



**seirbhís tacaíochta
cinnteoireachta**
decision support service



mhc
coimisiun meabhair - shláinte
mental health commission



Opening Statement to the Joint Committee on Disability Matters:

UNCRPD and the Optional Protocol:

Commencement of the Assisted Decision-Making (Capacity) Act 2015

10 November 2022

The Mental Health Commission (the MHC) is an independent statutory body established under the Mental Health Acts 2001-2018.

The MHC's remit has been extended by the Assisted Decision Making (Capacity) Act 2015 ('the 2015 Act'). Section 94 requires the Mental Health Commission to appoint the Director of the Decision Support Service ('the DSS') to perform the functions conferred on the Director by the 2015 Act.

I was appointed as Director in October of 2017. I am joined today by my colleagues Patsy Fitzsimons, Head of Complaints and Investigations and Kate Frowein, Head of Supervision.

Most of the 2015 Act has not yet been commenced. It has been acknowledged by Government that commencement is essential to the State's commitments under the United Nations Convention on the Rights of Persons with Disabilities.

We have been invited by the Committee to provide an update on the progress towards commencement, and specifically the current position of the Assisted Decision-Making (Capacity) (Amendment) Bill 2022 ('the Amendment Bill').

As the Committee is aware, the legislation and its commencement are the responsibility of the Department of Children, Equality, Disability, Integration and Youth ('the Department'). The ratification of the UNCRPD Optional Protocol is of course a matter for Government.

The key reforms introduced by the original 2015 Act may be briefly summarised as follows:

1. Wardship under the Lunacy Regulation (Ireland) Act of 1871 is repealed and all adult wards will be reviewed by the wardship court and discharged within three years.
2. The functional, non-medical, time-specific and issue-specific approach to capacity is put on a statutory basis.
3. The Act stipulates guiding principles, including the presumption of capacity, and the obligations to support decision making and to give effect as far as practicable to a person's will and preferences, rather than a 'best interests' approach.
4. A new three-tier framework to support decision-making is established.
5. There are tools for advance planning by way of a new form of enduring power of attorney and statutory advance healthcare directive.
6. The Act establishes the Decision Support Service with multiple statutory functions. These functions include the promotion of the new framework,

the provision of information and guidance and the registration and oversight of decision support arrangements.

The DSS has been working to a time-bound and costed project plan as approved by the Department of Justice in 2020. The establishment project to design and build a service has comprised approximately 30 sub-projects across six workstreams. We can provide further detail if that is of assistance to the Committee. A key component has been our extensive stakeholder engagement and communications activities, involving engagement with thousands of diverse stakeholders, including, most importantly, potential future users of the service.

The DSS has publicly provided assurance that we will be ready to begin operations as soon as the Act is commenced.

As stated, the key dependency at present is the enactment of the Amendment Bill. The timeline to enactment proposed by the Department earlier this year has not been achieved. The Bill completed Committee Stage in the Seanad last month and a date for Report Stage has not yet been set. The Department has restated its commitment to ensuring that further delay is as limited as possible. The DSS is aware that work on the amending legislation has been intensive and that it is a detailed and complex Bill.

It is important to note, however, that the Bill does not significantly amend the fundamentals of the principal Act. Many of the amendments are technical and procedural in nature.

The following are some of the reforms contained in the Bill:

1. Wards of court who are to be discharged under Part 6 will have improved access to the court, to representation during the process and to ongoing periodic review thereafter.
2. There is a revised two-part process for the registration and notification of an enduring power of attorney, and treatment decisions are removed from the scope of an enduring power.
3. Provisions relating to the purported exercise of restraint by attorneys and decision-making representatives have been deleted.
4. There is provision for the remuneration and reimbursement of panel member decision-making representatives by the DSS rather than from a relevant person's assets in appropriate circumstances, and for the setting of limits on a DMR's expenses and remuneration generally.
5. A limited provision allowing the court to confer on the Director responsibility for management of the relevant person's property is repealed.

6. There is a clearer basis for the Director to resolve complaints informally rather than escalating to court.
7. The DSS may apply to court for temporary suspension of a decision supporter pending investigation in urgent cases in order to prevent harm.
8. The DSS is given authority to specify the content of multiple forms, which would otherwise be the subject of regulation.
9. The Bill states that the High Court retains inherent jurisdiction 'to make orders for the care, treatment or detention of persons who lack capacity'.
10. The exception relating to advance healthcare directives and their applicability when a directive-maker is detained under the Mental Health Act is partially addressed.
11. Under new transitional provisions, an application for wardship that has been initiated at the time of commencement may proceed.

We are happy to discuss these amendments and the Bill in general if that is of assistance.

The 2015 Act is ambitious legislation. We know that a huge number of persons are waiting impatiently for its delivery and we share their impatience. Undoubtedly there will be matters that need to be revisited in time. It is part of the Director's duties to track and report on the operation of the Act to ensure that it is achieving its ambition.

Once again, we appreciate the invitation to attend today, we are happy to take questions and we look forward to our continuing engagement with the Committee.

Áine Flynn

Director of the Decision Support Service