

**newpolitics** 

**FINE GAEL** 

## Table of Contents

<b>EXECUTIVE SUMMARY</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>5</b>
<i>A New Constitution</i>	6
<i>Public Sector Reform</i>	8
<b>1. A SINGLE CHAMBER OIREACHTAS</b>	<b>11</b>
<i>Implementation</i>	13
<b>2. A NEW DÁIL</b>	<b>14</b>
<i>A Greater Role for TDs</i>	15
<i>A Powerful Committee System</i>	17
<i>A New Budget Process</i>	19
<i>Holding Public Bodies to Account</i>	22
<i>Implementation</i>	24
<b>3. OPEN GOVERNMENT</b>	<b>25</b>
<i>A New Freedom of Information Act</i>	26
<i>A Whistleblowers' Charter</i>	26
<i>A Register of Lobbyists</i>	27
<i>A New Electoral Commission</i>	27
<i>Implementation</i>	29
<b>4. EMPOWERING THE CITIZEN</b>	<b>30</b>
<i>Local Government Reform</i>	31
<i>A Strong Civil Society</i>	33
<i>Implementation</i>	34
<b>CONCLUSION</b>	<b>35</b>
<b>PART TWO: APPENDICES</b>	<b>36</b>

## EXECUTIVE SUMMARY

The *New Politics* is the most ambitious programme for political reform since the 1930s. Fine Gael, the party that created the State and declared it a Republic, will build a New Republic in Ireland - where trust is restored in our democratic institutions and the concerns of the Citizen, rather than the elites, are placed firmly at the centre of government.

Fine Gael's starting point is simple: political failure lies at the heart of Ireland's economic collapse. The finger of responsibility must, in the first instance, point directly to the massive policy failures of the recent Fianna-Fail led Governments and their willingness to promote the interests of a so-called "Golden Circle" over the interests of the Citizen. Under Fianna Fail a political culture developed which ensured that the bankers and the developers were not dealt with before it was too late. A culture which tolerates cosy cartels and high costs in the private sector and ignores the need for radical reform in the public sector.

However, it is also clear that several key weaknesses in Ireland's political system facilitated the failures of the last twelve years. In particular:

- A hugely centralised State with few real checks and balances;
- An over-powerful Executive that increasingly ignores the Dáil;
- A proliferation of State agencies and Quangos that answer to no one and a model of Social Partnership which effectively excluded the Dáil; and
- An outdated budget and fiscal system that makes it extremely difficult to manage the State's finances properly.

Fine Gael's New Politics tackles all of these weaknesses head-on and will restore people's trust in the political process by delivering real, tangible change. The Irish people are rightly outraged at the way in which their country has been misgoverned. However, there is a danger that this anger, if not addressed through positive reform, will lead to increasing numbers of our citizens disengaging from the democratic process. This cannot be allowed to happen.

Since World War II, almost all European countries have reformed their political systems. By contrast, Ireland has seen little or no change. Given this history, some may question whether

the New Politics will deliver on what it promises - change that is radical and starts at the top. Fine Gael's position is clear:

**The New Politics is central to our party's vision for the transformation of Ireland. Just as political failure lies at the heart of the current economic crisis, so we believe that the New Politics can play a vital role in returning our country to long-term growth and prosperity. Political reform is not an optional extra for Fine Gael - it is an essential part of our programme to build a New Republic in Ireland.**

As part of the New Politics Fine Gael will deliver:

- A single chamber Oireachtas with no Second House.
- A reduction in the number of TDs in the Dáil by 20.
- A significantly strengthened Dáil committee system that holds Government to account; a fundamentally reformed legislative process that gives TDs real influence over the drafting of legislation; and a completely modernised budget system that will prevent a future Government from behaving recklessly with the State's finances.
- A vote in Presidential elections for Irish citizens living abroad, a more transparent system of political funding, and a petitions system that will allow citizens to have their concerns considered in the Dáil.
- An *Open Government Bill*, published with this document, which significantly strengthens Freedom of Information, registers all lobbyists, protects whistleblowers and allows the Standards in Public Office Commission to launch its own investigations.

Fine Gael believes that there must also be a fundamental shift in power from the State to the Citizen, so that local people and local communities have more control over their own lives. In Government we will deliver stronger, more accountable Local Government, and dismantle the public sector's "command and control" model where everything is run from the top and local voices and concerns are ignored.

The New Politics will require major constitutional change. Within 12 months of assuming office, Fine Gael will hold a referendum on *Constitution Day*, at which the people will be

asked to approve a single chamber Oireachtas and changes to other articles of the Constitution covering the institutions of the State – principally the Executive, the Dáil, the Presidency and the Judiciary. This referendum will not address the Rights/non-institutional articles, as we want the debate to remain focused on how we govern ourselves.

Fine Gael believes it is vital that the citizens of Ireland are actively involved in helping set the agenda on constitutional reform. Within its first hundred days a Fine Gael Government will establish a *Citizens Assembly*, along the lines of similar assemblies which have been used in Canada and in the Netherlands to consider political and electoral reform. The purpose of the Assembly, which will be composed of members of the public, will be two-fold:

- To consider what changes should be made to Ireland’s political and government system over and above the specific changes that Fine Gael proposes to make; and
- To make recommendations on how the electoral system might be reformed. In particular, the Assembly will be asked to consider the merits or otherwise of a mixed member system where TDs are both directly elected and elected from a List.

Fine Gael also believes that two additional constitutional amendments should be put to a referendum of the people on the same day that any referendum on Children Rights is held. These would:

- Allow Judges’ salaries to be varied as part of changes in public sector salaries; and
- Reverse the effects of the Abbeylara Court decision which limits the ability of Dáil committees to hold full investigations into crucial issues of public concern such as the banking crisis.

## INTRODUCTION

2009 was the 60th anniversary of the declaration of a Republic by a Fine Gael Taoiseach, John A Costello. In a speech to the MacGill Summer School in 2009, Enda Kenny argued that Ireland “faces not only an economic crisis, but a crisis of national self-confidence.” With the death of the Celtic Tiger, the Irish people had to decide: “Who are we now? How do we now wish to define ourselves?”

“The answer for me is both simple and profound. Before we were a Tiger we were a Republic.”<sup>1</sup>

The fundamental goal of Fine Gael’s New Politics is to build a New Republic where the peoples’ concerns are placed at the centre of government. In a Republic, the people are supposed to be supreme. Judged by that simple standard, Ireland today is a Republic in name only. The expressions “Golden Circle”, “Crony Government” and “Cosy Capitalism” all describe the same thing: The abduction of our Republic by both public and private sector vested interests, aided and abetted by the present Government.

As we approach 2016, it is essential that we reclaim our Republic and create a fully modern political system that is tailored to meet the needs and demands of the 21<sup>st</sup> Century. It is one of the great ironies of Irish history that while our people rejected British rule, the British Westminster model of Government was retained with very little change. However, if the last decade of misrule has proven anything, it is that modern Ireland cannot be governed effectively by a system originally designed for 19<sup>th</sup> Century Britain.

The New Politics is built on four key pillars:<sup>2</sup>

1. **A Single Chamber Oireachtas:** Section 1 of this report explains why Fine Gael is determined to bring the Oireachtas into line with other comparable European countries by moving to a Single House of the Oireachtas.
2. **A New Dáil:** Section 2 contains an extensive series of proposals to expand the role and power of TDs so that they can truly hold the Government to account. This will be

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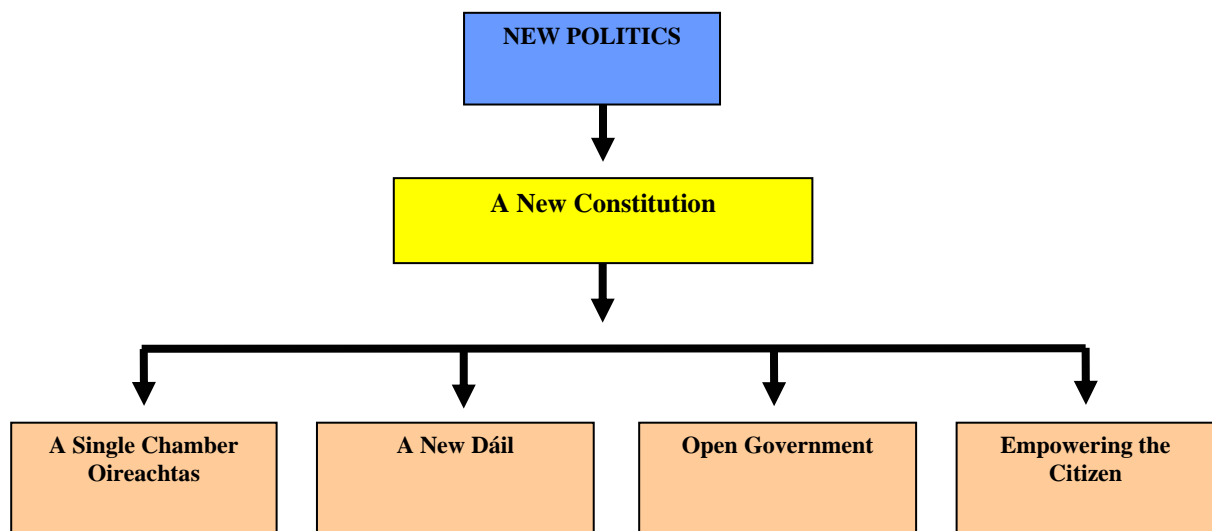
<sup>1</sup> Speech by Enda Kenny, “*A New Politics for a New Society*”, MacGill Summer, 23 July 2009.

<sup>2</sup> Part 2 of this report contains a series of Appendices giving more detailed information on and analysis of individual aspects of the New Politics.

done by radically reforming the legislative and budgetary process, and by significantly strengthening the committee system.

3. **Open Government:** Section 3 sets out our strategy for restoring trust in Government by opening it up to outside scrutiny and making party political funding more transparent.
4. **Empowering the Citizen:** Fine Gael believes that a New Republic must be based on a strong, vibrant civil society. We want to shift the balance of power between the State and the Citizen so that local communities and individuals have more power over their own lives. Section 4 shows how this will be accomplished.

**Figure 1: Four Key Pillars**



## A New Constitution

The New Politics will require major changes to the articles of the Constitution dealing with institutions of State.<sup>3</sup> While most of this change will be focused on the articles dealing with the Government and the Oireachtas, we believe that the constitutional provisions dealing with the Presidency and the Courts<sup>4</sup> also need updating:

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<sup>3</sup> Appendix 1 lists the institutional articles of the Constitution that will be reviewed and updated as part of the New Politics.

<sup>4</sup> See Appendix 2 for the text of a constitutional amendment, published by Alan Shatter (Fine Gael's Spokesman on Children), which will allow Judge's salaries to be varied as part of wider wage cuts in the public sector. A Fine Gael Government will also examine whether constitutional change is required to deal with the issue of judicial misconduct.

- **The institution of the President has performed well and we do not envisage major changes in the Office’s powers.** However, Fine Gael will reduce the President’s term of office from 7 to 5 years, provided the people give their approval in our proposed *Constitution Day* referendum. Given that Presidents are often re-elected for a second term, we believe that ten years of service from any one individual is sufficient. We also believe it makes sense, if the President’s term is reduced, to hold Presidential elections on the same day as the Local and European elections which are held every five years.
- **Fine Gael will introduce two major reforms of Ireland’s Courts<sup>5</sup> system that will involve constitutional change:**
  - **A new Civil Court of Appeal:** It will deal with the huge backlog of civil appeals to the Supreme Court and ensure that only complex legal cases end up there.
  - **A unified and separate specialist system of family courts will also be created,** having due regard to the State’s budgetary situation, with specialised Judges to deal with all aspects of matrimonial, family and children’s law.

The Citizens Assembly will play a crucial role in the development of the broad constitutional agenda. It will have up to 100 members who will be chosen from the public to reflect the demographic make-up of Ireland. These members will be provided with briefing papers and will have access to research staff and relevant experts. The Assembly will hold meetings throughout the country at which the views of citizens will be actively sought. All of its proceedings will be streamed live on the web and members of the public will be able, through the internet, to question anyone giving a presentation to the Assembly.

The Assembly will also be asked to consider how the representation of women in politics might best be increased. Fine Gael believes it is crucial that there are more female TDs and local councillors and will adopt measures internally to encourage this development, including the establishment of a mentoring process. We are also in favour of tackling the Dáil’s “long hours” culture of sittings continuing until late at night/early morning.

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<sup>5</sup> Fine Gael is concerned that the judiciary seems reluctant to implement legislation on mandatory minimum sentences, even though such legislation has been held by the Supreme Court, under the current and former Chief Justice, to be a fully constitutional exercise of power by the Oireachtas.

## Public Sector Reform

Any credible plan for reforming the political system must deliver real change to Ireland’s “permanent government” – the public sector generally, and the civil service in particular. Fine Gael has already outlined its public sector reform priorities in two key areas:

- Our *FairCare* plan will abolish the two-tier health system and replace it with the very successful Dutch model of Universal Health Insurance, adapted to Irish circumstances. The Health Service Executive will, over time, be dismantled.<sup>6</sup>
- Our *NewERA* programme will transform the Irish economy and create over 100,000 jobs, by investing €18 billion in key infrastructure (Energy, Telecoms and Water) through a radically reformed semi-state sector.<sup>7</sup>

Fine Gael will publish shortly a paper outlining our proposals for comprehensive reform of the public sector as a whole. We want to create a revitalised public service where as much power as possible is handed over to the people who know best – the professionals on the front line, local communities and citizens. Our FairCare policy, which will devolve real power and control to local hospitals, communities and individual patients, is a very good example of Fine Gael’s approach.

Fine Gael will also make significant changes to the way senior public servants and departments work:

- **We will create a new *Senior Civil Service* where key officials can be employed across the public sector, wherever the need is greatest, and not just in one department.** We believe this additional flexibility is essential if we are to get the most out of our senior civil servants.
- **Each senior civil servant will sign a contract with their individual line Minister outlining in detail their areas of responsibility.** This will allow senior officials to be held individually accountable for their performance in these areas.
- **We will ensure that there is greater involvement of senior personnel from outside the public service.** We believe that the procedures and practices of the Top Level

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<sup>6</sup> See Appendix 3 for more details on FairCare and how it will re-organise the health service.

<sup>7</sup> See Appendix 4 for an overview of NewERA’s proposed reforms of the Semi-State sector.

Appointments Committee (TLAC) need to be updated to make the appointments process more effective and open.

