

## Human Rights Concerns for Capacity Law Bill

### *Centre for Disability Law and Policy leads call to Irish Government to amend new capacity legislation relating to provisions on decision-making ability of people with disabilities*

**Thursday, 22 October 2015:** Today (Thursday, 22 October 2015), a broad disability rights alliance led by the Centre for Disability Law and Policy, called on the Irish Government to amend its planned capacity legislation Bill to ensure that it protects the human rights of people with disabilities, mental health problems and people with dementia.

Colm O’Gorman from Amnesty International Ireland, said: “This is the Government’s last chance to make Ireland’s legal capacity legislation watertight. Given how late Ireland is in ratifying the UN Convention on the Rights of Persons with Disabilities, it should make sure this is a gold standard piece of law. People with disabilities have the human right to make decisions about their lives just like everyone else, and have those decisions respected. With these amendments, this Act can help realise that right.”

Dr Eilionóir Flynn, Acting Director of the Centre for Disability Law and Policy at NUI Galway said: “We welcome many of the amendments made at Report Stage in the Dáil, in particular, the removal of informal decision-making provisions from the Bill. This is a significant protection for the human rights of people who might become subject to the Bill, including people with intellectual disabilities, acquired brain injury, autism, dementia, or mental health problems. However, some concerns remain with the Bill from a human rights perspective, especially its provisions on substituted decision-making. The UN Committee on the Rights of Persons with Disabilities describes substituted decision-making as a violation of human rights.”

The Bill could be made compliant with international human rights law by amending its provisions on substituted decision-making to comply with the recommendations of the UN Committee on the Rights of Persons with Disabilities. Fiona Walsh of Tallaght Trialogue Advocacy said: “The representative decision-maker under the Bill is appointed when a person is found to lack mental capacity. A more respectful approach would be to appoint an independent person to discover the person’s wishes. Where the person’s will and preferences remain unknown after significant efforts to discover them have been made, the independent person could make a decision based on her best interpretation of that person’s will and preferences.”

John Dolan of Disability Federation of Ireland said: “One of the most important innovations in the Bill is the introduction of decision-making assistance agreements. These are flexible agreements that can be used by people who need support, while retaining the legal right to make their own decisions. However, a person will not be able to make a legally binding agreement unless they prove that they can pass an assessment of mental capacity.

Justin Moran of Age Action said: “Many people, both with and without disabilities, would struggle to pass an assessment of mental capacity on a range of important

decisions in their life. It is our view that access to such a vital support should not be contingent on ability to pass a mental capacity assessment.”

Tina Leonard of the Alzheimer Society of Ireland said: “The Bill rightly says that decisions made by people should respect their will and preferences, which is particularly important for people with significant and complex disabilities, who have too often had their views ignored. However, the Bill could be further strengthened to ensure that a person is appointed to discover the will and preferences of an individual without resulting in a denial of legal capacity.”

The Bill also provides for advance healthcare directives for both physical and mental health decisions. Shari McDaid of Mental Health Reform said: “Many people with mental health difficulties have the experience to know what helps their recovery and want their advance decisions respected.” Áine Hynes of the Irish Mental Health Lawyers Association said: “We are disappointed that the Bill does not allow these directives to be legally binding in situations of involuntary detention and treatment. The moment when someone is detained under the Mental Health Act is precisely the time that such a directive would be most useful.”

Kathleen Lynch, Minister of State with responsibility for mental health did not accept amendments offered by Deputy Pádraig MacLochlainn and Deputy Fergus O’Dowd, which would have prohibited the use of chemical restraint by staff as a response to challenging behaviour in places such as nursing homes and residential services for people with disabilities. As a coalition, we welcome the Minister’s willingness from today’s Report Stage debate to meet with civil society organisations on these matters and look forward to working with her Department to introduce further amendments to address these issues once the Bill enters the Seanad.

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### **On behalf of**

Centre for Disability Law and Policy, NUI Galway  
Amnesty International Ireland  
Irish Mental Health Lawyers Association  
Alzheimer Society of Ireland  
National Federation of Voluntary Bodies  
Irish Advocacy Network  
Mental Health Reform  
Neurological Alliance of Ireland  
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