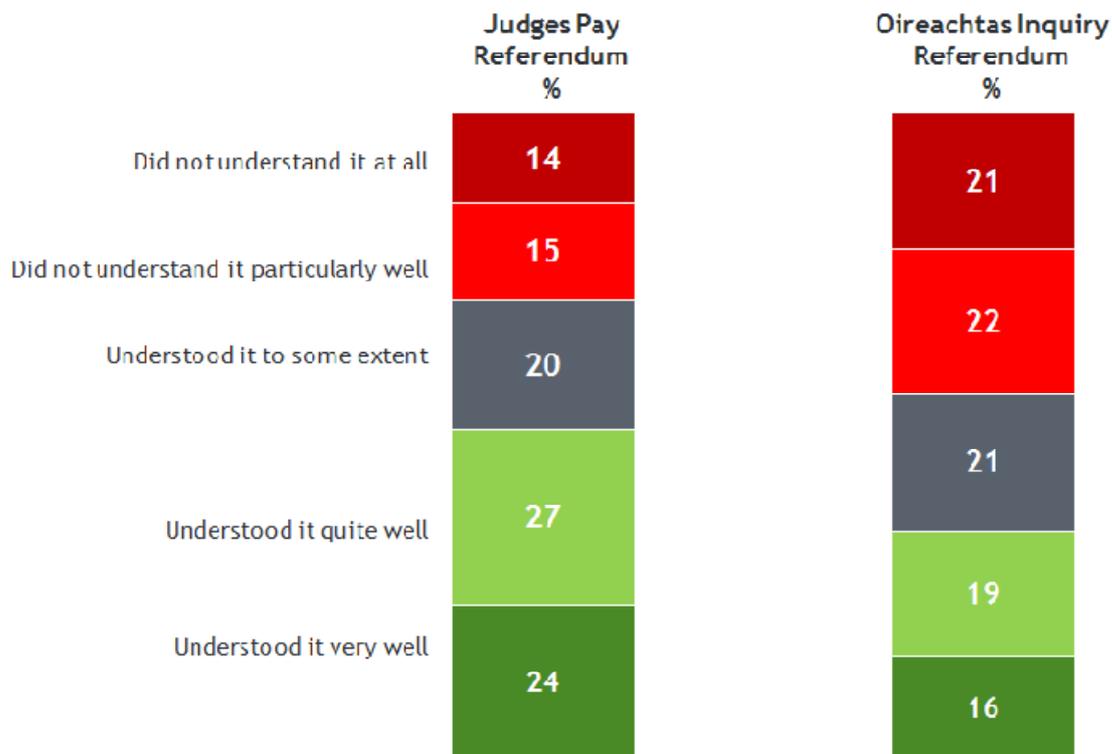
The variety of media outlets through which the Commission conveyed its information ensured that a broad audience across all demographic groups was reached.

### **Research findings on Commission Campaign**

The Commission decided to conduct research immediately after polling day to determine the impact of different aspects of its public information campaign. This is an important tool in measuring its effectiveness and the results provide future Commissions with valuable information on which they can base future campaigns.

In light of its broad function of promoting knowledge and understanding of the referendum proposals, the Commission was particularly interested in using the research to ascertain voters' perception of their understanding of the referendum proposals, by the time they came to vote.

The table gives the results of the questions on voters' understanding of the proposals –



Clearly there was significantly greater understanding of the judges' pay referendum than the Oireachtas Inquiries referendum. The Commission's mandate is to maximise understanding and so no particular level of understanding among voters represents "success". It is however possible to compare declared levels of understanding with those in previous referendums. For example in the two referendums on the Lisbon Treaty in 2008 and 2009, 44% said they understood it to some extent or better at the time of the first poll in June 2008. This had risen to 72% in research done immediately after the October 2009 poll.

On this occasion the proportion understanding the judges' pay referendum to some extent or better (71%) and the Oireachtas Inquiries referendum to some extent or better (56%) compares well to the Lisbon figures.

In light of its legal obligation to promote public awareness of the referendum and encourage the electorate to vote, the Commission was also keen to use the research to inform it and future Commissions as to why those who did not vote in the referendums had not done so.