- **We will require units within departments to bid publicly for resources within the broad budget allocations set by the Cabinet.** As part of this bidding process the units will need to specify what services the taxpayer will get for their money. New evaluation mechanisms within departments will be established to judge whether commitments are being met and to create an overall framework for accountability.
- **We will cut the number of quangos by at least 150.** We will also require the chairpersons of all State boards, agencies and regulators to submit their resignations within 1 year of the Oireachtas passing a *Public Appointments Transparency Bill*. All those applying for these positions – previous chairpersons will be allowed to re-apply - will be scrutinised by the relevant Dáil committees.
- **We will make significant savings by eliminating fragmentation and duplication.** Delivery of back-office services such as inspection and enforcement, procurement and human resources are currently fragmented along departmental lines. The McCarthy process was, in our view, not radical enough in this area.
- **We will make more use of “Regulatory Impact Assessments” (RIA):** RIAs allow for a systematic early consideration of the benefits, costs, and enforcement/compliance issues of new regulatory proposals. We want to see personnel, with appropriate expertise from outside the public service, involved in this process as early as possible.
- **We will examine how citizens can be given more control over their own lives through the use of “personal budgets”.** A recent report on severely disabled children showed that costs are reduced and the quality of care is significantly improved when families are given the resources to care for their children at home.<sup>8</sup>
- **Fine Gael will put in place guaranteed timetables for the delivery of services such as medical cards, passports and social welfare entitlements.** All too often citizens are denied these vital services in a timely manner, forcing them to turn to their local

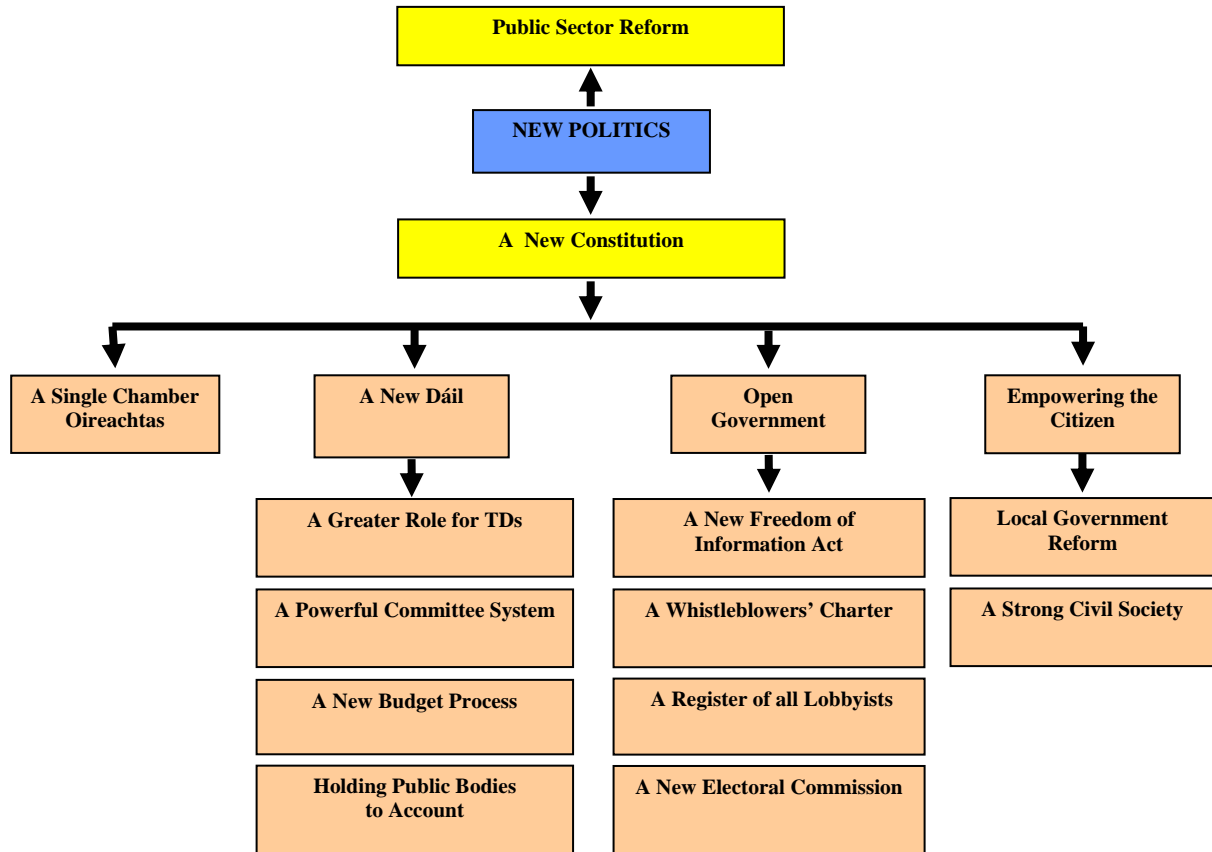
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<sup>8</sup> Centre for Health Management and Policy, TCD, “A cost and outcomes analysis of alternative methods of care for young children with severe disabilities in Ireland,” February 2010.

representatives for assistance. This, in our view, is one of the chief drivers of clientelism in Ireland.

Figure 2 demonstrates the full scope and scale of the New Politics.

**Figure 2: The New Politics**



## 1. A SINGLE CHAMBER OIREACHTAS

Fine Gael believes it is time for Ireland to join the global move to single chamber Parliaments and follow countries like Sweden, Denmark and New Zealand who have abolished their Second Houses.<sup>9</sup>

Ireland currently has 226 members of the Oireachtas - 166 in the Dáil, 60 in the Seanad. This equates to 1 member per 19,912 people. As Figure 3 shows, the principal reason for Ireland's over-representation is its two-chamber or bicameral system. If one ignores the Seanad and looks solely at the Dáil, particularly if the number of TDs is reduced by 20 as Fine Gael proposes, Ireland's representation is in line with countries that have a similar population.

**Figure 3: Ireland is significantly over-represented because of the Seanad**

Country	Deputies	Population (Mn)	Population per Representative
Ireland (Dáil and Seanad)	226	4.5	19,912
Ireland (Dáil with 166 TDs)	166	4.5	27,108
Ireland (Dáil with 146 TDs)	146	4.5	30,822
Sweden	349	9.0	25,917
Finland	200	5.2	26,200
Denmark	179	5.5	30,637
New Zealand	120	4.2	34,775

In Europe, Ireland is the only small, unitary State with a Second House.<sup>10</sup> A recent review for the House of Lords looked at 76 countries worldwide with a population of less than 5 million. It found that 55 have single chamber, unicameral legislatures. The small, two-chamber bicameral nations are typically those, like Ireland, “which have been subject to influence by either the Westminster or US models.”<sup>11</sup>

This move to single-chamber parliaments in other countries has been driven by three factors that are also applicable to Ireland:

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<sup>9</sup> See Appendix 5 for an examination of why other countries have abolished their Second House.

<sup>10</sup> Within Europe there are 31 unicameral Parliaments, excluding the three unicameral assemblies of Scotland, Wales and Northern Ireland. There are only 17 bicameral Parliaments, all of them in large and/or Federal States. See Appendix 6 for further details.

<sup>11</sup> HM Government, “*The House of Lords: Reform*”, 2007.

### ***Constitutional theory has evolved***

- Given the huge difficulty in creating workable Second Houses, modern constitutional theory now places the emphasis on establishing unicameral parliaments with appropriate checks and balances, e.g., a strong committee system, mixed member electoral systems and a reformed legislative process.
- Traditional constitutional theory suggests that Second Houses are an important part of the checks and balances within a political system. However, there is a basic problem at the core of this proposition:
  - If a Second House is democratically elected by the people, it tends to be dominated by political parties and quickly comes to resemble the first House, thereby undermining its rationale for existence.
  - If a Second House is not elected by the people, in order to make it different from the First House, a serious democratic deficit is created which erodes its legitimacy. As a result, its powers tend to be limited.
- All too often Second Houses, like the Seanad, embody the worst of both worlds. They are not democratic enough to enjoy popular support and not different enough to do their job properly.

### ***The historical justifications for bicameral parliaments are increasingly irrelevant***

- Many second houses in Europe were established to provide guaranteed representation for the nobility and/or specific ethnic groups. This was also the case for Ireland. While the First Dáil of 1919 was a single chamber, a senate was included in the 1922 Constitution to allow for Southern Unionist representation in the Irish Parliament.<sup>12</sup>
- The current Seanad was included in the 1937 Constitution in significant part as an expression of 1930s Catholic social theory. The early drafts of the Constitution did not include a second house and Éamon de Valera, who abolished the Free State Senate in 1936, included a Second House in the final document only very reluctantly. In several statements in 1937 and subsequently he questioned whether it was really possible to construct a satisfactory Second House.

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<sup>12</sup> For more detail on the Seanad's history see Appendix 7.

### ***Second Houses are very difficult to reform***

- Twelve reports have been published by committees of the Oireachtas on Senate reform in Ireland – ten since the adoption of a new Constitution in 1937. Yet the Seanad has not been reformed in any significant way.

### **Implementation**

- The creation of a single chamber Oireachtas will require significant constitutional change. The people will be asked to give their approval at the referendum on Constitution Day.

## 2. A NEW DÁIL

Fine Gael believes that the Dáil must be reformed to give it a much more central role in the governance of Ireland. The Constitution states that the Government is responsible to the Dáil (Article 28.4.1). In reality, an all-powerful Executive has turned the Dáil into an observer of the political process, rather than a central player. This marginalisation has been reinforced by two key developments over the last twelve years:

- The outsourcing of government to unaccountable state agencies and boards; and
- A system of Social Partnership that has created a parallel system of government, and needs fundamental reform.

Fine Gael has a long history of campaigning for parliamentary reform<sup>13</sup> and is actively involved in cross-party talks to make the current Dáil more effective. Our ultimate goal is the creation of a New Dáil where:

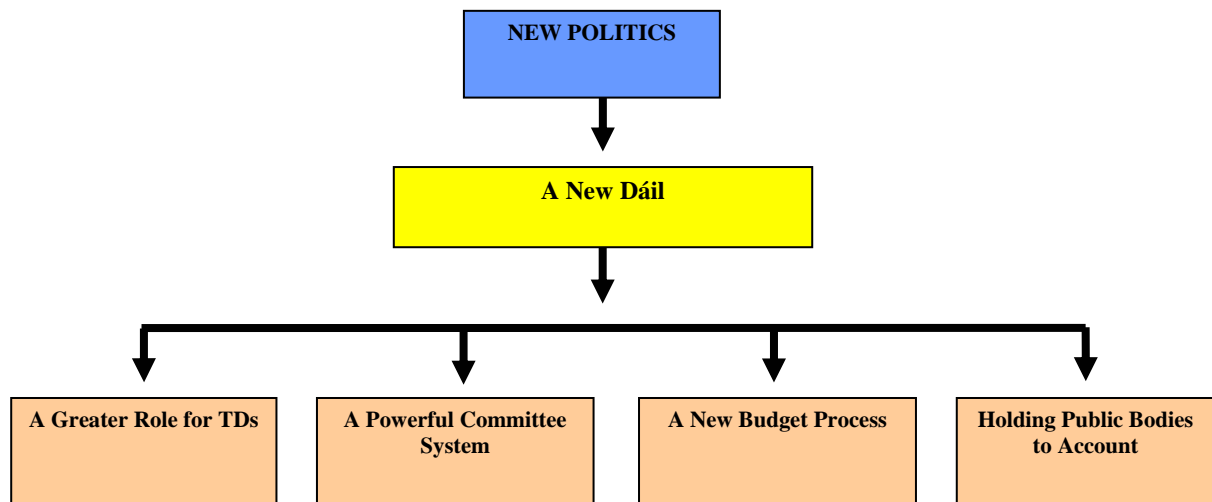
- TDs have a central role in preparing and scrutinising legislation;
- The Dáil has the power to hold the Government, Ministers and officials to account;
- The archaic budget system is completely overhauled; and
- The actions of public bodies and regulators are overseen by the Dáil.

In order to facilitate these changes, the New Dáil will sit for longer.

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<sup>13</sup> In 2000 we produced a comprehensive programme for political reform entitled: “*The Democratic Revolution*”. In January 2006, we published a “*Dáil Reform Plan*” with Labour, while in March of last year we also published “*Fine Gael Proposals for Oireachtas Reform*”.

Figure 4: A New Dáil



## A Greater Role for TDs

In Government, Fine Gael will make far-reaching changes to the way in which legislation is introduced, debated and passed in the Oireachtas. These reforms will improve the quality of the laws passed by the Dáil and ensure that the skills and experience of backbench TDs are utilised to the full.

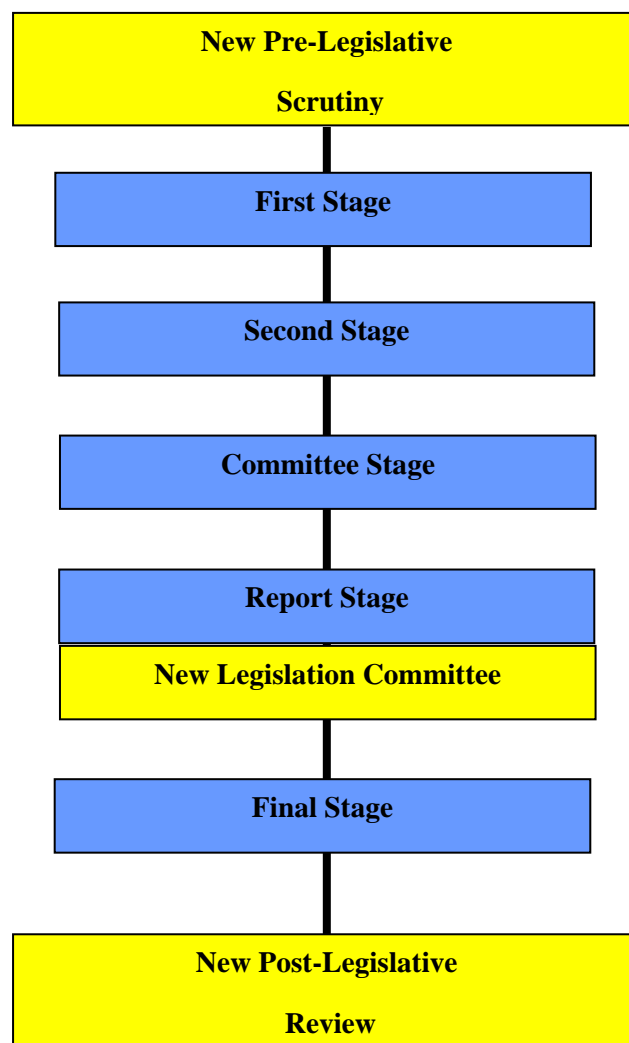
As a first step, Fine Gael will introduce major changes to the legislative process.

- **A system of pre-legislative scrutiny will be introduced:** As a rule major, non-emergency legislation will first be submitted to the Dáil in heads of Bill format. This will allow the appropriate Committee to scrutinise a Bill before it is drafted. Once the Committee reports on the draft legislation, the Government will be required to respond to the report before introducing the Bill. This process is used successfully in other parliaments and should not only improve legislation, but also speed up the subsequent progress of Bills through the Dáil.
- **The Report stage will become a true plenary stage:** A new Legislative Committee will be established to allow outside parties to provide a broad ranging reassessment of the Bill and to make recommendations for amendments to the Dáil at Report Stage. The Report stage of a Bill should, in our view, allow for fundamental reconsideration by the Dáil of key elements of a Bill. Increasingly, however, it has become little more than an extension of the Committee Stage, with the emphasis on the consideration of detailed amendments.

- **There will be post-legislative review of Bills after 18 months:** We believe such a process will have a positive impact on the shaping of legislation by driving home the lessons learned from the implementation of previous Bills. The Minister will be required to report to the relevant committee on the success of individual Bills in meeting their declared objectives. The committee will then decide whether to proceed with an in-depth examination of the legislation’s impact.

Figure 5 summarises how the new legislative process would look after these reforms.<sup>14</sup>

**Figure 5: A New Legislative Process**




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<sup>14</sup> Fine Gael will also tackle the widespread use of guillotines by the present Government to ram through legislation. Fine Gael does not dispute that legislation must be put through in as timely and efficient a manner as possible. However, many of the guillotine motions arise either from a Government desire to cut short debate on sensitive issues, or from a totally inefficient legislative process. This is not only undemocratic, but makes it much more likely that poorly constructed legislation is placed on the statute book. Rushed legislation tends to be bad legislation.

Additional measures will be introduced to further increase the power of TDs:

- **Fine Gael will give backbench TDs establish a bigger role in scheduling all non-Ministerial backbench business**, e.g., general motions, Dáil domestic business, debates on committee reports. The principle behind this proposal is very simple: Wherever possible, time in the Dáil should belong to the House, not the Government. We will do this by reforming the workings of the Committee on Procedures and Privileges.
- **Fine Gael will introduce a 10 Minute Rule that will allow backbench TDs to introduce their own Bills.** Under this system, the sponsoring TD will be given ten minutes to speak in support of their proposal. If the Bill is approved by the House at its first stage, it then joins the queue of private members' bills waiting to receive a second reading. Dedicated time will be made available at second stage separate from Private Members time.
- **TDs will be allowed to raise issues of topical interest in the Dáil.** It is absurd that the peoples' representatives are unable to discuss issues on a timely basis that are often the subject of extensive comment in the media outside the Dáil. This will replace the current situation where the order of business is being used to raise topical matters.
- **The Ceann Comhairle will be elected by secret ballot of the members of the Dáil.** We believe that a Ceann Comhairle elected in this way will have greater authority when it comes to managing the Dáil's business.

## A Powerful Committee System

If the changes to the legislative process outlined above are to have any real impact, Fine Gael believes that a strong committee system is essential, particularly in a single chamber system:<sup>15</sup>

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<sup>15</sup> See Appendix 8 for a discussion of “Checks and Balances in Unicameral Parliaments”.

- **As a first priority, the Abbeylara Supreme Court decision must be tacked.**<sup>16</sup> This decision significantly limits the ability of Dáil committees to hold full investigations into crucial issues of public concern, such as the banking crisis. We propose that a new article, which would reverse the effect of this decision, should be included in a referendum on the same day as the Children’s Rights referendum in 2010. This would strengthen the Dáil and reduce significantly the requirement for expensive tribunals of inquiry in the future. The final cost of the Mahon (planning matters and payments), Moriarty (payments to politicians) and Morris (Garda corruption) tribunals could be more than €370m.<sup>17</sup>
- **The number of Joint Committees should be reduced substantially.**<sup>18</sup> There are currently too many committees doing too little work. We also believe that the d’Hondt system should be to distribute chairs of key committees on a proportional and fairer basis. Ireland stands out in Europe in the degree of control that the Government exercises over the Committee system, severely limiting the ability of Dáil committees to work properly.<sup>19</sup>
- **Fine Gael will include key Dáil committees in the Constitution.** Dáil Committees are currently not given any standing in the Constitution. We believe it makes sense to change this for two reasons:
  - First, it would send a very clear message that the Committee system is an integral part of our system of government; and
  - Secondly, no future Government would be able to abolish any committee listed in the Constitution, or remove any powers assigned to it by that document, without a referendum seeking the approval of the Citizens of the State.

