

**PLEASE CHECK AGAINST DELIVERY**

Opening statement by Adam Harris, Commission Member, Irish Human Rights and Equality Commission.

To be delivered to the Joint Committee on Equality, Disability, Integration and Youth on the Pre-legislative scrutiny of the General Scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021

Wednesday, 16 February 2022

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My thanks Chair. I'm joined today by the Commission's Head of Policy and Research Dr. Iris Elliott.

The Irish Human Rights and Equality Commission is Ireland's independent National Human Rights Institution and National Equality Body.

Since Ireland's ratification of the CRPD we have also acted as independent monitor designate of Ireland's obligations under that Convention. In doing this we have operated under our own statutory mandate and powers while awaiting this legislation.

Today we will address the statutory role this legislation will confer on the Commission as formal monitor of the CRPD, but also our recommendations more broadly on this Bill.

The Commission has over recent years used our legal powers to act in a number of landmark cases around Ireland's wardship system. These have included *AC v Cork University Hospital* which made clear that people with disabilities are protected by the same constitutional guarantees and legal protections as any other person, *L v Clinical Director of Saint Patrick's Hospital*, which clarified the rights of voluntary patients in approved centres, and *AB v Clinical Director of Saint Loman's*, which found section 15(3) of the Mental Health Act 2001 to be unconstitutional.

Being blunt, for far too long we as a State have put up with a system of wardship, which is detached and divergent from any contemporary understanding of the concept of personal autonomy.

The move to a rights-based approach, with respect for the will and preference of the person is long overdue. Offensive legislative language of lunatics and lunacy must be dispatched to the dustbin of history, replaced by a recognition of disabled people's rights, and viewed through a lens of dignity, agency and participation.

A strength of this new legislation lies in its greater assimilation of human rights standards as to privacy, expression, fair trial, liberty, association, stemming from our Constitution, the ECHR, the UNCRPD and the EU Charter of Fundamental Rights.

The commitment by government to commence the 2015 Act by June 2022 is absolutely necessary, but the Commission does hold concerns after years of delay, that such a significant piece of legislation is being moved at significant pace.

We would restate our ask made first in respect of the original legislation in 2016 that, in line with CRPD obligations, every opportunity is afforded to a wide range of stakeholders, particularly people with disabilities, to meaningfully participate both in this pre-legislative scrutiny, and in a continued exchange with relevant stakeholders in the development of and implementation of this legislation.

Your PLS session yesterday with disability rights groups and disabled people's organisations while welcome, must not be seen as job done.

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On our Commission's CRPD monitoring role. It is welcome that this Independent Monitoring Mechanism will finally be cemented by way of an amendment to the IHREC Act 2014.

While the lapsed Disability (Miscellaneous Provisions) Bill 2016 had previously stood to provide for this, this amendment is now contained within Head 85.

Compared to the text of the 2016 Bill the amendment now proposed makes a number of changes.

This bill for example:

- does not make explicit provision for the Commission '*to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of persons with disabilities*', whereas the previous amendment did;
- has deleted the word '*protect*' in the outlined tasks of the IMM, compared to the previous amendment

These proposed changes require further consideration to ensure that they do not give rise to a narrowing of the Commission's Independent Monitoring Mechanism role.

And finally on this, I would say that IHREC would recommend that on definitions of disability that we would prefer to see an alignment with the CRPD Article 1 concept of disability<sup>1</sup> rather than the 2005 Disability Act.

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<sup>1</sup> CRPD Article 1 states as follows: 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'

More broadly, while we welcome provisions to establish a new statutory framework around wardship, and on particular provisions including changes aimed at the better inclusion of disabled people on juries, we would bring to member's attention some significant issues that remain to be addressed, namely:

- **Weaknesses around the limited nature of appeals given to Relevant Persons under the legislation.** The 2015 Act and this General Scheme only allows for a limited appeal on the many decisions that can be made on capacity and related issues, and "on a point of law only". This compares unfavourably for example to the full right of appeal provided by the Mental Health Act 2001 in its section 19.
- **It is unclear the manner in which legal representation will be afforded to Relevant Persons,** particularly again when compared with how the Mental Health Act 2001 affords involuntarily detained persons a legal representative by way of statutory right.
- **Looking at Part 10 focused on detention matters - it is unclear what the timeframes are within which applications to detain must occur.** This again compares poorly with provisions of the Mental Health Act which establishes time periods within which applications for involuntary detention must be heard by mental health tribunals and appealed to the Circuit Court.
- **We would like to see much more detail on how during the transition period, wards themselves will be kept fully informed of the changes to be effected to their wardship regime.**
- **There must be consideration of the situation of people with disabilities in prison, as highlighted by the IPRT,** who might need to avail of decision-making supports while detained, and make any legislative amendments needed to provide such supports.
- **And finally, the continuing failure to provide for a system akin to the "Deprivation of Liberty Safeguards"** that exist in England and Wales.

I will end there as there is much to discuss, and we are now happy to take your questions.

ENDS