

## Preliminary Response to the Social Welfare (Bereaved Partner's Pension) Bill 2025

March 2025

The general principles of the Social Welfare (Bereaved Partner's Pension) Bill 2025 (the '2025 Bill') are scheduled for debate in the Dáil on Wednesday, 26 March 2025.<sup>1</sup> This document sets out FLAC's preliminary response to the 2025 Bill. FLAC intends to provide a more detailed response (and proposed amendments) to this important and complex legislation before it reaches Committee Stage (at which point it will be considered section by section).

### Background

The 2025 Bill would give effect to the Supreme Court's decision in *O'Meara*.<sup>2</sup> FLAC represented John O'Meara and his children in their successful challenge to the existing survivor's pension legislation (which only provides for payments to bereaved families in circumstances where the parents had been married or in a civil partnership). The Supreme Court declared that the legislation excluding the family from access to a survivor's pension is unconstitutional by reference to the Constitution's guarantee of equality before the law.<sup>3</sup>

In July 2024, the Oireachtas Social Protection Committee accepted FLAC's recommendations for strengthening the *O'Meara* legislation.<sup>4</sup>

### The 2025 Bill

The 2025 Bill would expand entitlement to social welfare schemes aimed at bereaved partners and families to qualified cohabitants and their children.<sup>5</sup> As per our earlier submissions, FLAC very much welcomes a number of aspects of the 2025 Bill including its use of the pre-existing legal definition of "*qualified cohabitant*" and the inclusion of bereaved cohabitants who do not have children in the expanded scope of the relevant schemes (which is not strictly required by the *O'Meara* judgment). However, FLAC is concerned about the provisions in the 2025 Bill which would prevent families who have experienced a divorce or separation from accessing social welfare payments after a bereavement.

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<sup>1</sup> See: Houses of the Oireachtas (2025), [Social Welfare \(Bereaved Partner's Pension\) Bill 2025](#) & [Explanatory Memorandum to the Social Welfare \(Bereaved Partner's Pension\) Bill 2025](#).

<sup>2</sup> *O'Meara & Ors v The Minister for Social Protection* [2024] IESC 1.

<sup>3</sup> For a more detailed discussion of the background to the case and the Supreme Court's decision, see: FLAC (2024), [Analysis & Recommendations concerning the General Scheme of the Social Welfare \(Bereaved Partner's Pension\) Bill 2024](#), section 1.

<sup>4</sup> Houses of the Oireachtas (2024), [Joint Committee on Social Protection, Rural and Community Development, and the Islands - Report on the Pre-Legislative Scrutiny of the General Scheme of the Social Welfare \(Bereaved Partner's Pension\) Bill 2024](#).

<sup>5</sup> As per the Explanatory Memorandum, the 2025 Bill "*provides for the expansion of the eligibility criteria for the pension to include certain surviving qualified cohabitants who meet the criteria set out in the Bill... The Bill also amends other related schemes such as the Widowed Parent Grant, the Widow's, Widower's or Surviving Civil Partner's Pension payable under the Occupational Injuries Benefit and the Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension to provide access to these schemes for surviving qualified cohabitants*".

## FLAC's Concerns: Removal of Entitlement from Divorced & Separated Families

At present, people who are separated or divorced from a spouse or civil partner may access a survivor's pension if that spouse or civil partner dies, provided that they (the surviving partner) have not remarried and are not cohabiting with someone else.<sup>6</sup> The 2025 Bill would remove this entitlement (albeit subject to a 'saver clause' which provides that anyone who was receiving the pension or was entitled to it before the 2025 Bill is passed will not lose their payment<sup>7</sup>).

**These provisions run contrary to the recommendations of the Oireachtas Social Protection Committee** which recommended "*retaining the current entitlement of divorced and separated partners to a survivor's pension and expand it to surviving qualified cohabitants who were separated as opposed to taking the 'levelling-down' approach outlined in the General Scheme.*"<sup>8</sup>

**These proposals may run contrary to the principles underpinning the O'Meara decision.**

In *O'Meara*, the Chief Justice placed an emphasis on "*the rights of all children, and obligations of their parents, irrespective of the status of their parents.*"<sup>9</sup> He also highlighted the importance of the Widower's Contributory Pension in addressing the financial impact that the death of a parent may have on families.<sup>10</sup> In light of these findings, the legislation which treated the children of cohabiting parents less favourably than the children of married parents or civil partners was declared unconstitutional. It is difficult to see any justification for the introduction of legislation which treats the the children of separated or divorced parents less favourably than children whose parents are married, in a civil partnership or cohabiting.

