

CENTRE FOR DISABILITY LAW AND POLICY SUBMISSION TO THE REVIEW OF THE OPERATION OF THE DISABILITY ACT 2005

The Centre for Disability Law and Policy (CDLP) welcomes the opportunity to submit its observations to the review of the operation of the Disability Act 2005. In addition to the detailed comments included on the template for submissions relating to individual sections of the Act, this submission will outline some general comments on the operation of the Act as a whole, particularly in light of Ireland's signature and proposed ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD).

Leadership and Reporting Structures

When the Disability Act was enacted, overall ownership and responsibility for the Act was assigned to the Minister for Justice, Equality and Law Reform, since the Disability Equality Unit was located in this department. However, since the commencement of the Act, the Office of the Minister for Equality, Disability and Mental Health has been established – with responsibility across four departments – Health and Children, Justice, Equality and Law Reform, Education and Science and Enterprise, Trade and Employment. The Disability Equality Unit will now be moving to the Department of Community, Equality and Gaeltacht Affairs. In light of these developments it is important to reconsider the location of overall responsibility for the Disability Act.

The CRPD (Article 33(1)) also requires states to select a focal point (or focal points) within government which will be responsible for the overall implementation of the Convention. In choosing its focal point(s), Ireland should be conscious of the need to ensure joined-up thinking between various government departments, as well as the need to link implementation of the CRPD at national level to the implementation of the Disability Act and the National Disability Strategy as a whole. The UN Office of the High Commissioner for Human Rights has given the following guidance on the creation of focal points for the CRPD at national level:

[I]deally, the focal point (or focal points) should be located at the highest level of government, for example at the level of a minister or a commissioner within a given ministry. The establishment of a focal point or points and its/their mandate should take place through legal measures. The mandate should clearly address the need for coherent and coordinated government activity in the area of disability, and the focal point/s shall be allocated adequate human and financial resources.¹

The Disability Act 2005 also put in place a number of structures and processes which aimed to ensure dynamic progress in continuing to address the barriers to

¹ United Nations Human Rights Council, Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities (Geneva; New York, UN OHCHR, 2009), p. 19.

participation faced by people with disabilities. One of the most significant of these was the introduction of a legal requirement on certain government departments to create Sectoral Plans, as discussed in the template for submission under section 31. The Sectoral Plans in question place responsibility solely with departments for reporting on progress achieved – however, in practice many of the objectives set out in the plans are carried out by state bodies under the aegis of various departments e.g. FÁS, the HSE, the Citizens Information Board, etc. Therefore, a more coherent and transparent system of reporting from front line staff in public bodies through to the units of government departments with responsibility for Sectoral Plans may be required in order to ensure clear lines of responsibility in reporting on progress achieved.

Involvement of People with Disabilities and Raising Awareness of the Act

People with disabilities and their representative organisations were involved in the development of the Disability Act, through lobbying and awareness-raising measures. The Disability Legislation Consultation Group played a significant role in this process with the publication of their report *Equal Citizens*, in 2003.² However, since the Act has been in operation, the involvement of people with disabilities and levels of awareness about the Act and its various components (especially in relation to Sectoral Plans and accessibility requirements) do not appear to have increased.

Many people with disabilities remain unaware of the existence of the Act itself, and are not involved in the monitoring processes in place in government departments which prepare Sectoral Plans. Neither are they involved in the overall monitoring of the National Disability Strategy through the Disability Stakeholders Group (DSG) and the National Disability Strategy Stakeholders Monitoring Group (NDSSMG). A select number of groups are involved in these processes (e.g. 6 umbrella disability organisations on the DSG) and many of these represent the interests of service providers, which, while important, should not be equated with the interests of people with disabilities.

The Act itself makes explicit reference to the inclusion of people with disabilities in planning processes for the various Sectoral Plans (section 31(2)) and in the monitoring committees of public bodies relating to the employment quota (section 48(4)(b)). Based on the manner in which the Act was developed, it appears that the inclusion and participation of people with disabilities was a priority for future law and policy development. New ways to achieve this should be considered in order to further the operation of the Act and such mechanisms would align with the principles of the CRPD, which requires people with disabilities to be involved in decision making processes affecting them (Article 4(3)) and also places an onus on the state to raise awareness about the issues affecting people with disabilities in order to foster respect for their rights and dignity (Article 8).

To this end, it will be important for more information to be made available on a regular basis concerning progress made in implementing the Disability Act. For example, government departments prepare bi-annual reports for the NDSSMG on

² Disability Legislation Consultation Group, *Equal Citizens: Proposals for Core Elements of Disability Legislation* (Dublin: Stationery Office, 2003).

issues of key national significance and highlighting how sectoral plan objectives are being achieved. These reports are not currently available to the public, although they relate to issues which concern people with disabilities at grassroots level. In publishing these reports, departments should also consider accessibility requirements which should be met to ensure that all people with disabilities can access the reports in a format which is suitable for them.

Independent Monitoring

A number of monitoring processes are envisaged by the Disability Act as highlighted in the template for submissions below (e.g. monitoring the public service employment quota, monitoring and review procedures relating to Sectoral Plans, monitoring of the HSE's experience in rolling out the independent assessment of need, etc). As mentioned above, the Disability Act is also subject to monitoring as an aspect of the National Disability Strategy, through the DSG and NDSSMG processes. However, the outcomes of these larger monitoring exercises are not currently available to the public – although again this information would be particularly valuable to people with disabilities as it would demonstrate the steps which are being taken to ensure that the National Disability Strategy has an impact on their daily lives.

The CRPD (Article 33(2)) requires states parties to establish a monitoring mechanism which is independent from government in order to oversee the implementation of the Convention at national level. The arrangement in the NDSSMG which includes government departments as well as disability stakeholders would not currently fulfil this requirement – although it is a good example of a co-ordinating mechanism which the CRPD encourages states parties to adopt (Article 33(1)). Therefore, consideration should be given to the need to reframe the current monitoring in light of the CRPD requirement of independence – perhaps taking as a model the Independent Monitoring Group for Vision for Change.

Concluding Comments

The future operation of the Disability Act will undoubtedly be shaped by further developments in domestic disability law and policy, as well as international obligations, particularly once ratification of the CRPD is completed. Further transparency is also required in disseminating information on the operation of the Act to members of the public. Finally, it is important in this review to build sufficient flexibility into the Act to allow it to operate in new policy climates and to ensure the meaningful inclusion and participation of people with disabilities, families and carers as the Act continues to develop. A number of suggestions for achieving these aims relating to specific sections of the legislation are set out in the template for submissions below.