

**Irish Human Rights and  
Equality Commission**

**Supplementary  
Observations on the  
Disability (Miscellaneous  
Provisions) Bill 2016**

January 2017



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

## Introduction

The Irish Human Rights and Equality Commission ('IHREC' or the 'Commission') was established by the *Irish Human Rights and Equality Commission Act 2014* (the '2014 Act').<sup>1</sup> The Commission has a statutory remit to protect and promote human rights and equality in the State, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, to encourage good practice in intercultural relations and to work towards the elimination of human rights abuses and discrimination.<sup>2</sup> The Commission's functions include the examination of any legislative proposal and reporting its views on any implications for human rights and equality.<sup>3</sup>

The Commission welcomes the publication of the *Disability (Miscellaneous Provisions) Bill 2016* (the 'Bill') in December 2016. It notes that a significant number of additional provisions are proposed to be introduced at the Committee Stage of the parliamentary debate.

Prior to the publication of the Bill, the Commission published legislative observations on the *General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill* (the 'General Scheme of the Bill'),<sup>4</sup> and while these legislative observations are of continued relevance, the Commission takes the opportunity to provide a brief supplementary comment following publication of the Bill.

This legislation relates to the ratification of the UN Convention for the Rights of Persons with Disabilities (the 'CRPD') and the Commission reiterates the importance of ratifying this instrument as soon as possible.

These supplemental views briefly address the following matters:

- Publication of outstanding legislative proposals
- Title of the Bill
- Amendment of *Juries Act 1976*
- Amendment of *Irish Human Rights and Equality Commission Act 2014*

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<sup>1</sup> The *Irish Human Rights and Equality Commission Act 2014* merged the former Irish Human Rights Commission and the former Equality Authority into a single enhanced body.

<sup>2</sup> Section 10(1)(a)–(e) of the 2014 Act.

<sup>3</sup> Section 10(2)(e) of the 2014 Act.

<sup>4</sup> Irish Human Rights and Equality Commission (2016) *Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill*, November 2016, available at: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>

## Publication of outstanding legislative proposals

The Commission is concerned that a significant number of provisions in the Bill are due to be introduced as Committee Stage amendments, which significantly limits the potential for a detailed analysis, upon which meaningful commentary may be provided by the Commission. The problem is particularly acute in relation to the deprivation of liberty aspect of the Bill.<sup>5</sup>

The human rights and equality implications of how deprivation of liberty is regulated are highly dependent upon the processes and safeguards which will accompany the provision. In order to carry out a meaningful analysis of the adequacy of safeguards from a human rights and equality perspective, it is necessary to consider the particulars of the proposal; including for example, the scope of the reform, how detention will be reviewed, the particulars of an appeal mechanism together with the remedies proposed to allow a person to obtain appropriate redress and reparation. In the absence of published draft legislation, it is difficult for the Commission to discharge its function to examine legislative proposals under Article 10(2)(e) of the 2014 Act and to make concrete recommendations which can be of utility to the legislature, particularly in relation to this aspect of reform.<sup>6</sup>

While the Commission is aware of the ongoing impetus to ratify the CRPD at the earliest opportunity, this should not come at the expense of adequate scrutiny of the proposed legislation, which has significant potential to impact human rights and equality protections in Ireland.

**The Commission recommends that the outstanding provisions of the *Disability (Miscellaneous Provisions) Bill* are published without further delay to enable the Commission to engage with the implications of the proposals for human rights and equality.**

## Title of the Bill

The Commission notes that the General Scheme of the Bill was titled *Equality / Disability (Miscellaneous Provisions) Bill*. However, the Bill as initiated, is titled the *Disability (Miscellaneous Provisions) Bill 2016*. The omission of the reference to equality in the title of the Bill raises a concern for the Commission.

While the provisions of the published Bill largely address matters connected to the CRPD,<sup>7</sup> additional provisions to be introduced at Committee stage of the parliamentary debate address wider equality concerns, including discrimination against transgender persons.

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<sup>5</sup> In the Government's Roadmap to Ratification of the CRPD published in October 2015, the requirement to legislate for involuntary detention in nursing homes and care homes was identified, without further detail as to the approach envisaged. The General Scheme of the Bill did not outline the approach envisaged.

<sup>6</sup> In the Commission's published legislative observations, it outlined on a general basis the requirements of Article 14 CRPD which prohibits the detention of persons based on actual or perceived disability, without exception. It also outlined the State's obligations under Article 5 of the European Convention on Human Rights. These recommendations are of continued relevance. However the Commission may wish to comment more specifically on the substance of the proposal following the publication of the relevant provisions.

<sup>7</sup> Section 6 of the Bill (in part) does not relate to the CRPD. It confirms the *amicus curiae* function of the Irish Human Rights and Equality Commission before the Court of Appeal.

Maintaining the equality reference in the title of the Bill is therefore appropriate as some of the reforms are unconnected to the rights of persons with a disability.

**The Commission recommends retention of the reference to Equality in the title of the Bill to take account of the wider reforms proposed under the Bill.**

## Amendment of Juries Act 1976

The Commission welcomes the proposed reform to amend the ineligibility condition for participation on a jury. The Commission welcomes the approach taken under the Bill, which does not link ineligibility for jury service to the existence of any one of the formal arrangements under the *Assisted Decision-Making (Capacity) Act 2015*, as was proposed in the General Scheme of the Bill.<sup>8</sup> However, the Commission reiterates its previous position that the best approach involves an explicit presumption of capacity and that a person should not be ineligible by reason of his or her requiring reasonable accommodation.

**The Commission reaffirms that persons should be presumed to have capacity to serve on a jury. Reasonable accommodation should be provided to secure maximum participation in jury service.**

## Amendment of Irish Human Rights and Equality Commission Act 2014

The Commission welcomes confirmation of its proposed role in the monitoring framework required to be established under Article 33 CRPD. The Bill proposes to amend section 10 of the *Irish Human Rights and Equality Commission Act 2014* to add an additional function which is framed generally: ‘to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of persons with disabilities’.

The Commission recalls the intention outlined in the General Scheme of the Bill to provide that it is a function of the Commission ‘to act as the independent mechanism to promote, protect and monitor implementation of the Convention.’<sup>9</sup> However, the additional Commission function proposed in the Bill makes no reference either to the independent mechanism or to the CRPD more broadly.

The function proposed under the Bill should be clearly linked to the Commission’s designation as the independent mechanism under Article 33 CRPD.<sup>10</sup> This would better align with the view of the UN Committee on the Rights of Persons with Disabilities that States

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<sup>8</sup> See pages 41-42 of Irish Human Rights and Equality Commission (2016) *Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill* November 2016, available at: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>

<sup>9</sup> See Head 2 of the General Scheme of the Bill.


<sup>10</sup> This approach would align with section 10(2)(i) of the 2014 Act which explicitly recognises the Commission’s designation as the relevant body for the purposes of EU Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

must: 'adopt the necessary legal measures to *clearly establish the independent mechanism*' (emphasis added).<sup>11</sup>

**The Commission recommends that the proposed new function of the Commission under section 10 of the Irish Human Rights and Equality Commission Act is clearly linked to the designation of the Commission as the independent mechanism under Article 33 CRPD.**


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<sup>11</sup> See UN Committee on the Rights of Persons with Disabilities (2014) *Concluding observations on the Initial report of Ecuador*, CRPD/C/ECU/CO/1, para. 55, 27 October 2014, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/192/02/PDF/G1419202.pdf?OpenElement>



**16-22 Sráid na Faiche,  
Baile Átha Cliath 7, D07 CR20**  
16-22 Green Street,  
Dublin 7, D07 CR20

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