The death of an ex-partner (i.e. a divorced or separated partner) can still bring about a financial loss for families. Separated or divorced spouses have an obligation to maintain their children and may also have an obligation to maintain each other. Such obligations only end on death or remarriage. The amount of maintenance paid (whether decided by a judge or through agreement) will reflect the needs and living costs of the couple and children concerned.<sup>11</sup>

The evidence of the Department of Social Protection before the Oireachtas Committee suggests that a misapprehension has emerged regarding the implications of the *O'Meara* judgment for the entitlement of divorced and separated people to a survivor's pension. In his decision, the

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<sup>6</sup> See: the definitions of "*civil partner*", "*widow*" and "*widower*" in section 123 of the Social Welfare Consolidation Act 2005, as well as section 124(2) and (3) of that legislation.

<sup>7</sup> Section 9 of the 2025 Bill.

<sup>8</sup> Houses of the Oireachtas (2024), [Joint Committee on Social Protection, Rural and Community Development, and the Islands - Report on the Pre-Legislative Scrutiny of the General Scheme of the Social Welfare \(Bereaved Partner's Pension\) Bill 2024](#), p.9.

<sup>9</sup> *O'Meara*, para.32.

<sup>10</sup> "*WCP addresses a particular need: the financial loss experienced by a spouse and children on the loss of a partner and parent, who may have been a financial provider for the family or did work that will otherwise have to be accounted for. It also recognises the desirability that the surviving spouse should be relieved of the financial obligation to work in the period following the death of a spouse and parent.*" See: *O'Meara*, para.34.

<sup>11</sup> FLAC (2016), [Maintenance](#).

Chief Justice noted that the Widower's Contributory Pension was available to some families where the parents were unmarried (i.e. certain families where the parents were divorced) but not to families where the parents were co-habiting. This example was used to highlight that there was no clear rationale (such as the promotion of the institution of marriage) for excluding co-habiting families. However, the Chief Justice made no finding that the inclusion of surviving separated and divorced partners in the survivor's pension scheme is, of itself, irrational, anomalous or unconstitutional.<sup>12</sup>

The *O'Meara* decision was based on the principle that a family which suffers a financial loss as the result of the death of a parent should not be arbitrarily excluded from access to a survivor's pension. The legislation giving effect to that decision should not arbitrarily exclude a different category of such families from accessing the relevant payments and create a new category of children who cannot benefit from the payment on the basis of the marital status of their parents. It is worth highlighting that the Department estimates that there are only approximately 100 new "*divorced claimants*" for the Widow/Widower's Contributory Pension each year.<sup>13</sup>

### **Preliminary Recommendations & Next Steps**

FLAC hopes that the analysis set out above will inform consideration of the 2025 Bill as it progresses through the legislative process. In particular, we hope to see these concerns addressed through amendments to the 2025 Bill.

A number of options for amendment emerge from our preliminary analysis:

- ▶ To ensure strict compliance with the *O'Meara* judgment, entitlement to the Bereaved Partner's Pension should be expanded to cover divorced and separated partners (who are not remarried or cohabiting) and who were financially dependent on their deceased ex-partner in respect of their children.
- ▶ To give effect to the recommendation of the Oireachtas Social Protection Committee, the 2025 Bill would have to be amended to ensure that the current definitions (which include certain divorced and separated people are not removed) and that the new definition of qualified co-habitant is expanded to include certain separated qualified co-habitants.

FLAC looks forward to engaging further with members of the Oireachtas in relation to the form that such amendments could take and we would be pleased to discuss the matters raised in this document with them in further detail.

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<sup>12</sup> This issue is discussed further in the Oireachtas Social Protection Committee Report which also includes links to the relevant submissions of FLAC and the Department of Social Protection. See: Houses of the Oireachtas (2024), [Joint Committee on Social Protection, Rural and Community Development, and the Islands - Report on the Pre-Legislative Scrutiny of the General Scheme of the Social Welfare \(Bereaved Partner's Pension\) Bill 2024](#), pp.10-11.

<sup>13</sup> Houses of the Oireachtas, [Supplemental Submission of the Department of Social Protection concerning the General Scheme of the Social Welfare \(Bereaved Partner's Pension\) Bill 2024](#).