Asked why they did not vote, the most common reasons were either that circumstances did not allow them get to the polling station or that they were not interested enough. The majority of voters gave one of these reasons. Of relevance to the Commission is the 13% of non-voters who said they didn't vote in the judges' pay referendum either because they did not know enough or didn't understand the referendum, and the 18% of non-voters who gave these reasons for not voting in the Oireachtas Inquiries referendum.

Lack of understanding was put forward by a significant number of those who voted No in either referendum as their reason for doing so. Some 27% of those who voted No in the referendum on Judges' pay said they did so because they did not understand it, while 38% of those voting No in the referendum on Oireachtas Inquiries also said they did so because they did not understand it.

The research therefore shows that not only was it the case that a significant minority of voters did not feel they understood the referendums, but this lack of understanding influenced a significant number either to vote No or not to vote.

The research was designed mainly to assess the impact of different aspects of the Commission's campaign. The single most important aspect of Commission campaigns is usually seen as the Guide to the referendum proposal that is delivered to all homes.

Some 61% of voters said they had received the Guide, a disappointing drop from the 77% who said in 2009 that they had received the Guide to the Lisbon Treaty. It is always the case that a proportion of voters who received the Guide will not recall this and will say they had not received it. This does not, however, explain the significant drop in those reporting that they received it. During the latter stages of the campaign the Commission received a number of phone calls from voters who said they had not received the Guide, and the media also reported on this phenomenon.

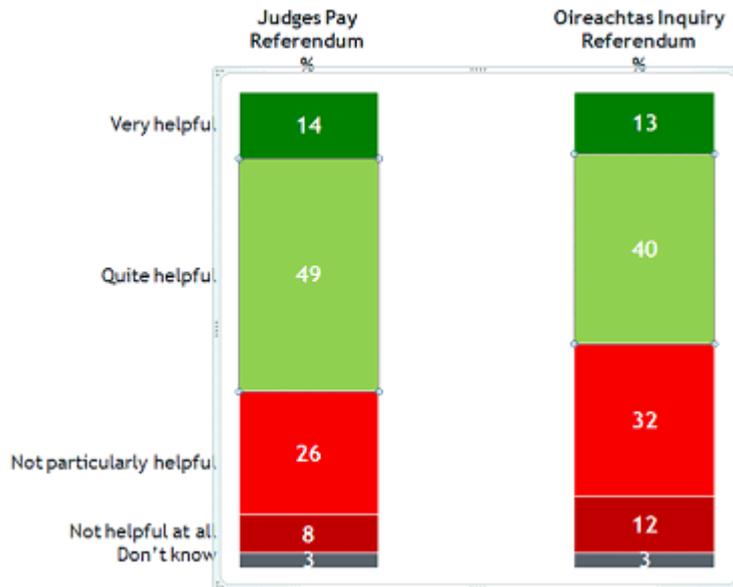
The Guide was distributed by An Post who were retained to deliver it to all homes. The delivery was done using their Publicity Post Service which is substantially cheaper than the other option of addressing it and posting it to each registered voter.

In previous referendums the Guide has been delivered at least a week and sometimes several weeks earlier in the run up to polling day. Therefore if the delivery is late for some reason to certain areas, there will normally be time to rectify this. On this occasion, however, the fact that the Commission was given very little time to prepare and execute its campaign meant that no leeway was available. This may have been a significant factor in the lower level of delivery.

Of those who received the Guide, 32% said they read all or most of it, 37% read certain parts and 30% said they did not read any of it.

In preparing its Guide for voters, the Commission devoted some time to striking the balance between (i) providing information at a basic level that would be understood by voters but might be seen by some as too simple, and (ii) providing information at a more detailed level that would inform those already interested in the issues but might be difficult to understand for many voters. Asked what they thought of the level of detail in the Guide 33% found it too detailed, 9% too basic with 35% saying it had about the right level of detail.

A clear majority of those who received it found it helpful as shown in the table. 63% found the material on the Judges' Pay referendum either very helpful or quite helpful, while the corresponding figure for the referendum on Oireachtas Inquiries was 53%.