Committees that might be included in the Constitution are:

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<sup>16</sup> The Abbeylara case is the litigation which concerned the inquiry by an Oireachtas subcommittee into the shooting of John McCarthy by Gardaí at Abbeylara, Co. Longford. The Supreme Court found that Oireachtas inquiries could not publish findings of fact or expressions of opinion that are adverse to the good name of persons who are not members of the Oireachtas.

<sup>17</sup> *Irish Times*, 2 July 2007. If the investigative role of Dáil committees is strengthened, Fine Gael believes that Parliamentary inspectors should also be appointed to assist the committees in their investigative work.

<sup>18</sup> See Appendix 9 for a list of the Committees that Fine Gael proposed to abolish (2009).

<sup>19</sup> Fine Gael believes that the Dáil timetable must also be re-organised to allow the Dáil committees to do as much work as possible when the House is not sitting.

- **The Public Accounts Committee** (with current powers);
- **A Banking and Financial Regulation Committee** (to oversee the financial sector and its regulators);
- **A Budget Committee** (as part of our reform of the budget system – see below); and
- **A European Legislation Committee** to ensure proper scrutiny of European legislation. Under the Lisbon Treaty, national parliaments gain new powers to evaluate various policies coming from the EU. In addition, the so-called ‘orange card’ gives national parliaments the right to object to proposals if the parliament believes they breach the subsidiarity principle.<sup>20</sup>

## A New Budget Process

In Government, Fine Gael will implement a *Responsible Budgeting Initiative* that will make the budgeting process much more transparent and give the Dáil a clear and meaningful role. In particular, it will allow both the Opposition and the wider public to examine in detail the key underlying financial assumptions on which Government is basing its actions *before* the budget is published.

The current process is deficient in several ways:

- **The budget set-piece debate is little more than political theatre.** The budget is presented to the Dáil at the end of each year as a *fait accompli*, to be rubber-stamped by the Oireachtas. It has already been crafted after extensive lobbying by interest groups and internal wrangling among government departments and ministers.
- **The debate on the Government’s allocations is completely superficial.** First, no significant alterations are tolerated by Government. Second, there is a complete absence of information on competing but unsuccessful demands for resources by other programmes and agencies.
- **Much of the Dáil debate on funding requests by each department occurs well into the year AFTER much of the money has already been spent.**

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<sup>20</sup> One third of national parliaments may object to a draft legislative proposal on the grounds of a breach of subsidiarity – the ‘yellow card’. The Commission will then reconsider it. If a simple majority of national parliaments continue to object, the Commission refers the reasoned objection to the Council and Parliament, which will decide the matter – the ‘orange card’.

To address these problems, Fine Gael will overhaul radically the entire budget process. We recognise that these new fiscal processes cannot by themselves buy international credibility or fiscal stability. However, we believe that a different budget process, such as we are proposing, might have limited the worst excesses of the last few years and will help avoid any recurrence.

- **We will establish a *Parliamentary Budget Office (PBO)*, supported by an *Independent Advisory Council (IAC)* to provide members generally, and the proposed Dáil Budget Committee in particular, with expert input and advice into:**
  - The underlying structural state of the public finances
  - The desirable borrowing / savings target for Government in the Budget, taking into account the economic cycle and longer-term fiscal pressures;
  - The long-term implications of specific spending and taxation policies, taking into account likely demographic and other social and economic changes;
  - Opportunities for rationalisation and prioritisation of public spending; and
  - Performance evaluation of spending programmes.
  
- **We will overhaul the annual *Government Budget Documentation* to include:**
  - Presentation of high-level service delivery and outcome targets alongside proposed spending allocations for public services;
  - Quantification of the cost of all major “tax expenditures” and “tax shelters”;
  - Assessment of the Government’s financial and non-financial assets and its financial and contingent liabilities, including public sector pension liabilities, future liabilities under Public Private Partnerships and possible liabilities resulting from the National Asset Management Agency (NAMA).
  
- **A new *Parliamentary Budget Cycle* will be established:**
  - **September** - Publication by the new Budget Office of its recommendation for the fiscal stance (borrowing target) in the Budget

- **October** - Government presentation to the Dáil of its Pre-Budget Outlook, including macro targets for spending, taxation and borrowing (saving) in the year ahead. The Government would have a “comply or explain” obligation with regard to the target set by the Budget Office.
- **November** – Government presentation to the Dáil of its draft Budget.
- **March** – Government presentation to the Dáil of a new *Public Service Delivery Report*, audited by the C&AG, showing compliance in the previous year with the levels of spending authorised by the Dáil, as well as a comparison of service delivery and outcome targets promised and actual results achieved
- **March** - Oireachtas Estimate Approval, following consideration of the Public Service Delivery Report.
- **April, July, September, December** – Government presentation to the Dáil of Quarterly Exchequer Reports (an expanded Exchequer Return), which would require the Minister to report on deviations from strategy and on the need for correction, at Departmental and macro-level
- **Government will develop a new *Medium Term Expenditure Framework* which will include:**
  - Presentation of aggregate envelopes for expenditure and tax based on the appropriate fiscal stance, recognising the different constraints that should apply to:
    - Capital
    - Demand-led spending
    - Stable programme spending
  - An explicit cabinet “rationalisation and prioritisation” mechanism to drive restructuring and to divide up the spending envelopes among broad departments and agencies. Cabinet would also retain a “strategic reserve” which could be applied to cross cutting activities and to Government priorities

- Within the broad allocations set by cabinet; units within Departments would be required to bid publicly for resources and offer a set of quantifiable service delivery and outcome commitments that they would deliver in return. New evaluation mechanisms within Departments would be established to judge whether commitments are being hit and to create an accountability framework.

## Holding Public Bodies to Account

The Dáil must have the power and resources to ensure that the massive failures in regulation and supervision of the last few years cannot happen again.

- **A Fine Gael Government will introduce a *Public Appointments Transparency Bill* that will require the relevant Dáil committees to vet all ministerial appointments made to State boards, agencies and regulators.**<sup>21</sup> In addition, it will require all chief executives and board chairpersons to appear before the relevant Oireachtas committee when called upon to do so.
- **Fine Gael will establish a new regulatory structure that will allow the performance of regulators to be benchmarked against best international practice.** We will also ensure that the relevant committee has the necessary expertise to allow our TDs to hold the various regulators to account.
- **A Fine Gael Government will substantially reduce the number of quangos (now circa 1,000).**<sup>22</sup> We will also require ministers to answer questions from TDs about the functioning of the key quangos in their area of responsibility.
- **Fine Gael will also establish strict criteria for the creation of any new quangos and ensure that all such agencies are subject to “sunset clauses”.** These sunset clauses will allow the Dáil, on a regular basis, to review the operations of the various quangos and decide whether their continued operation is merited.
- **We will strengthen the role of the Comptroller and Auditor General.** While the Comptroller plays a key role in helping ensure that Government gets value for money in its operations, recent reports show that it needs additional resources to do its job

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<sup>21</sup> This Bill was published in October 2008 by Leo Varadkar, Fine Gael’s Spokesman on Enterprise, Trade and Employment. See Appendix 10.

<sup>22</sup> See Fine Gael’s “*Streamlining Government*” policy document from March 2008, also published by Leo Varadkar. Available at: <http://www.finegael.org/upload/file/streamlining%20govt%20web.pdf>

properly. Any money invested here will, in our view, be saved many times over in better decision-making and accountability throughout the public sector.

- **Fine Gael will overhaul Ireland’s corporate governance regime.**<sup>23</sup> It is clear that massive failures of corporate governance in both the private sector and in key State bodies, such as FAS and the Dublin Docklands Development Authority (DDDA), contributed hugely to Ireland’s economic crisis and seriously damaged our international reputation. We will also ensure that senior executives of State bodies do not receive so-called “golden handshake” when they leave a job because of failures in their performance.

Fine Gael believes that the current crisis may be an opportunity to create a new, radically reformed model of Social Partnership that is tailored to meet the needs of the 21st century and is more in keeping with the original principles of Partnership. This model would be underpinned by a new social contract, in which workers deliver competitiveness and reform in the public and private sectors in return for greater equality and social progress.

Fine Gael has argued consistently that Partnership needs radical reform for two main reasons:<sup>24</sup>

- **It has become a tool to protect vested interests and insiders.** When Irish Citizens elect a Government and pay their taxes, they expect the Government to use this money wisely and fairly, for the benefit of all. That is the essence of the social contract between the State and Citizen. Over the last twelve years, however, Partnership became a mechanism to protect and promote sectional interests. The voices of the Citizen – the consumer, the family, the small business, large elements of civil society – were for the most part absent.
- **Social Partnership has increasingly lacked democratic legitimacy.** As the institutional complexity of Social Partnership has increased, its democratic legitimacy has decreased. Successive Fianna Fáil-led Governments have used Social Partnership to create an entirely parallel system of policy formation which involves outsourcing vital parts of government to unelected and often unaccountable bodies.

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<sup>23</sup> See Appendix 11 for more detail on our proposed Corporate Governance regime.

<sup>24</sup> See, for instance, “*A New Departure for Social Partnership*”, an Agreed statement of Fine Gael and Labour, 5 September 2005; and Enda Kenny, “*A New Direction for Social Partnership*”, 18 November 2007.

If a new partnership model is put in place, Fine Gael will ensure that any democratic deficit is eliminated by:

- Preceding each new round of talks with the adoption by the Dáil of a motion outlining the key challenges to be addressed;
- Subjecting the process to engagement with the appropriate Dáil Committee; and
- Broadening the process in order to provide a voice for consumers, small businesses, users of public services, parents and families, among others.

## Implementation

- Most of the changes in the Dáil's procedures, including strengthening the committee system and introducing a new budgetary process, can be made without any legislative or constitutional change. They will either require changes to the Dáil's Standing Orders or are matters for Government decision. The establishment of a Parliamentary Budget Office, supported by an Independent Advisory Council, will require new legislation.
- A number of pieces of legislation will be introduced by a Fine Gael Government to allow the Dáil to hold Public bodies to account, e.g., a *Public Appointments Transparency Bill*.
- The people will be asked on Constitution Day to give certain key Dáil committees standing in the Constitution.

### 3. OPEN GOVERNMENT

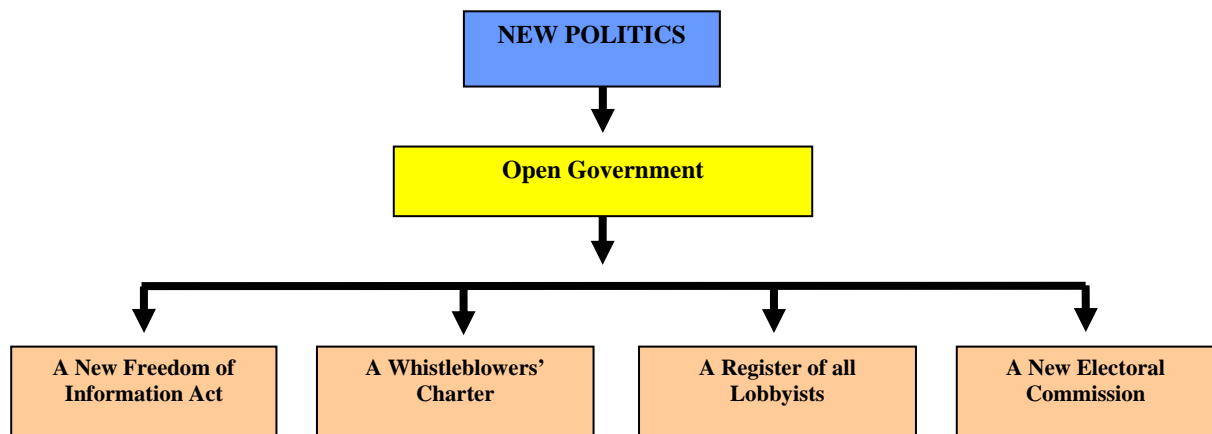
In conjunction with this report we are publishing an *Open Government Bill* that will be introduced by a Fine Gael Government within its first one hundred days.<sup>25</sup> The Bill will help restore trust in politics by making the workings of government, both central and local, more open to scrutiny by the public. It will do this by:

1. Significantly strengthening Freedom of Information (FOI);
2. Establishing a “whistleblowers charter”;
3. Registering all lobbyists; and
4. Creating a new Electoral Commission.

In addition a Fine Gael Government will:

- Allow the Criminal Assets Bureau to seize assets derived from political corruption; and
- Include the office of the Ombudsman in the Constitution, in order to allow its independence and powers to be given constitutional standing.<sup>26</sup>

Figure 6: Open Government



<sup>25</sup> See Appendix 12 for the text of our *Open Government Bill*.

<sup>26</sup> Fine Gael will also examine whether some of the functions of the Attorney General, as they relate to his role as “guardian” of the public interest, should be transferred to the Ombudsman. We believe there is a potential conflict of interest between this function of the Attorney General, and his other function as adviser to the Government.

## A New Freedom of Information Act

Fine Gael wants to reverse the restrictions that Fianna Fail has placed on Freedom of Information in Ireland. The first Freedom of Information Act was introduced by the Fine Gael led Rainbow Government in 1997 and was considered an example of international best practice. It had two main goals:

- **Short term:** To provide a mechanism whereby the Citizen could access both personal and non-personal information.
- **Long-term:** To fundamentally change the relationship between the State and the Citizen as a result of the legislation. It was expected that by making procedures and decisions of public bodies more open, a new relationship of accountability and participation would emerge.

The *Freedom of Information (Amendment) Act 2003*, introduced by a Fianna Fail-led Government, was a major step backwards. It placed major restrictions on the access of the Citizen to the decisions of public bodies, including significant charges, and increased the distance between the State and its Citizens. Fine Gael's new *Freedom of Information Bill* will remove these restrictions and will put in place a nominal charging mechanism.

## A Whistleblowers' Charter

Fine Gael is determined to introduce strong whistleblowers' legislation. We believe that the unacceptable practices at the banks and other public bodies might well have been uncovered sooner if such legislation had been in place. Although there are limited protections for employees in certain pieces of Irish legislation, there are several problems:

- Not all employees in either the public or private sector are safe from retaliation if they report wrongdoing;
- There is virtually no protection for whistleblowers in the financial services and business sectors; and
- There is very little in the way of whistleblower codes and guidance throughout the public service.

Our proposed legislation will not harm any business that is compliant with the relevant regulations and ethics of their industry.

## A Register of Lobbyists

Fine Gael will register all lobbyists and ensure that their activities are overseen by the Standards in Public Office Commission. While free and open access to Government is a key democratic right, the Mahon Tribunal and the abuses it uncovered makes it clear that lobbyists cannot be left unregulated. Our proposed system of registration, which is loosely based on the Canadian model, applies only to those individuals that are paid to lobby. People who are lobbying on a voluntary basis are not required to register. The Bill also specifically includes an exemption for charities. Their activities will continue to be regulated by the *Charities Act 2009*.

Fine Gael will also institute a one-year “cooling-off” for former public officials in both Local and central government, before they can join a private sector company that works for or with the State in a way that relates to the former official’s work.

## A New Electoral Commission

Fine Gael will establish a new, independent Electoral Commission whose first priority will be the creation of an accurate Electoral Register. It is estimated that there were roughly 800,000 errors in the 2007 register. This level of inaccuracy is completely unacceptable in a modern democracy.

We will establish the Commission by taking some of the key functions of the franchise section of the Department of the Environment, and merging them into what is now called the Standards in Public Office Commission (SIPO). In addition to compiling an accurate register of electors, the Commission will be responsible for:

- Electoral administration and oversight, including election spending;
- Revising constituency boundaries when necessary;
- Maintaining the Register of Lobbyists;
- Providing advice to the Minister on non-delegated matters, e.g., fixing of poll dates; and
- Overseeing political funding.

SIPO has, in its annual reports, requested additional powers. *Fine Gael's Open Government Bill* implements many of these recommendations and places local councillors, for the first time, under the remit of SIPO and its successor, the Electoral Commission. In particular, our proposals will allow the Commission to launch its own investigations, i.e., without having first received a complaint. We believe that this power will provide a considerable deterrent against any public official seeking to abuse his or her position for personal gain. Investigations by the Commission will, in the first instance, be conducted in private until it has confirmed that there is a genuine case to answer. Malicious complaints will meet with the full force of the law.

