



INCLUSION IRELAND

National Association for People with an Intellectual Disability

Pre-Budget Submission 2018

Department of Justice & Equality

August 2017

This document is written in font 12 Verdana in line with Inclusion Ireland plain English guidelines.

1. About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of people with an intellectual disability.

Inclusion Ireland uses a human rights-based approach to its work. This recognises persons with an intellectual disability as rights holders with entitlements, and corresponding duty bearers and their obligations. Inclusion Ireland seeks to strengthen the capacities of persons with an intellectual disability to make their claims and of duty bearers to meet their obligations.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

2. Introduction

The Programme for Partnership Government commits to:

- Eliminate any persisting discrimination on the nine grounds,
- Equality of opportunity,
- supporting persons with disabilities in maximising their potential.

Inclusion Ireland believes that persons with disabilities should live self-determined lives and Budget 2018 provides an opportunity to reform traditional services and systems, to create a more equal and just society, to encourage participation and decision-making, and to develop pathways into a life in the community.

2.1 Public Sector Duty

Government departments are required to have regard to the public sector duty in all activities as provided for by Section 42 of the Irish Human Rights and Equality Commission Act, 2014.

Inclusion Ireland would encourage the Departments to ensure that all decisions made for Budget 2018 are in line with this duty by being proactive in promoting equality, ensuring human rights are realised and eliminating discrimination.

The Department of Justice and Equality states in its most recent strategy statement that the duty is “consistent with the core functions and values of the Department” and that the “Department screens all draft legislation from a human rights and equality perspective.”

The Department further commits to carry out an assessment of the human rights and equality issues relevant to the functions and purpose of the Department and the policies, plans and actions being or proposed to be taken to address those issues. Of importance in fulfilling its public sector duty, more must be done to improve the accessibility of services and information. Information should be a minimum of plain English, and ideally in easy-to-read and other accessible formats.

Inclusion Ireland’s pre-budget submissions to all departments are categorised into 4 headings aimed at promoting equality for persons with disabilities (i) An Equal & Just Society (ii) Participation and Decision-Making, (iii) A life in the Community and (iv) Reform.

2.2 Consultation

In preparing our pre-budget submission, Inclusion Ireland conducted regional focus groups across Ireland in Cork, Donegal, Sligo and Tullamore as well as an online survey. Men and women with disabilities, family supporters and people employed in disability-related services took part.

3. Priorities for Budget 2018

- Develop a scheme akin to the Reasonable Accommodation Fund to support private enterprise reasonably accommodate at the standard of the UNCRPD, supported by an advertising campaign.
- Ensure the Decision Support Service is funded, branded and launched through Budget 2018 as a standalone service and is adequately staffed to carry out its myriad functions including public awareness.
- Individual reviews of wards of court are carried out to ascertain loss to funds and identify support needs.
- The Irish Human Rights & Equality Commission should be funded to establish the UNCRPD advisory committee.
- Funding for DPOs should be provided so that persons with disabilities will have input in the implementation of the UNCRPD.

- General funding allocated to the HSE and government departments to implement Ordinary Lives in Ordinary Places, including resources for dedicated staff, training materials and roll out.
- Ring-fenced funding for the development of advocacy structures such as the National Platform of Self Advocates.
- Funding for nationwide consultation forums made up of persons with disabilities and funding for nationwide consultation forums made up of family members.

3.1 Reasonable Accommodation by Providers of Goods & Services

Reasonable Accommodation is an essential requirement for the participation of persons with disabilities.

According to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), reasonable accommodation means “necessary and appropriate modification and adjustments” which do not impose a “disproportionate or undue burden” with the purpose of ensuring that persons with disabilities enjoy all human rights and fundamental freedoms on an equal basis with others.

In Ireland, there are apparent constitutional issues and a conflict with the constitutional right to own private property and, as a result, reasonable accommodation where the cost was no more than a nominal cost has been the standard in Ireland.¹

The EU Employment Equality Directive² set the standard at a higher disproportionate cost in respect of employment only and the Department of Justice has indicated that this higher standard may also be extended to the provision of goods and services from public sector bodies³. Private providers of goods and services will not be required to reasonably accommodate beyond nominal cost. This is lower than the UNCRPD standard.

Reasonable accommodation is required for people with disabilities to get and keep jobs, as required under our equality legislation and the yet to be ratified UNCRPD.

¹ The Supreme Court decided in the Article 26 referral of the Employment Equality Bill 1996 that it would be unconstitutional to impose such a requirement where the cost exceeds a nominal cost.

² Council Directive 2000/78/EC of 29 June 2000

³ Disability (Miscellaneous Provisions) Bill 2016 Explanatory Memorandum

The Reasonable Accommodation Fund for Persons with Disabilities was set up to provide grants for employers to hire and retain disabled workers. A similar fund for service providers could be considered to support private enterprise in providing reasonable accommodations to the higher standard.

During Inclusion Ireland Consultation for Budget 2018, we received the following feedback on reasonable accommodation

"Private companies should be given tax credits as an incentive to pay for some costs."

"Where possible, all services need to be accessible and attention needs to be given to be people in remote rural areas."

"In particular, it is hard to find sports and recreation facilities that are fully accessible."

"Without reasonable accommodation, people in our service cannot access the things that they would like to do each day."