Voters were also asked if they felt the Referendum Commission should retain its current role of explaining the subject matter of referendum proposals, or whether it should also give the arguments for and against the proposal. Some 33% felt the Commission mandate should remain unchanged while 58% believed that as well as explaining the subject matter it should give the arguments for and against. 9% gave no opinion.

## **Chapter 4 Approval of Bodies for the Purposes of the Referendum**

The Referendum Act 1998 provides that a body may apply to the Referendum Commission for a declaration that it is an approved body for the purposes of a referendum. Approved bodies are entitled to appoint agents to attend at the issue and opening of postal voters' ballot papers, at polling stations and at the counting of votes. Members of both Houses of the Oireachtas, who currently have the right to appoint such agents, would continue to have this right.

In order to become an approved body, an applicant must fulfil certain conditions -

- the body must be a body corporate or unincorporated body which, or a branch of which, is established in the State, governed by a constitution, a memorandum of association or other such document or other written rules and having a membership of not less than 300;
- the body must have an interest in the referendum and have a name which is not identical to, or does not closely resemble, the name of a political party registered in the Register of Political Parties. A political party for the time being registered in the Register of Political Parties is deemed to be a body for the purposes of the Act and need not establish compliance with the above conditions;
- applications must be made on the official form, which is available from the Commission and must be submitted within such time as the Commission may specify.

The Referendum Commission may refuse to make a declaration if a body does not fulfil the relevant conditions, or fails to provide the Commission with reasonable information or documentation which the Commission considers necessary to determine the application.

The Commission may also revoke a declaration made by it in relation to a body where it is satisfied that false information has been furnished to it. The Act also provides, under section 9, that it will be an offence knowingly to provide false information in relation to an application.

Advertisements were placed in the national press inviting applications from bodies seeking approval for the purposes of the referendum. The closing date was 7 October 2011. Following the application process the Commission approved three bodies. These bodies are listed in the following table.

<b>Approved Body</b>	<b>Address</b>
Fianna Fáil	65-66 Lower Mount Street, Dublin 2.
Christian Democrats	47 O'Connell Street, Limerick
Christian Solidarity Party	14 North Fredrick Street, Dublin 1

An application was received from the Green Party, 16/17 Suffolk Street, Dublin 2, after the closing date. The application was not considered because it was received late.

## Chapter 5 Recommendations

The Referendum Commission considers that the period of time given to it in 2011 to carry out its functions was grossly inadequate. To set out the context for some important recommendations on the conduct of future referendums, the Commission would like to detail some of the key factors which made it more difficult for the Commission to carry out its statutory functions in 2011.

- (i) The timescale given to the Commission in 2011 was exceptionally short. There were just five weeks between the passage of both sets of legislation through the Oireachtas and polling day. Each Bill underwent amendment at relatively late stages in the legislative process, and the final wording of the Oireachtas Inquiries proposal only became available on 23 September 2011.
- (ii) The Commission therefore had just five weeks to prepare its explanation of the referendum proposals, to write the text of the Guide and to translate, design, print and distribute this publication throughout the country. As explained earlier in this report, the Commission had a mere two working days to finalise the text of the Guide and deliver it to the printers. It is a measure of the professionalism and hard work of everyone involved that the Commission succeeded in executing a complex project in a timescale that would have been considered utterly unacceptable in the commercial world.
- (iii) There was uncertainty over the wording of the referendums until very late in the day, as evidenced by the amendments to the wording of both proposals which were made late in the legislative process. This added to the challenge of explaining the proposals in the short time available.
- (iv) Ideally the Commission should have time to monitor in an ongoing way the campaign through research and other means, and explain, elaborate and amend its messages and materials if necessary. There was no such opportunity available this time due to the shortness of the campaign.
- (v) Normally the Commission seeks to deliver its core Guide to all homes in the State several weeks before polling day. This means that if for any reason the timetable for delivery slips, there is time built into the schedule to allow this to be rectified before polling day. In this case, the late passage of the legislation meant that delivery had to be done at the latest possible moment. When it emerged that delivery in some areas had fallen behind, there was no leeway to allow this to be rectified in time.
- (vi) The limited debate in the Houses of the Oireachtas and the lack of vigorous campaigns on either side of the referendum proposals did not afford the public an opportunity to engage in these issues until close to polling day.
- (vii) The fact that a high profile Presidential election campaign was taking place simultaneously posed a further challenge to the Commission as it performed its statutory functions.