Fine Gael believes that a transparent system of political funding is essential if confidence is to be restored in the political system. We will:

- **Publish annual audited accounts for the Fine Gael party on the Web from 2010**
- **Introduce measures in Government to control party spending in the run-up to elections.** At the moment there are no real restrictions on electoral spending during this period.
- **Implement the recommendations from the Council of Europe's Group of States against Corruption (GRECO)<sup>27</sup> in the following areas:**
  - We will consolidate all of the various pieces of legislation on political financing into one piece of legislation.
  - We will ensure that adequate training is provided for those who are subject to legal obligations in the area of political financing, so that they better understand their rights and duties.
  - We will introduce legislation to make sure that violations of political funding rules are coupled with sanctions, e.g., there are no sanctions available, at the moment, if there is a failure to comply with a request by SIPO to provide information or documentation; and
  - We will give SIPO greater investigative and sanctioning powers in respect of less serious violations of the political financing rules. At present, SIPO must

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<sup>27</sup> GRECO, "*Transparency of Party Funding*", 4 December 2009.

refer all infringements – even those that are relatively trivial - to the law enforcement agencies for investigation.

## Implementation

- The proposed changes related to the Ombudsman will require constitutional change.
- All of the changes outlined in this section of the Report will require legislative change. Fine Gael's draft *Open Government Bill* is published with this report. None of its proposals require constitutional change.

## 4. EMPOWERING THE CITIZEN

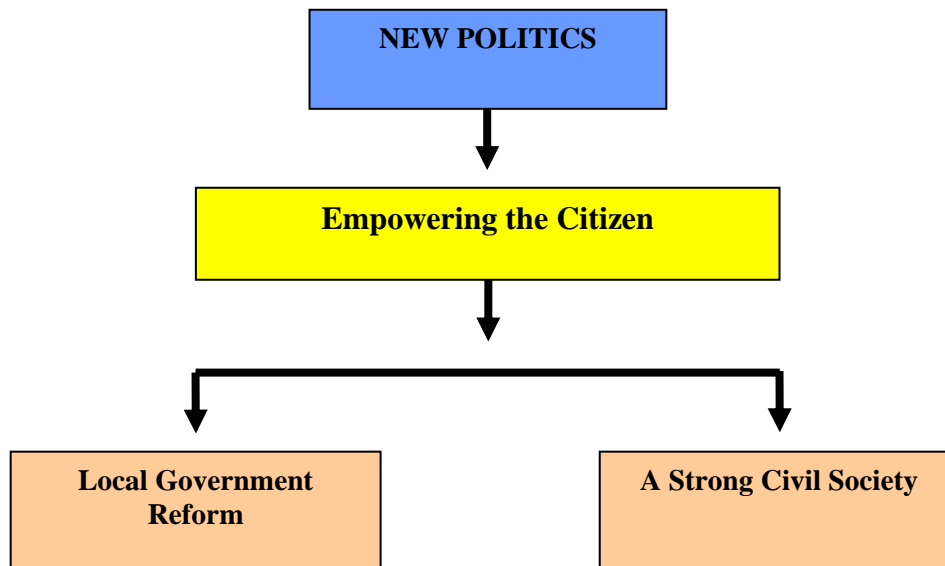
Fine Gael believes that there must be a fundamental shift in power from the State to the Citizen to create a strong, vibrant civil society. As far back as 2004 Richard Bruton (Fine Gael Spokesman on Finance and Deputy Leader) argued that:

“The first task for a new government is to champion the cause of the Citizen. It must make the needs of the Citizen the central driver of policy... Too often it is the producers, the bureaucracies, the big institutions whose voice is most loudly heard.”<sup>28</sup>

The inspiring response of citizens to the floods in late 2009/early 2010 shows clearly the tremendous community spirit that exists in Ireland. Fine Gael wants to build on that community spirit and champion the cause of the Citizen by:

- Building a stronger, more democratic Local Government that is accountable to local citizens and their communities; and
- Creating a more inclusive democracy that encourages much greater citizen involvement.

**Figure 7: Empowering our Citizens**



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<sup>28</sup> Richard Bruton, Speech to the MacGill Summer School, 23 July 2004.

## Local Government Reform

Fine Gael is committed to building strong Local Government.<sup>29</sup> The over-centralisation of government in Ireland is, in our view, inefficient and fundamentally incompatible with a healthy Republic. We believe that County and City authorities should be an important driver for local development and service delivery within the State. We also recognise that there is a need for regional structures to ensure strategic coordination.

### **Local Government Needs Much Greater Financial Flexibility**

If Local Government is to be credible, it must have greater flexibility in how it spends and raises money. The major weakness of Local Government financing is that about half of its income, which is over €10 billion, comes from central Government sources. The Indecon Review of Local Government Financing recommended three measures which Fine Gael supports:

- **A tax on non-principal residences;**
- **Greater freedom for Local Government to charges for local services; and**
- **A system of water charges, where everyone will be allocated a free water credit (quota). To facilitate this development, Fine Gael's NewERA plan will install water meters in every home.**

Local Government currently spends over a billion Euro providing clean drinking water every year, but in 2007 received only €257 million in water charges from non-domestic sources. This system is financially unsustainable and results in a huge waste of water.

Fine Gael will also give Local Government more flexibility in how income from Central Government is spent, through the greater use of block grants.

### **Local Control over Local Services Is Essential**

We believe that public services generally and Local Government in particular, have been damaged by a culture of managerialism that emphasises centralised control at the expense of accountability. One key example of this is the enormous growth of unaccountable State agencies and quangos to deliver local services. A Fine Gael Government will move many of

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<sup>29</sup> In May 2009 Fine Gael published *Power to the People*, a comprehensive plan for the reform of Local Government.

the functions currently being performed by agencies and management back to Local Government, involving publicly funded budgets in the region of €50 million every year. This will increase accountability and save the taxpayer an estimated €5 million in administration costs.

### **The Planning Process Must be Overhauled**

The developer led planning system has played a key role in the fragmentation of our communities led by excessive housing construction which resulted in a property boom and crash. We are all paying in some shape or form for this failed planning system. The Government's strategy of centralising more planning control with the Minister for Environment is not a viable long term solution as it transfers too much power to one individual. It does not take into account who might be occupying that office in twenty years' time. Fine Gael still believes that local communities should have the final say for their areas. What needs to be overhauled is the planning system so it becomes a 'plan-led' system rather than 'developer-led'. Fine Gael supports the concept of hierarchical plans, with democratic approval, from national to the local. We need to restore vision, purpose and imagination to our planning process and to build a new future based on fairness and the needs of local communities.

### **Dublin Needs a Real Mayor with Real Powers**

Fine Gael will vigorously contest any election for a Dublin Mayor. However, we firmly believe that Dublin deserves more than the Green Party's proposals to create a toothless, ill-defined "Mayor-Lite" for Dublin in 2010. We will bring in new legislation in Government to give Dublin a real Mayor with real powers. Fine Gael believes that:

- **Elections for a Dublin Mayor should take place in 2014 at the time of the local elections.** This will allow Local Government reforms to take place before a Mayor was elected. A recent study of the Mayoral model in the UK makes it clear that directly elected Mayors do not by themselves change anything unless the underlying structures of Local Government are also changed.<sup>30</sup> The introduction of a directly elected Mayor will require a major review of the structure of Local Government in Dublin. It is simply not sustainable for Dublin to have a directly elected Mayor, four local authorities and 130 local public representatives.

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<sup>30</sup> Aodh Quinlivan, "*The Mayor Essentials – Experience Abroad*".

- **The citizens of Dublin should be given a chance, through a broad-based public consultation process, to have their say about what kind of Mayor they want.** We believe such a process would be invaluable in helping define the proposed role of the Mayor, and in creating genuine public enthusiasm for the new office.
- **The Mayor should have clearly defined responsibilities, executive power and a real budget.** Current Government proposals suggest that the Mayor-Lite will have a number of strategic oversight and coordinating functions. But the position will have little or no real powers or responsibilities. One of the keys to the success of the Mayor of London is that the office has real spending power. However, it looks as if the Irish Government is not prepared to give Dublin's Mayor-Lite any real spending power.
- **The role of the Mayor should be reviewed at the end of his/her first term:** Such a review should recommend possible changes to the structure of the Office of Mayor and potential extensions to the Mayor's areas of influence, both politically and geographically.

## A Strong Civil Society

Civil Society in Ireland is under pressure from two sources:

1. Ireland, like all Western democracies, is suffering from a growing lack of involvement by citizens in the democratic process. A Fine Gael Government will introduce measures to encourage political re-engagement. In particular, we will:
  - a. **Automatically register all 18 year olds to vote and, where appropriate, hold elections on weekends to improve voter turnout.**
  - b. **Change the electoral system so that eligible Citizens, outside the country, have a right to vote at Irish embassies in the Irish Presidential election.** This will require safeguards, including an accurate electoral register.
  - c. **Support the growth of *Direct Democracy* in Ireland:**
    - i. **As part of its public sector reform programme, Fine Gael is working on a new Information Technology (IT) strategy for public services.** We believe that government in the future must not only be more transparent but also more interactive. We want to put as much

real-time government information as possible on the Web, and make it much easier for Citizens to interact directly with government through the Internet. In the US, the Government Web site Recovery.Org allows Citizens to track in detail how the fiscal stimulus package of €787 billion is being spent.

ii. **We will introduce a Public Petition system for the Dáil.** We believe that Citizens should have a way to raise key concerns directly with the Dáil. Our proposal will oblige the Dáil to consider a particular issue once it has been cleared by a Petitions committee.

2. Many Civil Society groups feel that the present Government is deliberately marginalising them. While some of these complaints may be driven in part by self-interest, there is evidence that the current Government is seeking to silence the voice of groups that have criticised its policies.<sup>31</sup> A Fine Gael Government will:

a. **Make key equality and rights bodies answerable to the Dáil, rather than the Government,** e.g., the Equality Authority and the Irish Human Rights Commission (IHRC). This will help protect these bodies in the future from unwarranted Government pressure.

b. **Ensure that the voices of Civil Society groups are heard under any successor to Social Partnership.** Work undertaken by the Carnegie Trust in Ireland shows clearly that many Civil Society groups felt they were excluded from key negotiations under Social Partnership.<sup>32</sup>

## Implementation

- Our proposals for a Public Petitions proposal, and widening the franchise for Presidential elections, will require constitutional change.
- Legislation will be required to implement our proposals on Local Government and our final proposals on the Dublin Mayor.
- Fine Gael's new IT strategy for government will require a massive overhaul of the chaotic way in which IT is currently managed in the public sector.

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<sup>31</sup> See, for instance, Jennifer Hough, "Irish Examiner", 17 November 2009.

<sup>32</sup> See Carnegie UK Trust, "Civil Society: Enabling Dissent", meeting held in Dublin, 20 May 2009.

## CONCLUSION

As we approach 2016, Fine Gael hopes that the New Politics will mark the start of a wider debate about the state of our Republic and the urgent need to restore confidence in Ireland's democratic institutions. A recent survey shows that Irish peoples' trust in government is one of the lowest in Europe: the figure now stands at 28% in Ireland, compared to an EU average of 43% and a global average of 49%.<sup>33</sup> Another poll found that 75% of Irish people have no confidence in the political system's ability to deal with the economic crisis.<sup>34</sup>

Fine Gael is convinced that public confidence in government can be restored – but only if there is real tangible change in the political system. The New Politics is designed to tackle head-on the major weaknesses in our archaic system of government, so that the huge policy mistakes of the last few years will not be repeated. It will:

- Prevent future Governments from behaving recklessly with the State's finances by requiring them to abide by certain key fiscal rules;
- End “Crony Government” in Ireland by opening up government and giving the Dáil, for the first time in its history, real power to hold ministers and public bodies to account; and
- Make our public sector and system of government much more efficient by reversing the centralisation of power in Ireland.

Fine Gael is not suggesting that political reform, by itself, is a panacea for all that ails our country. But we are convinced that political failure lies at the heart of Ireland's economic failure. If we want to fix the economy, and return Ireland to growth and prosperity, we must also fix the political system.

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<sup>33</sup> *2010 Edelman Trust Barometer.*

<sup>34</sup> *Irish Independent*, 7 February 2010.

## **PART TWO: APPENDICES**

## Appendix 1: The Constitution’s “Institutional” Articles

Figure 8 lists the articles that will be reviewed as part of the New Politics, namely articles 12-37 (excluding article 29 on International Relations). These articles contain some provisions that deal with non-institutional matters, e.g. the constitutional ban on the death penalty, which will fall outside the remit of this review.

**Figure 8: Constitution’s Institutional Articles**

Article	Topic
12	Presidency – 11 sections, 24 subsections.
13	Presidency, appointment of Taoisigh, ministers, dissolution of Dala, signing bills into Acts, Supreme command of defence forces, right of pardon, presidential message or address, president not answerable to courts, impeachment, powers on the advice of government. 11 sections. 15 subsections.
14	Presidential incapacity, presidential commission, council of state in emergency, commission’s role in event of president’s non-performance of functions or duties. 5 sections. 6 subsections.
15	The national parliament: what is Oireachtas, repugnancy of laws, ban on death penalty, right to maintain an armed forces, sittings, no arrest of members, members’ allowances. 5 sections. 20 subsections.
16	Dáil Éireann. Who can vote, size of Dáil, Dáil meeting after election, Length of Dáil term; filling of vacancies. 7 sections. 14 subsections.
17	Estimates 3 sections. 2 Subsections.
18	Seanad Éireann. Membership. Election and nomination. Panels. General elections for Seanad. 10 Sections 8 subsections.
19	Provision for direct election of Seanad for panels 1 section 0 subsections.
20	Bills’ passage through both Houses. 3 sections. 2 subsections.
21	Money bills. 2 sections. 4 subsections.
22	Money bills – definition. Certification of a Bill as a Money Bill. President’s appointment of a Committee on Privileges. 2 Sections. 8 Subsections.

<b>23</b>	Time for consideration of bills. 2 Sections. 4 Subsections.
<b>24</b>	Time abridgement of period in which Seanad Éireann can discuss bills. 3 Sections.
<b>25</b>	Signing and promulgation of bills. 5 Sections. 12 Subsections.
<b>26</b>	Reference of bills to court. 3 sections. 8 subsections.
<b>27</b>	Reference of Bills to the people (role of Seanad, Dáil and President) 6 Sections. 4 subsections.
<b>28</b>	Government. 12 sections. 20 Subsections.
<b>28A</b>	Local government. 5 sections.
<b>30</b>	Attorney General. 6 Sections. 4 Subsections.
<b>31</b>	Council of State. 8 Sections.
<b>32</b>	President & Council of State. 1 article.
<b>33</b>	Comptroller & Auditor General. 6 Sections. 3 Subsections.
<b>34</b>	The Courts. 5 sections. 14 subsections. Creation of High Court. Definition of role. Protection from declaration of unconstitutionality for Acts referred by the President under Article 26. Creation of Supreme Court. President of the Supreme Court. Jurisdiction of the Supreme Court. Pronouncement of judgements of the Supreme Court. Decision of Supreme Court shall be final and conclusive. Declaration of Office of judges. Failure to take declaration shall deem judge to have vacated office.
<b>35</b>	The Judiciary. 5 sections. 3 subsections. Appointment of judges. Removal of Judges. Remuneration.
<b>36</b>	Regulation of Courts. 1 section. Three parts ( <u>not</u> subsections), empowering the Oireachtas to provide statute law framework.
<b>37</b>	Judicial Functions. 2 sections. Provision for “limited functions and powers of a judicial nature” being fulfilled by a person or body that is not a judge or court.

## Appendix 2: Judicial Remuneration

Article 35.5 of the Constitution states:

*“The remuneration of a judge shall not be reduced during his continuance in office.”*

As a consequence of this provision, the judiciary are widely considered to be constitutionally immune from any reduction in public sector pay and any legislation enacted or other decision made to reduce judicial salaries would be unconstitutional. The purpose of this provision, as contained in the 1937 Constitution, is to preserve the independence of the judiciary and to prevent the executive and/or parliament from reducing judicial salaries, as sign of disapproval of judicial conduct or in retaliation for a judgement delivered with which the government and/or a parliamentary majority disagree.

An essential principle in conjunction with preserving the independence of the judiciary is that public respect for the judiciary is maintained and that the judiciary are not brought into disrepute as an essential organ of the State. It is regarded by many people as grossly unfair that the judiciary are exempt from reductions in public sector pay, due to the current constitutional provision. As a matter of principle, we believe it is important that the judiciary are seen to respond in a manner consistent with all others in the public service to the current financial emergency, and the incapacity of the State to maintain the present level of current public expenditure.

To tackle this issue requires a constitutional referendum to amend Article 35.5. Alan Shatter, Fine Gael’s Spokesman on Children, has published a Private Members Bill on this issue. Fine Gael believes it is essential that any change to Article 35.5 cannot be used in any way by any future government to undermine judicial independence. The provisions contained in Deputy Shatter’s Bill ensure that the independence of the judiciary cannot be undermined, whilst also facilitating a reduction in judicial salary similar to that imposed either across the public sector generally or on a comparative class of public servants.