Inclusion Ireland asks for Budget 2018 on reasonable accommodation

- Develop a scheme akin to the "Reasonable Accommodation Fund" to support private enterprise to put in place adjustments or modifications to ensure that their business can take steps to reasonably accommodate at the standard of the UNCRPD.
- Invest in an advertising campaign through the Irish Human Rights & Equality Commission to promote easy steps towards reasonable accommodation.

3.2 Assisted Decision-Making

The Assisted Decision-Making (Capacity) Act 2015 was enacted at the end of 2015. Full commencement is the next critical step to ensure that individuals with disabilities have the support to exercise decision-making and choice in their lives.

The recruitment process for the Director of the Decision Support Service (DSS) is underway and should be concluded but it is essential that s/he is given adequate resources to execute his/her functions including promoting public awareness, to provide information, to supervise compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys and carrying out investigations.

The Decision Support Service (DSS) was situated within the Mental Health Commission (MHC) and this was an important process while the DSS was being established as many of the functions of the MHC and DSS are similar, as the rights-based approach of the MHC was preferable to the more adversarial courts system that had been proposed.

It is now essential that the DSS should become an independent body in its own right. There is potential for a DSS to perform a function with mooted Safeguarding Legislation as well as any national advocacy service that is established.

The DSS should also stand alone in order to reflect the 'disability neutral' nature of the law.

The National Disability Inclusion Strategy commits to establish the DSS in 2017 and to commence the Assisted Decision-Making (Capacity) Act, to develop the associated Codes of Practice, and to promote and provide training in early 2018.

Part 6 of the Assisted Decision-Making Act, involves a review of people who are currently Wards of Court. A report of the Public Accounts Committee⁴ found that some Wards of Court's had individual funds were severely depleted in value during the financial downturn and recommended contingency plans for those with depleting funds. Budget 2018 should provide resources for the review of wards on an individual basis and necessary financial, health and social care supports as required.

⁴ Public Accounts Committee Report on the Wards of Court July 2015

During Inclusion Ireland Consultation for Budget 2018, we received the following feedback on Assisted Decision-Making

"We need this now to help people understand the law."

"Decisions are being made without us!"

"Training is essential everyone needs to be made aware this is the future."

"We have learned today that it has been set up. We feel there is more advertising (needed) as many people do not know that this act is in place."

"This has been a long time coming and the office should be (there) for help and advice."

Inclusion Ireland asks for Budget 2018 on Assisted Decision-Making

- Ensure the Decision Support Service is funded, branded and launched through Budget 2018 as a standalone service.
- Ensure the Decision Support Service is adequately staffed to carry out its myriad functions including public awareness.
- Individual reviews of wards of court are carried out to ascertain loss to funds and identify support needs.

3.3 Monitoring the UNCRPD / Funding Disabled Persons Organisations

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) will, when ratified, be monitored by the Irish Human Rights and Equality Commission. As the body responsible for monitoring Ireland's performance with other UN instruments, it is important that the UNCRPD is monitored in a similar fashion.

It is proposed that a committee of persons with lived experience of disability will support the work of the Irish Human Rights and Equality Commission in monitoring the implementation of the UNCRPD.

This committee should be adequately resourced, the members remunerated and appropriate supports put in place for those participating.

The UNCRPD places a responsibility on the State to ensure that individuals with disabilities and disabled persons organisations (DPOs) fully participate in the implementation of the Convention. Currently, there is no funding provided by the State to DPOs in Ireland and as a result, many of these organisations, that are led by persons with disabilities, lack the resources they would need to fully participate in this process.

During Inclusion Ireland Consultation for Budget 2018, we received the following feedback on Monitoring the UNCRPD

"Without question, empower those who the convention is intended for."

"People with Intellectual Disabilities should be a major part of all decision made when Ireland ratified the UN Convention."

"(we need) a comprehensive and resourced CRPD Monitoring function."

Inclusion Ireland asks for Budget 2018 on monitoring the UNCRPD/ Funding Disabled Persons Organisations

- The Irish Human Rights & Equality Commission should be funded to establish the UNCRPD advisory committee.
- Funding for DPOs should be provided so that persons with disabilities will have input in the implementation of the UNCRPD.

3.5 Participation of People with Disabilities in Decision-Making

'Transforming Lives' is the programme to implement the changes informed by the recommendations of the report Value for Money and Policy Review of the Disability Services in Ireland (2012). There were several Working Groups established under a National Steering Group including Working Group 3 in the area of people with disabilities and community involvement. In 2015, Working Group 3 began work on a plan

for 'Effective Participation in Decision Making for People with Disabilities and Families'. This plan will be published by the HSE shortly and sets out what needs to happen in order for people with disabilities to be involved in a meaningful way in decisions that impact their lives directly.

During Inclusion Ireland Consultation for Budget 2018, we received the following feedback on participation on decision-making

"People need training in how to participate effectively in policy making."

"We do not have enough say in the policies that are being passed by our politicians."

"I have no CONTROL over my life."

"This needs to happen now. We need to be central in all processes and decisions to ensure our rights and wants are being respected."

"Important that people with disabilities are represented by people with disabilities."

Inclusion Ireland asks for Budget 2018 on participation of people with disabilities in decision-making

- General funding allocated to the HSE and government departments to implement Ordinary Lives in Ordinary Places, including resources for dedicated staff, training materials and roll out. Ring-fenced funding for the development of advocacy structures such as the National Platform of Self Advocates.
- Funding for nationwide consultation forums made up of persons with disabilities.
- Funding for nationwide consultation forums made up of family members.

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