The Commission did produce its material in a remarkably short period and it believes its quality belies the pace at which it had to produce and distribute understandable explanations of proposals of some complexity. The research referred to earlier in this report, however, shows significant lack of understanding of the proposals, and shows also that this lack of understanding influenced a significant number of voters either not to vote or to vote No. While how people vote is a matter for individual citizens, the Commission is concerned that as many people vote as possible, and also that people's voting choice is not influenced by their not having enough time to understand the proposal.

The manner in which referendums are conducted in this country, as evidenced above, contrasts with the recommendations the Council of Europe's Code of Good Practice on Referendums (March 2007). These were produced by the European Commission for Democracy Through Law (the Venice Commission). The following extracts from the Code are instructive.

*3.1. Freedom of voters to form an opinion*

*a. Administrative authorities must observe their duty of neutrality ... which is one of the means of ensuring that voters can form an opinion freely.*

*b. Contrary to the case of elections, it is not necessary to prohibit completely intervention by the authorities in support of or against the proposal submitted to a referendum. However, the public authorities (national, regional and local) must not influence the outcome of the vote by excessive, one-sided campaigning. The use of public funds by the authorities for campaigning purposes must be prohibited.*

*c. The question put to the vote must be clear; it must not be misleading; it must not suggest an answer; electors must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote.*

*d. The authorities must provide objective information. This implies that the text submitted to a referendum and an explanatory report or balanced campaign material from the proposal's supporters and opponents should be made available to electors sufficiently in advance, as follows:*

*i. they must be published in the official gazette sufficiently far in advance of the vote;*

*ii. they must be sent directly to citizens and be received sufficiently far in advance of the vote;*

*iii. the explanatory report must give a balanced presentation not only of the viewpoint of the executive and legislative authorities or persons sharing their viewpoint but also of the opposing one.*

**The Commission recommends that the Minister should consider -**

- 1 Reviewing as a matter of urgency the referendum process, including the statutory remit of the Referendum Commission, having regard to the Council of Europe's Code of Good Practice on Referendums (March 2007). The review should have particular regard to the need for voters to be given sufficient time, to have access to impartial information, and for a clear question being put to voters. Regard should also be had for the need to have balanced campaign material from the proposal's supporters and opponents available to electors. Allowance might also be made for either strict or proportional equality between parties rather than the current strict equality (where proportional relates to the strength of the parties to the debate).

- 2 Giving the Commission a period of at least three months to explain properly a referendum proposal. Where procurement of services is required, an additional two months is needed.
3. The establishment of a permanent independent body as recommended by previous referendum commissions - such as the proposed Electoral Commission - which would consolidate the various electoral functions, including those of the Referendum Commission. This would be a permanent and ongoing body which, in the case of referendums, would have ample time to prepare and promote public awareness of important constitutional amendments.

In the alternative, and in the absence of such an independent body, amending the Referendum Act 1998 in order to allow the Commission to be established in advance of the date on which a Referendum Bill is initiated in Dáil Éireann. This would allow the Commission to carry out essential preliminary work and prepare to explain properly complex proposals to amend the Constitution.

Finally, the Commission notes that the Taoiseach has recently said he will set up a Referendum Commission in Spring 2012 so that it will have adequate time to prepare for future referendums. While we are unaware of the precise proposal the Taoiseach has in mind we very much welcome his acknowledgement that giving the Commission a short time in which to explain referendum proposals can lead to public confusion.