The Bill proposes the deletion of the current Article 35.5 and its replacement with the following new Article 35.5:

*“The remuneration of a judge shall not be reduced during his continuance in office save where it is necessary to address a serious threat to the State’s economy, there is*

*a compelling need to stabilise the State's finances and as a consequence it is necessary to effect a reduction in public service remuneration; in such circumstances any reduction in the remuneration of all public servants or in the remuneration of a class of public servants may be applied to effect a comparable reduction in the remuneration of all members of the judiciary."*

**Note:** Fine Gael is also concerned that the judiciary seems reluctant to implement legislation on mandatory minimum sentences, even though such legislation has been held by the Supreme Court, under the current and former Chief Justice, to be a fully constitutional exercise of power by the Oireachtas.

## Appendix 3: FairCare

Fine Gael proposes to introduce the Dutch model of Universal Health Insurance (UHI) to Ireland in order to create a fairer, more efficient single-tier health system. Recent surveys show that, despite spending around the same money as us on a per capita basis, the Netherlands has the Number 1 health system in Europe.

The move to UHI will be accomplished in three phases.

### ***Phase 1: Maximise what we have (Implemented from Year 1)***

In the first phase of FairCare, we will change the way hospitals work and, in parallel, will significantly strengthen Ireland's Primary Care system. As part of our hospital reform programme, we will make the Minister of Health directly responsible for hitting key targets. Progress will be measured daily by real time information systems, and a Special Delivery Unit will be established to assist the Minister. A similar unit was successfully used in Northern Ireland to help slash waiting lists without significantly increasing spending.

### ***Phase 2: Introduce "Money follows the patient" (Implemented from Year 3)***

Under the current system of fixed budgets, each additional patient is effectively a "cost" to the health service. This system provides no incentives for efficiency or productivity. Under MFTP, health providers will be paid for how many patients they treat, subject to certain caps. Patients will be a source of "income" rather than a "cost", just as they are in private hospitals today.

### ***Phase 3: Universal Health Insurance (From Year 5)***

Once the first and second phases of FairCare have been successfully implemented, Fine Gael will introduce the Dutch system of Universal Health Insurance (UHI). UHI will only be introduced once waiting lists have been significantly reduced in Phases 1 and 2. In the interim, the current system of voluntary insurance will remain in place.

Under UHI local hospitals will be given much more freedom to run their own affairs and will become much more answerable to their patients and local communities. The HSE will, over time, be dismantled.

## Appendix 4: NewERA

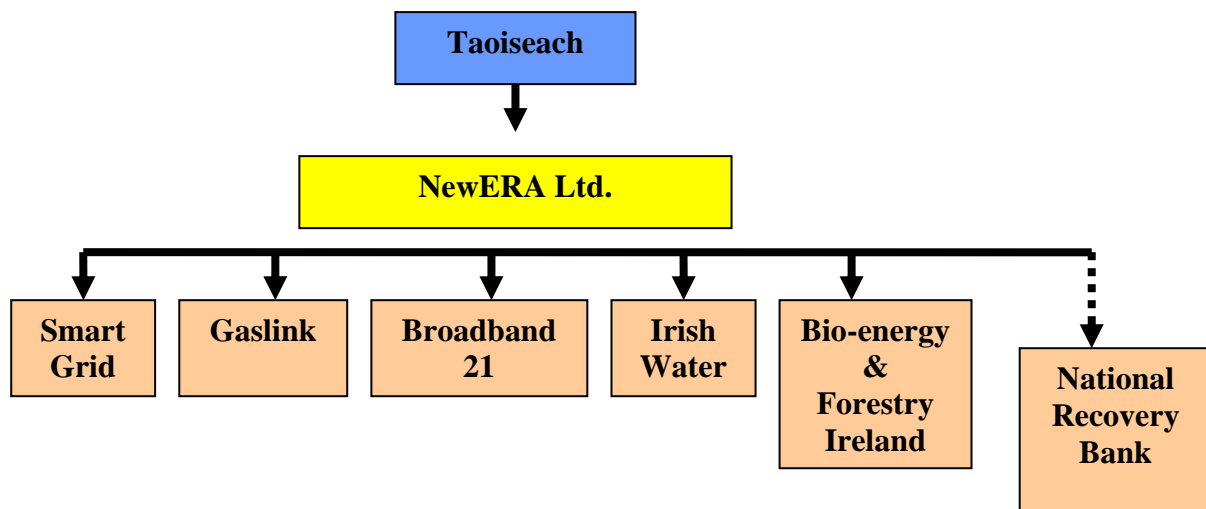
Fine Gael’s *NewERA* plan will transform the Irish economy and create over 100,000 jobs, by investing €18 billion in key infrastructure (Energy, Telecoms and Water) through a radically reformed semi-State sector.

Under *NewERA*, Fine Gael will establish a new State holding company (*NewERA Ltd.*) that will act as a “Manager” for the sector as a whole. It will oversee the restructuring of the sector through a combination of mergers, divestments and the creation of a small number of new companies. As a result of the *NewERA* consolidation programme there will be a net reduction in public bodies, companies and agencies. *NewERA Ltd.* will be held to account for its performance by the Taoiseach of the day, who will appoint the CEO and the board of the company.

*NewERA Ltd.* will be a commercially driven State company (not a quango) with a staff of 100 professionals. It will also be established with a Sunset Clause that will require its dissolution after seven years. We believe this is sufficient time for *NewERA Ltd.* to re-organise the semi-State sector into a series of more focused, more dynamic companies.

As Figure 9 shows, *NewERA Ltd.* will oversee five separate semi-State companies, and will work closely with Fine Gael’s proposed *National Recovery Bank*.

Figure 9: A Restructured semi-State sector



- **Smart Grid:** A merger of ESB Networks and Eirgrid.
- **Gaslink:** the existing State Company responsible for managing the gas network in Ireland.
- **Broadband 21:** Will amalgamate the telecom assets of existing State companies, including Bord Gáis, the NRA, the ESB and the MANs (Metropolitan Area Networks) that are managed for the State by Enet.
- **Irish Water:** Will take over the water investment and maintenance programmes of the 34 existing local authorities.
- **Bioenergy and Forestry Ireland (BFI):** Will merge Bord na Mona and Coillte.
- **National Recovery Bank:** This wholesale Bank that will provide financing directly to energy utilities to fund retrofits for houses with poor energy ratings.

## Appendix 5: Abolition of Second Houses

The abolition of upper houses in parliaments was a feature of the late nineteenth and twentieth centuries. In some States this was due to abandonment of hereditary upper houses (states with partially or totally hereditary upper houses included Austria, Germany, Hungary, Japan, Russia, Spain and the United Kingdom).<sup>35</sup> In others it was either due to increased democratisation, or fundamental constitutional change that led to the creation of new parliaments. By the early 21<sup>st</sup> century only a minority of European states still have upper houses (17, compared to 31 that don't). Small countries with under 10 million people have almost all ditched their upper houses unless operating a federal system or for other specific reasons.

Among those States that abolished their upper houses entirely were Sweden, Denmark and New Zealand. Sweden and New Zealand abolished their upper houses without adopting a new constitution. Denmark used the adoption of a new constitution to move from a bicameral to a unicameral system.

### **Sweden**

Sweden's constitutional systems underwent wholesale reform in the last thirty years of the twentieth century. Sweden's nineteenth century system of government, in which power was shared between the monarch and a bicameral legislature (which had itself replaced a four-chamber diet in 1866), was changed and democratised in the 1960s and 1970s, leading to the adoption of the new 1974 Instrument of Government (the constitutional document dealing with government) which came into force in 1975.<sup>36</sup> The new instrument replaced the Instrument of Government dating from 1809.

Reforms focused in particular on the monarch, the structures of parliament, and the executive. While the monarchy survived the process of reform, albeit scaled down and with all powers removed (though its abolition had been debated),<sup>37</sup> it was parliament that was fundamentally changed. The upper house was in fact abolished in 1970, ahead of the adoption of the new Instrument of Government, the latter of which came in to being in 1975.

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<sup>35</sup> Nicolas Baldwin, Donald Shell, *Second Chambers* (Frank Cass and Company, 2001) p.13.

<sup>36</sup> Sweden's constitution is made up of a collection of four documents dealing with government, succession to the throne, freedom of the press and freedom of expression.

<sup>37</sup> Part of the new Instrument refers to the 'head of state', not the 'king', suggesting that part at least of the document was drafted before it was clear whether Sweden would have a king or president.

The Swedish upper house had 151 members, who were elected by county and city councils. Nineteen constituencies were grouped into eight groups, with each year one of the eight facing an election. The usage of an indirect suffrage system, in which councillors formed an electoral college, was similar to the system created in Bunreacht na hÉireann. By the late 1960s the proportion of party support in the upper house was relatively similar to that in the lower house, except for the small left wing parties such as the Communist Party, which remained unrepresented to a representative degree in the upper house.

The abolition of the upper house was tied in to a major reform of the surviving Riksdag, and also in the relationship between the executive (which was no longer even in a theoretical sense answerable to the King of Sweden) and the legislature. Sweden's centuries old Privy Council, which advised the monarch, was also abolished.

### ***Denmark***

Denmark, like its Scandinavian counterparts, underwent a period of constitutional reform in the twentieth century. As was to be the case with Sweden later, issues such as the structure of parliament and the power of the monarchy came into play. From 1849 Denmark had had a two-chamber parliament known as the Riksdag, which was made up of two houses, the Landsting (upper house) and the Folketing (lower house).

Both houses had similar powers. Their major difference was in terms of membership, with the Landsting's make-up changed repeatedly with a degree of democratisation, having initially being partially indirectly elected and partly appointed by the King for terms of office.

As was of the case elsewhere, the Landsting was more conservative and older than the lower house, with the electoral system favouring wealthy landowners and the upper house defending their interests. Its democratisation in successive constitutions adopted in 1866 and 1915 saw the house size increase, while the electorate was changed with the granting of a right to vote to women. By the 1930s questions were being raised about the House's continued relevance.

A new constitution in 1939 proposed to replace the Landsting with a new upper house, the Rigsting, while some aspects of policy would be dealt with by both houses collectively, forming in effect a third house of parliament. Though overwhelmingly endorsed among those who voted, the new Constitution fell because the majority amounted to less than 1% below

the minimum threshold required for the referendum decision.<sup>38</sup> A new Constitution was finally adopted in 1953. It abolished the Landsting outright, leaving a single chamber parliament.

### ***New Zealand***

New Zealand originally had a bicameral system, with an appointed upper house (Legislative Council) and an elected lower house (House of Representatives). It was created by the *New Zealand Constitution Act 1852* (15 & 16 Vict. c. 72) and reflected its British origins and enactment in terms of role, symbolism and indeed existence. Like the Canadian Senate it had an appointed house, reflecting contemporary British constitutional rules (a hereditary house was not feasible as there was no native recognised aristocracy).

As with the House of Lords its role was supportive and advisory. From early on questions began to be raised as to its relevance and use, as well as its lack of a democratic mandate. A number of attempts to democratise the council were proposed, but not implemented. That was in part due to the fact that the Act that created it was an enactment of Westminster and could only be appealed or amended by Westminster. The *Statute of Westminster 1931* (22 & 23 Geo. V c. 4) enabled the dominions, should they choose, to amend or replace British enactments that applied to their internal governance. While Saorstát Éireann chose to introduce the statute into domestic law almost immediately, and use it to repeal British-enacted laws, it was not however until 1947 that New Zealand passed the necessary legislation incorporating the Statute into New Zealand law. The *Legislative Council Abolition Act 1950* then formally abolished the New Zealand upper chamber, moving New Zealand from a bicameral to unicameral system, something unusual among former dominions, most of which retained the Westminster System of Government.

Proposals have, however, been made to resurrect an upper house in New Zealand. Prime Minister Jim Bolger in 1990 proposed to return New Zealand to a bicameral system alongside reform of the electoral system but the issue never made it to a referendum.

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<sup>38</sup> As with the unused legislative referendum procedure in Ireland, the proposal needed to fulfil two criteria – it needed to win a majority of those voting and those who had voted yes needed to amount to a minimum percentage of the total electorate. It narrowly fell under the second requirement, by less than one per-cent.

## Appendix 6: Unicameralism in Europe

According to the database of the Inter-Parliamentary Union, there are thirty-one single chamber legislatures in Europe.<sup>39</sup> This does not include the three Scottish, Welsh and Northern Irish regional assemblies. Thirteen of the thirty-one unicameral legislatures are in the EU.<sup>40</sup>

There are 17 two chamber legislatures in Europe (including Ireland):

- Nine have populations well in excess of ten million: France, Germany, Italy, Spain, the Netherlands, the Russian Federation, Poland, Romania, and the UK.
- Four of the other eight countries that have populations of less than 10 million are federal (Austria, Belgium, Bosnia and Switzerland).
- The upper house in the Czech Republic is a hangover from the Federal Assembly of the dissolved Czechoslovakia (Slovakia is unicameral).
- Belarus also has a population less than ten million. However, like Russia, it has a Presidential system.
- Strictly speaking, Slovenia (population two million) is neither bicameral nor unicameral. It has two houses, but the second chamber (the National Council) has very little power. Its role is mostly consultative/advisory. The first Chamber, the National Assembly, acts as the supreme legislative assembly. As a result, Slovenia is often described as an “incomplete” bicameral system, or a unicameral system with a second chamber.

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<sup>39</sup> Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Georgia, Greece, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Norway, Portugal, Republic Of Moldova, San Marino, Serbia, Slovakia, Sweden, the Former Yugoslav Republic Of Macedonia, Turkey and the Ukraine.

<sup>40</sup> Bulgaria, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia and Sweden.

With the exception of Belarus, the Republic of Ireland is unique in having a full bicameral legislature for a State that is:

- Small (Population 10 million or under), and
- Unitary (non-federal).

## Appendix 7: History of Seanad Éireann

In January 1919, candidates who had been elected in the Westminster elections of 1918 assembled at the Mansion House to create a Unicameral parliament called Dáil Éireann. The establishment of the First Dáil occurred on the same day as the outbreak of the Irish War of Independence.

In 1920, the Westminster Parliament passed the *Government of Ireland Act*, which established two parliaments in Ireland – one for the six counties of Northern Ireland, the other for the remaining twenty-six counties. Both of these parliaments were bicameral. However, a substantial proportion of its membership boycotted the Southern Irish Senate and it eventually abandoned its meetings.

The 1921 Anglo-Irish Treaty did not include an upper house in the parliament of the Irish Free State. However, a Senate was subsequently established in the Free State Constitution of 1922 as a concession to Southern Unionists. Of the initial 60 members, half were chosen by W.T. Cosgrave, the President of the Government and leader of Cumann na nGaedhael (Fine Gael's predecessor). The other half was elected by the Dáil. Cosgrave, as expected, included sixteen former Unionists among his thirty nominees. W.B. Yeats, though not a Unionist, was also chosen.

A full state-wide general election in 1925 saw 76 candidates run for the 19 places available, with an electorate of about 1,345,000. The process was complex and attracted little interest. A subsequent constitutional amendment removed direct election and substituted an electorate made up of sitting TDs and the outgoing Senate. This process created a problem – by electing one-third of the Seanad at a time, it took time for the Seanad membership to change, so it usually was out-of-touch with contemporary public opinion.

When Fianna Fail, under the leadership of Éamon de Valera came to power in 1932, he was faced with an upper house that thanks to its electoral system had largely been elected when Cumann na nGaedhael had larger numbers than Fianna Fáil in Dáil Éireann. As a result it was unsympathetic to his agenda. An attempt by him to abolish the Seanad in was delayed by the upper house, meaning that the abolition only finally was achieved in 1936.

An Oireachtas Commission was established to consider whether a new Second House was required. Its final report showed an extraordinary diversity of opinion on issues such as its composition, functions and election.

Although the early drafts of the 1937 Constitution did not include a Senate, a Second House was eventually included in the document with a membership of 60 Senators. 43 of these are elected by local councillors, TDs and outgoing Senators from a series of panels:

- 1) Public administration and social services;
- 2) Agriculture and fisheries;
- 3) Education, the arts, the Irish language and Irish culture and literature;
- 4) Industry and commerce; and
- 5) Labour.

The vocational idea reflected Catholic social teaching of the time. The hope was that those elected would be experts in their area. However, the fact that the 43 Senators were ultimately chosen by politicians meant that these senators would instead reflect the politics of the various parties instead.

Of the remaining 17 Senators, 3 are elected by graduates of Trinity College Dublin and another 3 by graduates of the National University of Ireland. The remaining 11 Senators are nominated directly by the Taoiseach of the day.

There have been numerous reports on Seanad reform. Twelve such reports have been published by committees of the Oireachtas.

1. Seanad Committee on Procedure and Privileges Subcommittee on Seanad Reform (April 2004)
2. Seventh Progress Report of the All-Party Oireachtas Committee on the Constitution (March 2002)
3. Second Progress Report of the All-Party Oireachtas Committee on the Constitution (April 1997)
4. Report of the Constitution Review Committee (May 1996)

5. Report of the Committee on the Constitution (December 1967)
6. Report of the Seanad Electoral Law Commission (1959)
7. Seanad Éireann (1953), Report of the Select Committee on the Seanad Éireann (Panel Members) Bill, 1952
8. Report of the Joint Committee on Seanad Panel Elections (1947)
9. Report of the Commission on Vocational Organisation (1943)
10. Dáil Éireann (1937) Special Report of the Special Committee on the Seanad Electoral (Panel Members) Bill, 1937
11. Report of the Second House of the Oireachtas Commission (1936)
12. Report of the Joint Committee on the Constitution of Seanad Éireann (1928)

## Appendix 8: Unicameral Checks and Balances

We have examined four countries that have moved from bicameral to unicameral Parliaments - New Zealand, Sweden, Denmark and Croatia – to see what system of checks and balances they employ in their Parliaments.

Our analysis suggests that a number of different procedures have been adopted.

- New Zealand does not appear to have a very extensive checks and balances system in place. However, Citizens do have the right to petition parliament requesting that a suggested draft Bill is debated.
- Sweden has several measures to strengthen Parliament. For instance, a number of its committee have constitutional status, while committees also have the power to introduce proposals into the Parliament, i.e., the committees are much more than talking shops. There are also provisions on key issues for “weighted majorities”, i.e., more than a simple majority in Parliament is required.
- Like Sweden, Denmark also uses weighted majorities for certain issues. Denmark also has a provision for a legislative referendum. One-third of MPs may, within three weekdays of the final passing of a bill, ask the speaker for a referendum on a bill.
- The Croatian Constitution likewise contain provisions for weighted majorities in Parliament on certain issues, and provisions to allow voters to demand that a referendum be held to change the Constitution.

## Appendix 9: Oireachtas Committee Reform

The following changes to the committee system were suggested in our Oireachtas reform proposals from March of this year:

- Agriculture / Fisheries / Food with Community / Rural / Gaeltacht under the name Agriculture, Fisheries, Rural Affairs and Gaeltacht.
- Energy /Natural Resources with Environment, Heritage and Local Government and Climate Change and Energy Security under the name Environment and Energy.
- Education / Science with Arts/Sport under the name Education, Arts and Sport.
- Enterprise/Trade/Employment with Tourism under the name Enterprise and Industry.
- Foreign Affairs with European Affairs and Good Friday Agreement under the name Foreign Affairs and the European Union.
- Finance/Public Service with Economic Regulatory Affairs under the name Finance and Public Service.
- Health / Children with Social/ Family and Constitution on Children under the name Health and Social Affairs.
- Transport with Communications under the name Transport and Communications.
- Justice / Equality / Defence.

The following Standing Committees of the House should be maintained.

- Public Accounts Committee.
- Committee on Procedure and Privileges.
- Administration Committee.

Fine Gael believes that no Oireachtas member should be on more than one committee.

Figure 10 lists the current Joint Oireachtas committees.

**Figure 10: Current Committee Structure**

Joint Oireachtas Committees (Sectoral Committees) <sup>41</sup>		
No.	30th Dáil (2007 - )	29th Dáil (2002 - 2007)
1	Joint Committee on Agriculture, Fisheries and Food	Same
2	Joint Committee on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs	Same
3	Joint Committee on Communications, Energy and Natural Resources	Same
4	Joint Committee on the Constitution	Same
5	Joint Committee on Education and Science	Same
6	Joint Committee on Enterprise, Trade and Employment	Joint Committee on Enterprise and Small Business
7	Joint Committee on the Environment, Heritage and Local Government	Joint Committee on Environment and Local Government
8	Joint Committee on European Affairs	Same
9	Joint Committee on European Scrutiny	<b>Newly established.</b> Formerly a sub-committee of the European Affairs Committee.

<sup>41</sup> All Joint Committees, with the exceptions of the Committee on the Constitutional Amendment on Children, on Economic Regulatory Affairs and on Climate Change and Energy Security, also meet in Select format.

10	Joint Committee on Finance and the Public Service	Same
11	Joint Committee on Foreign Affairs	Same
12	Joint Committee on the Implementation of the Good Friday Agreement	<b>Newly established</b>
13	Joint Committee on Health and Children	Same
14	Joint Committee on Justice, Equality, Defence and Women's Rights	Same
15	Joint Committee on Social and Family Affairs	Same
16	Joint Committee on Transport	Same
17	Joint Committee on Climate Change and Energy Security	<b>Newly established</b>
18	Joint Committee on the Constitutional Amendment on Children	<b>To complete its work and dissolve by Summer 2009</b>
19	Joint Committee on Economic Regulatory Affairs	<b>Newly established</b>

<b>Standing Committees</b>		
20	Joint Administration Committee	This is an amalgamation of the  Joint Services Committee and  Members' Services Committees.
21	Select Committee of Members'  Interests of Dáil Éireann	Same
22	Select Committee of Members'  Interests of Seanad Éireann	Same
23	Public Accounts Committee	Same
24	Committee on Procedure and  Privileges (CPP) of Dáil Éireann  and Seanad Éireann	Same
25	Committee of Selection (Seanad  Éireann)	Same
- Standing Joint Committee on Consolidation Bills		

# Appendix 10: Public Appointments Transparency Bill

## PUBLIC APPOINTMENTS TRANSPARENCY BILL 2008

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### ARRANGEMENTS OF SECTIONS

#### PART 1

##### Preliminary and General Matters

1. Short title.
2. Interpretation.
3. Commencement.
4. Laying of certain information before Dail Eireann and Procedure for Confirmation
5. Accountability to Committees of the Oireachtas.

PUBLIC APPOINTMENTS TRANSPARENCY BILL 2008

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BILL

*Entitled*

AN ACT TO PROVIDE FOR REFORM OF THE APPOINTMENT PROCESSES OF PERSONS TO THE BOARDS OF STATUTORY AGENCIES; TO PROVIDE FOR OIREACHTAS SUPERVISION OF THE APPOINTMENT OF MINISTERIAL NOMINEES TO THE POSITION OF NEW MEMBERS OR THE RE-APPOINTMENT OF EXISTING MEMBERS TO THE BOARDS OF STATUTORY AGENCIES; TO PROVIDE FOR THE OVERSEEING OF AND CONFIRMATION BY RESOLUTION OF DAIL EIREANN OF THE APPOINTMENT OF MINISTERIAL NOMINEES TO THE POSITION OF CHIEF EXECUTIVE AND BOARD CHAIRPERSON OF STATUTORY AGENCIES; TO UPHOLD THE PROBITY OF THE APPOINTMENT PROCESS, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short Title

1. This Act may be cited as the Public Appointments Transparency Act 2008.

Interpretation

2. In this Act-

“Annual report” means a report on the activities of the statutory agency in the previous year;

“Appointee” means a person appointed, by a Minister of Government, to the board of a statutory agency the subject of this Act;

“Appointment” means the appointment of a person to a position on the Board of a Statutory Agency the subject of this Act;

“Appropriate Minister” means any Minister of the Government on whom functions stand conferred or who has general responsibility in respect of or in connection with a Statutory Agency.

“Board” means the Board of a Statutory Agency or Public Board or any governing body which performs a similar Board, whatever name is given to that governing body;

“Board Chairperson” means the Chairperson of the board of a Statutory Agency the subject of this Act;

“Chief Executive” means the Chief Executive Officer of a Statutory Agency the subject of this Act;

“Nominee” means a person nominated for appointment to the board of a Statutory Agency or Public Body for the first time or a person nominated for re-appointed to the board of a statutory agency for a second or subsequent occasion;

“Oireachtas Committee” means a Committee of one or both of the Houses of the Oireachtas to which the Oireachtas has assigned the role of examining matters relating to any or all of the activities or responsibilities of the Statutory Agencies or Public Bodies governed by the provisions of this Act;

“Public Body” means any body which is in receipt of in excess of €1,000,000 of public funds in any year and the appointment to the management of which is in the control of a Minister of Government;

“Statutory Agency” means a body created by legislation which is in receipt of in excess of €1,000,000 of public funds in any year.

Commencement date

3. This Act is to take effect one month after its enactment into law.

Laying of Certain

Information

Before Dail Eireann

And Procedure for

Confirmation

4.
  - (1) The nominees of the Minister for appointment to the positions of Chairperson of the Board, or any other position the holder of which performs the functions of the office of Chairperson (by whatever name called), of the body of a Statutory Agency shall appear before the relevant Oireachtas Committee
  - (2) A person to whom *subsection* (1) applies shall give evidence to that Committee on-
    - (a) his or her suitability for appointment to the position of Chairperson,
    - (b) his or her qualifications for appointment to the position of Chairperson,
    - (c) other matters pertaining only to the appointment of a Chairperson to the relevant statutory agency.
  - (3)
    - (i) The committee shall be required to confirm or reject the nomination of a person under *subsection 1* to the appropriate

Minister within 7 days of the evidence under *subsection 2* having been completed

(ii) Where the committee confirms the nomination of a person under *paragraph (i)*, the Minister shall order their appointment by resolution of Dáil Éireann

(iii) Where the committee rejects the nomination of a person under *paragraph (i)*, it shall give be required to present to the Minister the reasons for its decision in subsequent private session of the Committee

(4) The names of all Ministerial prospective nominees to the Board of any Statutory Agency, shall be presented to the relevant Oireachtas Committee at least 21 days before their nomination takes effect.

(5) The names of all Ministerial nominees to the Board or governing body of a Public Body, shall be presented to the relevant Oireachtas Committee at least 21 days before their nomination takes effect.

Provision for

Annual Reporting

5. (1) The Chief Executive and/or the Board Chairperson of a Statutory Agency or Public Body the subject of this Act, shall, on an annual basis, and whenever so required by a relevant Oireachtas Committee, cause to be laid before that Committee Committees the annual report, annual accounts, work plans and strategic plans of the Statutory Agency.

(2) From time to time, and whenever so required, the Chief Executive and/or the Board Chairperson of a Statutory Agency or Public Body the subject of this Act, shall, at the request in writing of a Committee appointed by one or both Houses of the Oireachtas, attend before it to account for the performance of the functions of that Statutory Agency.

## PUBLIC APPOINTMENTS TRANSPARENCY BILL 2008

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### EXPLANATORY MEMORANDUM

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#### Purpose of the Bill

The purpose of the Bill is to provide a measure of accountability and Oireachtas oversight into the appointment of persons to the boards of the statutory agencies. The Bill makes provision for the placing before Dáil Éireann of the names and qualification of all Ministerial appointees to statutory agencies. The Bill provides for the appearance before the relevant Oireachtas Committee of proposed nominees for appointment to the position of chief executive and board chairperson of statutory agencies. It provides for confirmation by way of resolution of Dáil Éireann of nominees to the position of chief executive and board chairperson of statutory agencies. It also provides that the names of other Board members of statutory agencies and nominations to other Public Bodies shall be laid before the appropriate Oireachtas committee 21 days prior to their nomination taking effect.

In doing so the Bill provides a safeguard to ensure that the most qualified and suitable available candidates are appointed to the position of Board Chairman resulting in greater confidence in the management of statutory agencies.

The Bill provides for key pre-conditions to the appointment or re-appointment of persons to existing or new statutory agencies. It provides a system for the supervision of Ministerial appointees to the position of members of the board of statutory agencies and for greater Oireachtas oversight of appointment of Ministerial nominees to the position of Board Chairperson and of the activities of statutory agencies.

*Provisions of Bill:*

*Section 1* provides that the Bill on enactment shall be known as the Public Appointments Transparency Act 2008.

*Section 2* is the definition section providing definitions of key terms used in the Bill.

*Section 3* provides for the Bill to become operative one month after the date of its enactment.

*Section 4* provides that the name and qualifications of all ministerial appointees to the board of any statutory agency or public body governed by the provisions of this Bill shall be laid before Dail Éireann.

*Section 5* requires that the nominee of the relevant Minister to the positions Board Chairperson of a statutory agency governed by the provisions of the Bill, shall be subject to a hearing of the relevant Committee of Dáil Éireann and that their appointment shall be confirmed by resolution of Dáil Éireann. Granting Dáil Éireann an enlarged role in overseeing and ensuring the transparency of the appointment process of Ministerial nominees to the position of Board Chairperson of statutory agencies.

*Section 6* requires the statutory agencies governed by the provision of the Bill to furnish the relevant Oireachtas committee with a copy of their annual report, annual accounts, work plan and strategic plan. Further, subsection 2 requires the chief executive and/or board chairperson to appear before the relevant Oireachtas committee when called upon to do so.

## Appendix 11: Corporate Governance

The New Politics is essentially about reforming Ireland's under-performing political system. However, Ireland's reputation has taken a battering internationally as consequence of the scandals in the banks, stage agencies like FAS and the Dublin Docklands Development Authority (DDDA), the DCC/Fyffes case and the failure of public institutions like the Central Bank and Financial Regulator to prevent them.

This reputational damage comes at cost. It is more expensive for the Government to borrow money, harder for our companies to export their goods and services, more difficult to secure trade finance and export credit insurance and harder to attract foreign direct investment. Many of the corporate governance failures that occurred in stage agencies like FÁS also occurred in private sector banks like Anglo. In both cases a CEO went on to be Chairman and in both cases there was a culture of multiple directorships.

Currently, the Combined Code of Corporate Governance is not legally binding and only applies to companies listed on the Irish Stock Exchange. It does not apply to unlisted companies, semi-states or state agencies. We must improve corporate governance across the private, semi-state and public sectors. The new *Company Law Consolidation Bill* is a golden opportunity to do this. We need new laws but we also need a change of culture.

Fine Gael believes that the following changes should be made to Ireland's corporate governance regime:

1. State-owned companies and state agencies to sign up to the Combined Code or Corporate Governance (to the extent that it is applicable) and to make available to the public the same information that would be made available to shareholders of a limited company (details of loans to directors and connected persons, etc.).
2. Former chief executives of public and semi-state companies and stage agencies must not be allowed to assume role of chair of such companies or agencies for a period of five years or vice versa. This should not be permitted in financial institutions at all.
3. The role of CEO and Chair should not be combined in companies above a certain size.

4. Details of all transactions and arrangements entered into by a company with any of its officers, and benefits obtained by an officer from a company during the course of a financial year, to be fully disclosed in the annual accounts or the annual report.
5. A “conflict of interests” regime to be introduced which prevents an overlap of directors between the boards of financial institutions and state/semi-state companies.
6. A Rotation of auditors after three years for companies above a particular size in the private and semi-state sectors and end to the Comptroller and Auditor General’s monopoly on auditing state agencies by allowing for external audits from time to time.
7. Restrictions should be introduced on the number of directorships that any one person can hold.
8. Semi-states and state Agencies to hold Annual General Meetings in front of the relevant Oireachtas Committee with the committee members acting in place of shareholders. Committees will report to the Oireachtas on the adoption of the annual report, re-election of the board and senior remuneration
9. Audit Committees must include at least one qualified independent financial expert

# Appendix 12: Open Government Bill

**DRAFT**

## **OPEN GOVERNMENT BILL 2010**

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*Mar a tionscnaíodh*

*As initiated*

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### ARRANGEMENT OF SECTIONS

#### PART 1

##### PRELIMINARY AND GENERAL

###### Section

1. Short title and commencement.

#### PART 2

##### NATIONAL ELECTORAL OFFICE

2. Interpretation.
3. Establishment day.
4. National Electoral Office.

5. Amendment to the Act of 2001
6. Transfer of electoral registration functions.
7. Additional functions of the National Electoral Office
8. Power to initiate inquiry.
9. Time limit on furnishing documents.
10. Amendment to Section 24 of the Act of 2001.
11. Time limit on furnishing tax clearance certificates.
12. Extension of definition of Office Holder.

### PART 3

#### REGISTRATION OF LOBBYISTS

13. Amendment to the Act of 2001

### PART 4

#### FREEDOM OF INFORMATION

14. Interpretation

15. Revocation of fees for Freedom of Information applications.
16. Absolute limits on fees that may be applied to Freedom of Information applications.
17. Provision for refund of fees of successful appeals.
18. Repeals of restrictive measures of the Freedom of Information (Amendment) Act 2003.