## **Chapter 6 Acknowledgements**

The Commission is once again indebted to all its service providers for enabling it to complete a wide array of tasks under severe time constraints. The various broadcast outlets and the national press deserve special mention for their active co-operation. As Marketing/Communications Consultant to the Commission, Murray Consultants, and Mr Mark Brennock and Ms Aoibheann O'Sullivan in particular, played a vital role in ensuring that the various strands of the campaign were delivered on time and in a coordinated fashion. The creative advertising agency Chemistry and media buying agency Carat produced work of high quality under great time pressure. Mr Fintan Cooney of Chemistry and Mr Chris Nolan of Carat deserve special thanks as do the teams working with them. The skills of Ms Ita Mangan in drafting a wide range of information material greatly assisted the campaign. The Commission is also grateful to its legal advisor, Mr Peter Law of A&L Goodbody, to Senior Counsel, Mr Maurice Collins and to Mr Micheál O'Connell BL. The Commission was able to fulfil its commitments under the Official Languages Act 1993 and produced its information material bilingually thanks to the work of our translators eTeams (International) Ltd, Bridge House, Main Street, Scariff, Co. Clare

The Commission is extremely indebted to its secretariat, provided by the Standards in Public Office Commission, for its work in assisting it through a highly pressured public information campaign. Mr David Waddell and Mr Paddy Walsh in particular ensured that all aspects of our work were conducted to the highest standard. All of the work of the other staff in the secretariat is also greatly appreciated. Many staff in the Office of the Ombudsman also contributed to the work of the Commission and it is particularly grateful to Mr Pat Whelan, Director General.

Dr Bryan M. E. McMahon, Chairman

Mr Kieran Coughlan, Clerk of Dáil Éireann

Ms Deirdre Lane, Clerk of Seanad Éireann

Ms Emily O'Reilly, Ombudsman

Mr John Buckley, Comptroller & Auditor General

Appendix 1

**Expenditure on the Information Campaign**

	<b>Judges' pay</b>	<b>Oireachtas Inquiries</b>
	€	€
Advertising (excluding press)	302,655	302,655
Legal costs	7,200	13,916
Press & other public awareness promotions	78,034	78,034
Postal & other distribution costs	97,048	97,048
Printing & design of publications	129,226	129,226
Other administration costs	6,428	6,428
Translations	914	914
Miscellaneous (office supplies etc)	4,449	4,449
<b>*Total Expenditure to date</b>	<b>625,954</b>	<b>632,670</b>
Add		
Estimates of invoices outstanding	<b>25,750</b>	<b>25,750</b>
Projected Expenditure	<b>651,704</b>	<b>658,420</b>
<b>Original budget</b>	<b>750,000</b>	<b>1,500,000</b>
<b>Projected Surplus to be surrendered</b>	<b>98,296</b>	<b>841,580</b>
<b>Of which the following has been returned</b>	<b>98,206</b>	<b>840,038</b>
<b>Balance to be returned</b>	<b>90</b>	<b>1,542</b>

\*Subject to Final Accounts

## Appendix 2

### Press Releases issued by the Referendum Commission

The Commission issued three national press releases in the course of the campaign.

#### **1. Referendum Commission launches public information campaign on the October 27<sup>th</sup> referendums**

##### **Main points of judges' pay and Oireachtas inquiries referendums explained**

**Tuesday 11th October 2011:** The Referendum Commission has today launched its public information campaign designed to explain the referendum proposals on judges' pay and Oireachtas inquiries in advance of polling on October 27th.

Speaking at the launch, the Chairperson of the Referendum Commission, Dr Bryan McMahon, said, "The referendums are on two separate proposals to make two distinct changes to the Constitution. The first is on whether the pay of judges can be reduced in certain circumstances. The second proposes to give the Houses of the Oireachtas express power to conduct inquiries into matters of general public importance and, in doing so, to make findings of fact about any person's conduct."

He said the proposals could be explained briefly as follows.

If the referendum on **judges' pay** is passed, the proposed change to the Constitution would

- allow for a law to be passed reducing the pay of judges proportionately if the pay of public servants is being or has been reduced and that reduction is stated to be "in the public interest". At present the Constitution does not allow for the reduction of the remuneration of sitting judges.
- allow for a law to be passed making judges subject to the "Public Service Pension Levy" and to any other future similar charge or charges. At present, judges pay tax and the Universal Social Charge in the same way as everyone else. They are not legally obliged to pay the "Public Service Pension Levy" although they can voluntarily make an equivalent contribution.

The referendum on **Oireachtas Inquiries** proposes to give the Houses of the Oireachtas (the Dáil and Seanad) express power to conduct inquiries into matters of general public importance and, in doing so, to make findings of fact about any person's conduct.