## PART 5

### PROTECTED DISCLOSURES OF INFORMATION IN THE PUBLIC INTEREST

19. Interpretation
20. Protected disclosures.
21. Official secrets act
22. Disclosure to prescribed persons.
23. Protection from civil liability of persons who have made a protected disclosure.
24. Protection of employees from penalisation for having made a protected disclosure.
25. Proceedings before the Labour Court.
26. Enforcement of determinations of the Labour Court.
27. Evidence of failure to attend before or give evidence or produce documents to the Labour Court.
28. Continuity of employer's business.
29. Making false reports.

Acts Referred to:

Ethics in Public Office Act 1995

Ethics in Public Office Acts 1995 and 2001

Freedom of Information Acts 1997 and 2003

Official Secrets Act 1963

Standards in Public Office Act 2001

Unfair Dismissals Act 1997-2007

## OPEN GOVERNMENT BILL 2010

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### BILL

*Entitled*

AN ACT TO PROVIDE IN THE PUBLIC INTEREST FREE AND OPEN ACCESS TO GOVERNMENT AND FOR THOSE PURPOSES TO STRENGTHEN THE POWERS OF THE STANDARDS IN PUBLIC OFFICE COMMISSION; TO AMEND THE ETHICS IN PUBLIC OFFICE ACTS 1995; TO AMEND THE STANDARDS IN PUBLIC OFFICE ACT 2001; TO AMEND THE FREEDOM OF INFORMATION ACTS 1997 AND 2003; TO PROVIDE A SYSTEM OF REGISTRATION OF PAID LOBBYISTS AND DISCLOSURE OF THEIR ACTIVITIES; TO PROVIDE PROTECTION FROM CIVIL LIABILITY OR PENALISATION OF EMPLOYEES WHO MAKE CERTAIN DISCLOSURES IN RESPECT OF THE ACTIVITIES OF THEIR EMPLOYERS AND TO MAKE PROVISION FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### PART 1

#### PRELIMINARY AND GENERAL

Short title and  
commencement

1.— (1) This Act may be cited as the Open Government Act 2010.

(2) This Act shall come into operation on such days as the Minister for Finance may direct by Regulations, but not later than 120 days after its enactment.

## PART 2

### NATIONAL ELECTORAL OFFICE

#### Establishment Day

**2.-** In this part, the “establishment day” shall be the day six months after the enactment of this Act.

#### Interpretation

**3.-** In this Act, "Act of 2001" means the Standards in Public Office Act 2001

#### National Electoral Office

**4.—** (1) The name of the Standards in Public Office Commission is changed on the establishment day, and it shall be known as the National Electoral Office.

(2) References in the Act of 2001, in this Act or in any other Act to the Standards in Public Office Commission, or to the Commission, shall, from the establishment day, be construed as references to the National Electoral Office.

#### Amendment to the Act of 2001

**5.-** The Act of 2001 is amended –

(i) by the insertion before section 1 of “Part 1 – The National Electoral Office”;

(ii) by the insertion after section 26 of “Part 2 – Registration of Lobbyists”;

(ii) by the insertion after section 26H of “Part 3 – General”.

Transfer of Electoral Registration

to the National Electoral Office

**6.-** Section 6 of the Electoral Act 1992 is amended by the substitution of ““registration authority” means National Electoral Office” for ““registration authority” means the council of a county or the corporation of a county borough”.

Additional Function of

the National Electoral Office

**7.—**In addition to the functions conferred on the National Electoral Office by the Act of 2001, the National Electoral Office shall have such additional function as may be conferred by the Minister for the Environment, Heritage and Local Government by regulation, which shall be approved by Dáil Éireann.

Power to initiate

Inquiry.

**8.—**Section 6 of the Act of 2001 is amended by inserting the following new subsection after subsection (8):

“(9) (a) Where the National Electoral Office is considering initiating an investigation into any matter under section 23 of the Principal Act, the National Electoral Office may, on its own initiative, appoint an inquiry officer to conduct a preliminary inquiry.

(b) Paragraph (c) shall apply irrespective of whether a complaint has been made to the National Electoral Office under section 4 or section 22 of the Principal Act.

(c) Whenever so requested by the National Electoral Office under this subsection, an inquiry officer shall carry out a preliminary inquiry into the matter specified by the National Electoral Office —

(i) by requesting any person whose evidence would or might, in the opinion of the officer, be relevant to the inquiry, at the option of the person, to—

(I) provide him or her with a statement in writing of the evidence that the person would give to the National Electoral Office in relation to the matter at an investigation into the matter by the National Electoral Office under section 23 of the Principal Act, or

(II) make a statement of the evidence aforesaid at a meeting with the inquiry officer which the officer shall write down, within such reasonable period as may be specified by the officer.

(ii) where the inquiry officer is of the opinion that allegations are made in a statement provided under subparagraph (i) that might upon investigation by the National Electoral Office give rise to findings of fact or to conclusions which could adversely affect or impugn the good name of any person, by furnishing the person with a copy of that statement and with copies of any relevant documents and requesting the person, at the option of the person, to—

(I) provide him or her with a statement in writing of the evidence that the person would give to the National Electoral Office in relation to the matter at such an investigation as aforesaid in relation to the matter, or

(II) make a statement of the evidence aforesaid at a meeting with the inquiry officer which the officer shall write down, within such reasonable period as may be specified by the officer.

(iii) where appropriate, by conducting interviews with the persons referred to in subparagraphs (i) and (ii), and questioning them, for the purpose of the making of the statements aforesaid,

(c) Subsections (3) to (8) shall apply to a preliminary inquiry under this subsection as they apply to a preliminary inquiry under subsection (2).

(d) A preliminary inquiry under this subsection shall be conducted in private .”.

Time limit on  
furnishing documents.

**9.** — (1) Section 23 (1) of the Act of 2001 is amended by –

- (a) the substitution of “6 months” for “9 months” in each instance where it occurs;
- (b) the substitution of “3 months” for “one month” in each instance where it occurs.

(2) The amendment effected by *subsection (1)* applies to all documents under section 23 of the Act of 2001 issued or made after the commencement of this section

Amendment to  
Section 24 of the  
Standards in Public  
Office Act 2001

**10.** — Section 24 (2) (b) (ii) of the Act of 2001 is amended by the deletion of the phrase “the House” and the insertion of “both Houses of the Oireachtas”

Time limit on  
tax clearance certificates

**11.** — Section 25 of the Act of 2001 is amended by the insertion after *subsection (4)* of the following subsection:

“(4A) Where a member who furnishes to the National Electoral Office an application statement in accordance with subsection (4) above and is subsequently issued with a tax clearance certificate, that member shall furnish the National Electoral Office with the tax clearance certificate within 30 days.” .

Extension of  
definition of officer  
holder

**12.** — Section 2 of the Ethics in Public office Act 1995 is amended by substituting the following for the definition of "Office Holder":

“Office Holder” means-

- (a) a person who is a Minister of the Government or a Minister for State,
- (b) a member who holds the office of Attorney General,
- (c) a person who is Chairperson or Deputy Chairperson of Dáil Éireann or Chairperson or Deputy Chairperson of Seanad Éireann, and
- (d) a person who holds –
  - (i) the office of Chairperson of a committee of either House;
  - (ii) the office of Chairperson of a joint committee of both Houses;
  - (iii) the office of Chairperson of a standing committee of either House;
  - (iv) the office of Chairperson of a sub-committee of a committee of either House.

### PART 3

#### REGISTRATION OF LOBBYISTS

Amendment to  
Act of 2001

**13.-** The Act of 2001 is amended by the insertion before section 27, of the following provisions:

“Interpretation

26A.- In this Part-

“lobbyist” means a person who engages in, or assists a person who engages in, lobbying;

“lobbying” means engaging in any of the following activities:

- (a) communication with a public official, or
  - (b) arranging a meeting or other form of communications between a public official and any other person  
in an attempt to influence-
- 
- (i) the development of any legislative proposal by the Government, a Minister of the Government, a Minister of State of the Government or a member of Dáil Éireann or Seanad Éireann,
  - (ii) the introduction, defeat, passage or amendment of any Bill or resolution in either Dáil Éireann or Seanad Éireann,
  - (iii) the making, revocation or amendment of any Statutory instrument,
  - (iv) the development or amendment of any policy or programme of a public body, or
  - (v) the awarding of any contract, grant, contribution or other benefit by or on behalf of a public body.

“public body” means

- (i) a Department of State,
- (ii) the Office of the Attorney General,
- (iii) the Office of the Comptroller and Auditor General,
- (iv) the Houses of the Oireachtas Commission,
- (v) a board, commission, authority, office, regulator or other agency which has been established pursuant to statute,
- (vi) any body, organisation or group appointed by which is or accountable to the Government or a Minister of the Government,
- (vii) a company in which a majority of the shares are held by or on behalf of a Minister of the Government or Directors appointed by such a Minister,
- (viii) a local authority.

“public official” means an officer holder or any of the following persons:

- (a) a member of Dáil Éireann or Seanad Éireann,

- (b) a person employed by a member of Dáil Éireann or Seanad Éireann in his or her capacity as such or by a political party registered in the Register of Political Parties,
- (c) a special adviser within the meaning of section 19 of the Principal Act,
- (d) a person who is a director of a public body.

Register of Lobbyists and Lobbying.

26B.-

- (1) The Commission shall establish and maintain a register (“the register”) in which a record shall be kept of all lobbyists in accordance with this Part, and a record of all returns and other documents submitted to the Commission under this Part.
- (2) The register may be organised in such manner and kept in such form as the Commission may determine.
- (3) The register shall be open to public inspection at such place and at such reasonable hours as the Commissioner may determine.
- (4) Persons who have been admitted onto the register shall be furnished with an accreditation card.

Registration of Lobbyists

26C.- (1) Any person who proposes to engage in lobbying on behalf of a commercial undertaking is required to apply for registration on the register established pursuant to section 26B.

(2) Any commercial undertaking which proposes to engage in lobbying on its own behalf or on behalf of any other person is required to apply for registration on the register established pursuant to section 26B.

(3) It is an offence for an unregistered person engage in lobbying on behalf of a commercial undertaking.

(4) The obligation to register does not apply to –

- (i) members of the diplomatic corps or their staff; or
- (ii) registered charities.

Returns by Lobbyists

26D.- (1) Any person who is included on the register established under section 26B is required to furnish the Commission, on a bi-annual basis of a statement declaring:

- (a) the identity of the entities on whose behalf he or she has been lobbying,
- (b) the identity of the public bodies which have been lobbied,
- (c) the subject-matter, proposal or policy being lobbied on, and
- (d) such other matters as may be prescribed by the Minister as being required in order to enhance transparency and maintain stability and confidence in policy, political and decision making processes.

Code of Conduct

26E.-

(1) The Commission shall prepare a code of conduct for lobbyists engaged in activities regulated by this Part.

(2) In preparing a code of conduct under subsection (1), the Commission shall invite submissions from and consult with interested persons, office holders and organisations affected by this Part.

Restrictions on Lobbyists

26F.-

- (1) An individual who is required to file a return under section 26G shall not receive any payment, nor shall the client of any such individual make any payment, that is in whole or in part contingent on the outcome of any matter on which the individual engaged in lobbying activity on behalf of that client.
- (2) No person shall, during a period of three years after the day on which the ceased to be a public official, carry on any lobbying activities referred to in this Part, whether as an individual or as an employee of a body corporate on behalf of that body corporate.

## Investigations

### 26G.-

(1) The Commission shall consider all returns and other documents submitted to it under this Part.

(2) The Commission shall, if it has reasonable grounds to believe that a person, office holder or body corporate has breached the terms of this Part, conduct an investigation at its own initiative to determine if such a breach has occurred.

(3) The Commission may refuse to investigate, or may cease any investigation under subsection (2), if it is of the opinion that the error or omission was minor and inadvertent, and, following notification to the person office holder or body corporate of such error or omission, the record has been corrected by such person, office holder or body corporate within 14 days of receipt of such notification.

(4) The Commission shall prepare a report of any investigation carried out under this section including the findings of the investigation, details of any records corrected in accordance with *subsection (3)* and the conclusions of the Commission, and cause a copy of such report to be laid before each House of the Oireachtas.

## Accuracy of Register

### 26H.-

(1) The Commission may take such steps as it deems appropriate to verify the information contained in any return or other document submitted to the Commission under this Part.

(2) In discharging its powers under *subsection (1)*, the Commission may send to any current or former public official any record or disclosure made to the Commission under this Part in order that the public official confirm to the Commission the accuracy and/or completeness of any such record, or correct and/or complete any such record submitted to the Commission under this Part.

(3) The Commission may, in its annual report, report on the failure by a current or former office holder to respond to a request under *subsection (2)*.

## PART 4

### FREEDOM OF INFORMATION

Interpretation

**14.** In this Part, "Act of 2003" means the Freedom of Information Act 2003.

Revocation of fees

for Freedom of Information

**15.-** The Freedom of Information Act 1997 (Fees) Regulations 2003 (S.I. No. 264 of 2003) are revoked.

Absolute limit on

fee that may be applied

to Freedom of Information

applications

**16.-** Section 47 (6A) of the Freedom of Information Act 1997 is amended by the substitution of the following for paragraph 9(d):

“(d) Fees of different amounts may be prescribed under paragraph (a) but such fees shall not exceed €10.”

Provision for

refund of fees of

successful appeals

**17.-** Section 47 (6A) of the Freedom of Information Act 1997 is amended by the insertion of a new paragraph (f):

“(f) (i) A fee under this subsection shall be refunded in full in the event of a successful appeal of the original decision of a public body either at ‘internal review’ or on appeal to the Information Commissioner,

(ii) Fees refunded under subparagraph (i) above must be refunded in full within two weeks of the decision of the internal reviewer or Information Commissioner.” .

Repeals

**18.-** Sections 14, 15, 19 and 29 of the Act of 2003 are repealed.

## PART 5

### PROTECTED DISCLOSURES OF INFORMATION IN THE PUBLIC INTEREST

Interpretation

**19.-**

(1) In this Part, ‘employee’ and ‘employer’ have the same meaning as in the Unfair Dismissals Acts 1997-2007.

(2) In this Part, ‘penalise’ includes any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to

any term or condition of his or her employment and which is consequent upon a protected disclosure by the employee.

(3) For the purposes of subsection (2) but without prejudice to its generality, penalisation includes suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2005), or the threat of suspension, lay-off or dismissal, demotion or loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages or a change in working hours, imposition of any discipline, reprimand or other penalty (including a financial penalty), coercion, intimidation or harassment, injury, damage or loss, and threats of reprisal.

(4) Paragraph (c) of subsection (2) shall not be construed in a manner which prevents an employer from ensuring that the business of the body concerned is carried on in an efficient and effective manner.

Protected disclosure

**20.-** Where an employee makes, in good faith and not for personal gain, a disclosure to an authorised person and the employee has reasonable grounds for believing that it will show one or more of the following:

(1) that a criminal offence has been committed, is being committed, or is likely to be committed;

(2) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(3) that a miscarriage of justice has occurred, is occurring or is likely to occur;

(4) that the health and safety of any individual has been, is being or is likely to be endangered;

(5) that the environment has been, is being or is likely to be damaged;

(6) that there is conduct which has led, is leading or is likely to lead to a misuse or substantial waste of public funds;

(7) that there is conduct leading to concern about questionable accounting, internal controls or auditing matters;

(8) that the health or welfare of a person who is receiving a health or personal social service has been, is or is likely to be at risk;

(9) that the actions of any person employed has posed, is posing or is likely to pose a risk to the health or welfare of the public;

(10) that the information tending to show any matter falling within any one of the preceding paragraphs has been, is likely to be deliberately concealed or destroyed;

then disclosure shall be a protected disclosure under this Act.

Official Secrets Act

**21.-** Notwithstanding anything in the Official Secrets Act 1963 a disclosure of information to which section 15 relates shall be a protected disclosure if the employee makes the disclosure in accordance with section 17.

Disclosure to prescribed person

**22.- (1)** A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure in good faith to a person prescribed by Regulation made by the Minister for Finance for the purposes of this section, and

(b) reasonably believes—

(i) that the relevant disclosure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each descriptions, is or are prescribed.

Protection from civil liability  
of persons who have made a  
protected disclosure.

**23.-** (1) A person is not liable in damages in consequence of a protected disclosure.

(2) Subsection (1) does not apply in respect of a person who makes a disclosure knowing it to be or reckless as to whether it is false, misleading, frivolous or vexatious or who, in connection with a disclosure, furnishes information that the person knows to be false or misleading.

(3) The reference in subsection (1) to liability in damages shall include a reference to any other form of relief.

(4) In the course of obtaining legal advice.

Protection of employees  
from penalisation for  
having made a protected  
disclosure.

**24.-** (1) An employer shall not penalise an employee for making a protected disclosure.

(2) A contravention of subsection (1) is a ground of complaint by an employee to a rights commissioner.

(3) In proceedings before a rights commissioner or the Labour Court in relation to a complaint of a contravention of subsection (1), it shall be presumed, unless the contrary is proved, that the disclosure was a protected disclosure.

(4) If the contravention of subsection (1) was a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee both under this section and under those Acts.

(5) A rights commissioner hearing a complaint under this section shall—

(a) give the parties an opportunity to be heard and to present any evidence relevant to the complaint,

(b) give a decision in writing, and

(c) communicate it to the parties.

(6) A decision of a rights commissioner under subsection (5) shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the employer to comply with subsection (1) and to take specified steps;

(c) order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances.

(7) A rights commissioner shall not entertain a complaint under this section unless it is presented to him or her within the period of 12 months beginning on the date of the contravention, unless there are circumstances that prevented the presentation of the complaint within that period, in which case the rights commissioner may allow such

further period for the presentation of a complaint under this section, not exceeding 6 months from the expiration of the period of 12 months, as the rights commissioner considers reasonable.

(8)

(a) A complaint under this section shall be presented to a rights commissioner by giving notice of it in writing to him or her and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Finance.

(b) A copy of a notice under paragraph (a) shall be given to the employer by the rights commissioner.

(9) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(10) A rights commissioner shall furnish the Labour Court with a copy of any decision given by the commissioner under this section.

(11) A party to proceedings under this section before a rights commissioner may appeal to the Labour Court from a decision of the rights commissioner and, on an appeal, the Labour Court shall—

(a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and

(c) communicate the determination to the parties.

(12)

(a) An appeal under this section shall be initiated by the giving, by the party appealing, within 6 weeks of the date on which the decision to which it relates was communicated to that party, of a notice in writing to the Labour Court under subsection (11) and stating the intention of that party to appeal.

(b) A copy of a notice under paragraph (a) shall be given by the Labour Court to the other party as soon as practicable after the receipt of the notice by the Labour Court.

(13) The following matters, or the procedures to be followed in relation to those matters, shall be determined by the Labour Court, namely:

(a) the procedure in relation to the initiation and the hearing by the Labour Court of appeals under this section;

(b) the times and places of hearings of such appeals;

(c) the representation of the parties to such appeals;

(d) the publication and notification of determinations of the Labour Court;

(e) the particulars to be contained in a notice under subsections (12) and (14);

(f) any matters consequential on, or incidental to, the matters referred to in paragraphs (a) to (e).

(14)

(a) The Minister for Finance, may, at the request of the Labour Court, refer a point of law arising in proceedings under this Part before it to the High Court for determination.

(b) A party to proceedings before the Labour Court may appeal to the High Court from a determination of the Labour Court on a point of law.

(c) The determination of the High Court under this subsection is final and conclusive.

(15)

(a) Where a decision of a rights commissioner under subsection (6)(b) or (c) has not been implemented by the employer in accordance with its terms, the time for bringing

an appeal against the decision has expired and no such appeal has been brought, the employee may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer or any evidence (other than in relation to the matters), make a determination to the like effect as the decision.

(b) The bringing of a complaint before the Labour Court by virtue of this subsection shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(16) Proceedings under this section before the Labour Court shall be heard otherwise than in public.

(17) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under paragraphs (a), (b), (c), (e) or (f) of subsection (13) (not being a determination as respects a particular appeal under this section) or subsection (15)(b).

Proceedings before

Labour Court

**25.-**

(1) The Labour Court shall, on the hearing of any matter referred to it under this Part, have power to take evidence on oath and for that purpose may cause oaths to be administered to persons attending as witnesses at the hearing.

(2) Any person who, upon examination on oath authorised under this section, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false is guilty of an offence and, on conviction, is liable to the penalties for wilful and corrupt perjury.

(3) The Labour Court may, by giving notice in that behalf in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter referred to the Labour Court under this section or to produce any documents in his or her possession, custody or control which relate to any such matter.

(4) A notice under subsection (3) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides.

(5) A person to whom a notice under subsection (3) has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,00

Enforcement of  
determinations of Labour  
Court.

## 26.-

(1)

(a) If an employer fails to carry out in accordance with its terms a relevant determination of the Labour Court under section 20 within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by the employee, without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(b) In paragraph (a), a 'relevant determination' means a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought, it has been abandoned and the reference to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of its abandonment.

(2) The Circuit Court may, in an order under this section relating to the payment of compensation, if in all the circumstances it considers it appropriate to do so, direct the employer to pay to the employee interest on the compensation, at the rate referred to in section 22 of the Courts Act 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer ordinarily resides or carries on any profession, trade, business or occupation.

Evidence of failure to attend

before or give evidence or

produce documents to Labour Court.

**27.-** A document purporting to be signed by the chairman or a vice-chairman of the Labour Court stating that—

(1) a person named in the document was, by a notice under section 20 required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document,

(2) a sitting of the Labour Court was held on that day and at that time and place, and the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under section 20, be evidence of the matters so stated without further proof.

Continuity of employer's

business.

**28.-** References in this Part to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to ownership of the business.

Making false reports

**29.-**

(1) A person who makes a disclosure which the person knows or reasonably ought to know to be false is guilty of an offence.

(2) A person guilty of an offence under this section is liable:

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 2 years from the date on which the offence was committed or, if later, 2 years from the date on which evidence that, in the opinion of a member of the Garda Síochána, is sufficient to justify the bringing of the proceedings.

(4) For the purposes of subsection (3) of this section, a certificate signed by a Superintendent of the Garda Síochána as to the date on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge is *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed is deemed to be so signed and shall be admitted as evidence without proof of the signature of the Superintendent purporting to sign the certificate.

## **DRAFT**

### **OPEN GOVERNMENT BILL 2010**

#### **EXPLANATORY MEMORANDUM**

##### **Purpose of Bill**

The purpose of this Bill is to ensure transparent and open government in Ireland.

The Bill is divided into five parts, which separate the issues that need to be addressed to provide openness in government. These are the establishment of the National Electoral Office, which will incorporate the Standards in Public Office Commission and extend the powers and role of that body, the registration of lobbyists, reform of the Freedom of Information system, and the provision of protection from penalisation of whistleblowers.

##### National Electoral Office

This Bill will establish the National Electoral Office. The National Electoral Office will be the central authority of all matters connected to the conduct of elections and the conduct of elected officials.

This Bill provides that the operations of the Standards in Public Office will now be carried out by the National Electoral Office. Furthermore, the National Electoral Office will, through this Bill, have responsibility for maintaining the electoral register, in place of the county councils who currently perform that function.

It is provided that the functions of the National Electoral Office can be extended by the Minister with the assent of Dáil Éireann, and it is envisaged that many of the functions of the franchise section of the Department of the Environment would be transferred to the National Electoral Office.

## Standards in Public Office

Arising from its experience in overseeing the implementation of the Ethics and Electoral Acts and the Party Leaders Allowance legislation, the Standards in Public Office Commission has, in a series of annual reports, made proposals for legislative improvements.

This Bill implements many of these recommendations.

Chief among these recommendations is the power to initiate inquiries into matters of concern to the Commission. The Commission's recommendation is that it be given the power to appoint an Inquiry Officer to conduct a preliminary inquiry where it is considering initiating an investigation into matters in respect of which no complaint has been made. At present, any decision to initiate an investigation can only be taken on the basis of information which the Commission possesses either because it is publicly available or because formal orders of discovery have been made.

The Minister for Finance has indicated that he was satisfied with the existing powers of the Commission and said that he felt that it is reasonable that at least a formal complaint to the Commission should be required to commence the inquiry process, which, in itself, can carry serious consequences for the person under investigation. The Minister maintained that, if a matter is of sufficient public importance or substance to warrant an inquiry, it must surely be of sufficient importance to warrant at least a formal complaint from one of the numerous categories entitled to make a complaint, including the general public and every office holder and public representative.

However, in its Annual Report of 2006, the Commission reasserted its view that there are exceptional circumstances where the public interest would be best served by the appointment of an Inquiry Officer so that it can, in a fully informed manner, consider whether to commence a formal investigation under the Ethics Acts on its own initiative.

## Registration of Lobbyists

Free and open access to government is an important matter of public interest and the lobbying of public office holders is a legitimate activity. Nevertheless, it is desirable that public office holders and the general public be able to know who is attempting to influence government.

The Bill provides a system of registration of lobbyists and monitoring of their activities,

overseen by the Standards in Public Office Commission.

The Act only applies to people who are paid to lobby. People who are lobbying on a voluntary basis are not required to register. The Bill includes an exemption for charities, whose activities would continue to be regulated by the Charities Act 2009.

### Freedom of Information

The Freedom of Information Act of 1997 provided a new ethos of openness, transparency and accountability within the administrative arm of the state, and pointed towards a new responsiveness by the state to the needs of the citizen.

Besides the immediate goal of providing a mechanism whereby the citizen could access both personal and non-personal information, it was expected that there would be long-term changes in the relationship between the state and the citizen as a result of the legislation. State bodies would be much more likely to release information outside the FOI mechanism in the knowledge that it could be accessed by FOI – by making as much information public as possible they would be lowering their own FOI workload. In the long term it was expected that by making procedures and decisions of public bodies more open, a new relationship of accountability and participation would emerge.

The 1997 Act was considered an example of international best practice.

The Freedom of Information (Amendment) Act 2003 was a step backwards. It limited the access of the citizen to the decisions of public bodies, and increased the distance between the state and its citizens.

The 1997 Act created a movement towards trust and accountability but the 2003 Act saw the tide turn. It is incumbent on the State and its servants to do everything in their power to realign the state and its citizens so that they are once again working in tandem. The Information Commissioner, in its statutory commentaries on the implementation of the Acts, has made a series of recommendations for changes and improvements to the legislation to bring it back to the true purpose of the original Act, openness and transparency in Irish public life. This Bill encompasses many of those recommendations.

### **2003 Amendments**

The 2003 Act introduced a number of amendments that can be described as regressive. For example, the 2003 Act:

- Replaced the mandatory exemption of all Government records with a discretionary exemption which had been contained in section 19 of the Freedom of Information Act 1997.
- Introduced a system of up-front payment for Freedom of Information requests.
- Removed correspondence between Ministers and ministerial advisors from public scrutiny, where they related to cabinet business.
- Extended the delay in releasing Cabinet documents from 5 years to 10 years.
- Reclassified documents impacting on security, defence and international relations that were previously made available or refused at the discretion of the minister or the head of agency, as documents which must be refused on a mandatory basis.
- Removed the costings by a public body of political proposals (e.g. the Bertie Bowl) from public scrutiny.

## **Fees**

A retrograde amendment was introduced by the Freedom of Information (Amendment) Act 2003, under which fees were made chargeable for applying for records under the Act. Previously fees were charged only if access was actually granted and the fee related to the administration cost of satisfying such a request.

In addition, fees are charged for applying for an internal review of a refusal to give access and for appealing a refusal to the Information Commissioner. The introduction of fees resulted in a marked decline in usage of the Freedom of Information Acts and has been heavily criticised by both holders of the Office of Information Commissioner, the body charged with oversight and implementation of the Act.

## Protection of Whistleblowers

The protection of whistleblowers is a central element to good governance in a democratic society.

Although there are limited protections for employees in certain pieces of Irish legislation, not all employees in either the public or private sector are safe from retaliation if they report wrongdoing. There is virtually no protection for whistleblowers in the financial services and

business sectors, while whistleblower codes and guidance throughout the public service are worryingly few. Ireland's economic collapse was due in large part to the failure of proper regulation by the state in the financial and construction sectors. It is incumbent on the legislature to take all possible steps to redress this shortcoming by ensuring that mechanisms are adopted where an employee or other person can, in good faith, make disclosures in a regulated manner about wrongdoing.

This Bill provides a clear statement that such employees and other persons who, in good faith and in the public interest, make protected disclosures to specified persons will be free from penalisation by their employers or by subsequent actions at civil law.

It is important to ensure that the protection of whistleblowers does not result in difficulties for businesses who are conducting their activities in compliance with the relevant regulations and ethics of their industry. Rather its purpose is to remove any threat to such persons and to enhance transparency and good governance in commercial and state enterprises by providing protection for people who alert the proper authorities of specified wrongdoings by the state or commercial entities.

## **Provisions of Bill**

*Section 1* defines the short title of the Act and provides that it must be commenced within 120 days of its enactment.

*Section 3* provides the National Electoral Office will be established six months after the enactment of this Act.

*Section 4* provides for the changing of the name of the Standards in Public Office Commission to the National Electoral Office.

*Section 5* is a technical section.

*Section 6* provides that the electoral register will be maintained by the National Electoral Office instead of the local county councils.

*Section 7* provides that the Minister for the Environment, with the assent of Dáil Éireann, can extend the functions of the National Electoral Office.

*Section 8* provides that the Standards in Public Office Commission has the power to conduct an inquiry into a matter of public importance that is of concern to the Commission, without having to wait for a complaint to be made by a member of the public.

*Section 9* makes an amendment to the time limits within which statutory declarations, tax clearance certificates and application statements are to be made or issued and furnished to the Commission. The Commission recommends that tax clearance certificates could be issued and furnished to the Commission within six months rather than nine months as at present and that statutory declarations could be made and furnished within three months rather than made within one month and furnished within nine months as at present. This is a recommendation of the Standards in Public Office Commission.

*Section 10* provides that a report by the Standards Commission concerning the contravention of the tax clearance provisions by an Attorney General who is not a member of the Oireachtas, and who subsequently complied, should be sent to both Houses of the Oireachtas rather than to 'the House' as is currently provided. This is a recommendation of the Standards in Public Office Commission.

*Section 11* provides that where an elected member or an appointee to a senior office in a public body furnishes an application statement to the Standards Commission, which indicates that the person has applied to the Office of the Collector General for the issue to him or her of a tax clearance certificate and that a decision has not been made, that person shall be required to furnish a tax clearance certificate to the Standards Commission where such a certificate is subsequently issued to him or her. This is a recommendation of the Standards in Public Office Commission.

*Section 12* extends the definition of office holder to include the Chairpersons of Oireachtas Committees. The Standards Commission has repeatedly noted that the Minister for Finance has not initiated the appropriate motion in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders thereby making them subject to the Act in respect of those positions. The Standards Commission has recommended this change which would be in keeping with the expansion of the Ethics Acts in other areas of the Public Service.

*Section 13* provides for the insertion of a new part into the Standards in Public Office Act 2001 which provides for a system of registration of paid lobbyists and regulation of their activities

*Section 14* is an interpretation section.

*Section 15* provides for the revocation of the regulations which enforce fees for making applications under the Freedom of Information Acts 1997 and 2003.

*Section 16* places an absolute limit on freedom of information applications of a nominal amount. The Information Commissioner has noted the value of placing a small fee on such applications in order to discourage frivolous or vexatious applications, but suggests this fee should be very low.

*Section 17* provides that where an appeal of an application is successful, any fee which is applied to have the appeal must be returned to the applicant. It is neither fair nor desirable that the applicant be financially penalised for an error in the interpretation of the Act by a public body. This is a recommendation of the Information Commissioner.

*Section 18* repeals in their entirety sections 14, 15, 19 and 29 of the Freedom of Information (Amendment) Act 2003. These sections:

- change the discretionary exemption for the protection of ‘Government records’ to a mandatory exemption, extend period for protection of certain Government communications from 5 to 10 years and extend the definition of ‘Government’ for the purpose so as to include a committee of officials, not one of whom need be a member of the Government and, indeed, some or none of whom may be civil servants of the Government or the State;
- create a mandatory exemption in the case of a record in respect of which a Secretary General of a Department has certified that it relates to the deliberative processes of a Department of State;
- create a mandatory, class exemption for certain records which fall within the wider category of records relating to the security or defence of the State, international relations or matters relating to Northern Ireland. As the exemption is mandatory, it applies to all records within the class irrespective of their sensitivity or of any harm which release may cause; and
- removed the costings by a public body of political proposals (e.g. the Bertie Bowl) from public scrutiny.

*Section 19* is an interpretation section.

*Section 20* defines those disclosures that constitute a protected disclosure.

*Section 21* is a technical section.

*Section 22* provides the classes of person to whom an individual can make a protected disclosure.

*Section 23* provides for the protection of employees who, in good faith and without seeking to make personal gain, make a protected disclosure about the activities of their employer.

*Section 24* provides that an employer may not penalise an employee for making a protected disclosure.

*Section 25* is a standard provision relating to the procedures to be used by the Labour Court.

*Section 26* provides that a party which is the subject of a ruling by the Labour Court, and has not appealed that ruling, may be issued with a further direction by the Labour Court to comply that ruling if after 6 weeks they have not done so.

*Section 27* provides for the mandatory attendance at the Labour Court of any person required by that Court to so attend.

*Section 28* is a technical section.

*Section 29* prohibits the making of false reports by an employee.