At present, the Constitution does not give power to the Houses of the Oireachtas to conduct such inquiries. The proposed change to the Constitution would mean that

1. The Dáil and the Seanad, either separately or together, would have the power to conduct an inquiry into any matter that either or both consider to be a matter of general public importance. Legislation would be required to be introduced to set out the details of how such inquiries would take place.
2. When conducting any such inquiry, either or both Houses would have the power to inquire into the conduct of any person and the power to make relevant findings about that person's conduct.
3. The Dáil and/or the Seanad would have the power to determine the appropriate balance between the rights of people involved in any such inquiry and the requirements of the public interest. When doing so, they would be obliged to have regard to the principles of fair procedures. These principles have been established by the Constitution and by the Courts.

The Commission has produced more detailed information for those who wish to know more about the proposed changes. This is available online at [www.referendum2011.ie](http://www.referendum2011.ie). The Commission has a public information phone line at 1890 270970.

“Our role is to explain the proposals in general terms”, said Dr McMahon. “Others will seek to persuade you to vote yes or to vote no to each of the proposals. You should listen to the debate and then make up your own mind on how you wish to vote.”

Nationwide distribution of the Commission's Guide to the referendums to two million homes began yesterday and will take ten days to complete. This guide highlights the main points of the referendums in a simple way. It gives the current wording of the relevant parts of the Constitution, and the proposed new wordings. The other elements of the Commission's public information campaign have also begun with advertising appearing on radio, television, in newspapers and online giving brief explanations of the proposals.

In concluding remarks Dr McMahon said: “We would urge all voters to read the Guide which will be delivered to their homes over the next ten days. These are entirely separate proposals, and you can take a different view on each if that is what you decide. The most important thing is to inform yourself and then use your vote. The Constitution is important, it was enacted by a vote of the Irish people in 1937 and can only be changed if the Irish people vote to change it.”

**Ends**

## **2. Referendum Commission calls on people to vote in the October 27<sup>th</sup> referendums**

**Be Informed: Read the Guide or log on to [referendum2011.ie](http://referendum2011.ie)**

**Tuesday 25<sup>th</sup> October 2011.** The Referendum Commission has urged the electorate to vote in the referendums on judges' pay and Oireachtas inquiries which take place on Thursday October 27<sup>th</sup>, the same day as the Presidential election.

The Commission, the independent body set up to explain the referendum proposals, said voters should take a few minutes to read its Guide to the referendums which has been distributed to the two million voting households in the State. Alternatively they can read an explanation of the proposals at [www.referendum2011.ie](http://www.referendum2011.ie).

Dr Bryan McMahon, Chairperson of the Referendum Commission said, “The referendum proposals are straightforward and easy to understand. One is about whether the pay of judges can be reduced in certain circumstances and the other is about the powers of the Houses of the Oireachtas (the Dáil and Seanad) to conduct inquiries into matters of general public importance.

"The Constitution is important. It belongs to the Irish people, not to the political or legal system. It's up to the people to decide whether or not they would like to change it. Voters can easily inform themselves by reading the Guide, or logging onto [www.referendum2011.ie](http://www.referendum2011.ie).

"This is a national issue and voters in every county in Ireland should exercise their right to vote. I would like to call on the voters across the country to do their part to ensure a high turnout on the day."

The Commission has run an extensive public information campaign over the past two weeks. The Commission's Guide distributed throughout the country explains the two referendum proposals in a simple and clear way and also outlines the wording of the proposed amendments to the Constitution.

On polling day people will be handed three ballot papers, one for the Presidential election, one for the Constitutional amendment relating to judges' remuneration and one for the constitutional amendment relating to Oireachtas inquiries. People voting in the Dublin West constituency will be given a fourth ballot paper so that they can vote in the bye-election.

### **Judges' pay ballot paper**

The ballot paper on Judges' pay will ask you if you approve the proposal to amend the Constitution contained in the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011. The ballot paper will be green in colour.

If people approve they can mark an 'X' in the Tá/Yes square and if they do not approve they can mark 'X' in the Níl/No square.

### **Oireachtas inquiries ballot paper**

The ballot paper on Oireachtas inquiries will ask if you approve the proposal to amend the Constitution contained in the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011. This ballot paper will be blue.

If people approve they can mark an 'X' in the Tá/Yes square and if they do not approve they can mark 'X' in the Níl/No square.

### **Referendum on the pay of judges**

If the referendum on **judges' pay** is passed, the proposed change to the Constitution would

- allow for a law to be passed reducing the pay of judges proportionately if the pay of public servants is being or has been reduced and that reduction is stated to be "in the public interest". At present the Constitution does not allow for the reduction of the remuneration of sitting judges.
- allow for a law to be passed making judges subject to the "Public Service Pension Levy" and to any other future similar charge or charges. At present, judges pay tax and the Universal Social Charge is the same way as everyone else. They are not legally obliged to pay the "Public Service Pension Levy" although they can voluntarily make an equivalent contribution.

### **Referendum on inquiries by the Oireachtas**

The referendum on **Oireachtas Inquiries** proposes to give the Houses of the Oireachtas (the Dáil and Seanad) express power to conduct inquiries into matters of general public importance and, in doing so, to make findings of fact about any person's conduct.

At present, the Constitution does not give power to the Houses of the Oireachtas to conduct such inquiries. The proposed change to the Constitution would mean that

1. The Dáil and the Seanad, either separately or together, would have the power to conduct an inquiry into any matter that either or both consider to be a matter of general public importance. Legislation would be required to be introduced to set out the details of how such inquiries would take place.

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**Ends**

### **3. Referendum Commission statements were accurate, reliable and independent**

#### Statement from Referendum Commission

Sunday October 30th: The Referendum Commission has noted comments by the Minister for Public Expenditure and Reform Mr Brendan Howlin concerning the role of the Referendum Commission in the recent referendum campaign.

Mr Howlin refers to a statement which he says was made by the chairperson of the Commission Dr Bryan McMahon. In fact this statement was made by the Referendum Commission itself in fulfilment of its statutory role of giving a general explanation of referendum proposals.

Mr Howlin's criticism is therefore of the Referendum Commission, which is obliged by law to be independent of Government in its actions and to be neutral in the carrying out of its statutory functions. The membership of the Commission is set down in the Referendum Act. Its Chairman must be a sitting High Court judge, or a retired judge of the Supreme Court or the High Court appointed by the Chief Justice at the request of the Minister for the Environment. Retired High Court judge Dr Bryan McMahon was appointed to

chair the Commissions for the two referendums that have just taken place. Its other members are: The Ombudsman Emily O'Reilly; the Comptroller and Auditor General John Buckley; the Clerk of the Dáil Mr Kieran Coughlan; and the Clerk of the Seanad Ms Deirdre Lane.

The Commission regrets that Mr Howlin has sought to personalise the issue by criticizing the Commission Chairperson over the Commission's explanation to voters of the referendum proposal in relation to Oireachtas Inquiries.

In the wake of the referendum outcome, Mr Howlin has referred to an aspect of the Commission's explanation relating to the referendum on Oireachtas Inquiries. In the relevant part of the Commission's explanation the Commission said in relation to Oireachtas Inquiries: "that the House or Houses would have discretion as to the procedures to be applied in any given case. The balance struck in any given case may have important implications for people affected by an inquiry. It is not possible to state definitively what role, if any, the courts would have in reviewing the procedures adopted by the Houses."

This formed part of the statement on the referendum which the Commission is obliged by law to produce. The text was published on our website [www.referendum2011.ie](http://www.referendum2011.ie). The Chairperson gave a number of media interviews which were based entirely on the Commission's agreed view.

The statement to which the Minister refers was prepared by the Commission as a whole with the assistance of independent external legal advice. The Commission is absolutely satisfied as to the accuracy and reliability of this statement, and is satisfied that it carried out its duty with the independence and neutrality required by law.

#### NOTE TO EDITORS

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## 2. Extract from the Referendum Act 2001

The Commission shall have, in addition to any functions conferred on it by any other provisions of this Act, the following principal functions in relation to the referendum in respect of which it is established

- (a) to prepare one or more statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate;
- (b) to publish and distribute those statements in such manner and by such means including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned;
- (c) to promote public awareness of the referendum and encourage the electorate to vote at the poll

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