Disabled Women Ireland

Submission to the Public Consultation on the Review of the Mental Health Act 2001

April 2021

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Introduction

Disabled Women Ireland (DWI) is the national representative organisation of disabled women, girls and non binary people in Ireland. As a cross disability organisation, our members have a diverse range of impairments. This submission is led by, and developed in consultation with, our members who have psychosocial disabilities. It is essential that the voice and lived experience of this group lead and shape reform of our mental health legislation.

DWI welcomes the opportunity to contribute to the public consultation on the review of the Mental Health Act. The primary focus of this submission is on The Mental Health Act 2001.

The recommendations in this submission are also made in the context of other relevant legislation such as:

- Assisted Decision Making (Capacity) Act 2015;
- Mental Health (Amendment) Act 2018;
- Child Care Act
- UN Convention on the Rights of Persons with Disabilities (UN CRPD)
- UN Convention Against Torture (UN CAT)

There should be a connection between human rights standards and mental health legislation, ensuring that the framework governing mental health reflects the states human rights obligations. This will require significant reform of the Mental Health Act, in order to shift it from a discriminatory piece of legislation, to a tool to promote and safeguard the rights of persons with disabilities.

This submission is guided by the UN CRPD. The state was an early signatory to the convention, and ratified it in 2018. Legislative reform should be shaped by the states obligations under the convention as well as the guiding principles of the Convention. The State has made reservations or declarations under articles 12, 14 and 27, and we reiterate calls for their removal.

The principles of the UN CRPD which shape this submission are:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

In order to meet its obligations under UN CRPD, the state should consider all law reform in light of these principles.

Our submission will be examined under the following headings:

Mental Health Law and Disability Rights
Experience led Reform
Capacity and Consent
Advanced Health Care Directives
ECT and Psychosurgery
Seclusion and Restraint
Perinatal mental health
Children and Young People
Advocacy
Voluntary patients
Inspection and complaints mechanisms
Protection of Liberty

Mental Health Law and Disability Rights

It is essential that any law addressing Mental Health recognises that it is a disability rights issue. There is a disconnect between the states response to disability and it's response to mental health.

Mental health law must not be used as a discriminatory tool in order to deny people with psychosocial disabilities access to their rights. It should be a tool to promote and safeguard individuals enjoyment of their rights. We request that any law relating to mental health recognises that the traditional normative frameworks which have governed mental health, have violated the inherent dignity and autonomy of disabled individuals.

Restricting human rights on the basis of impairment is discriminatory, and is contrary to Article 5 of UN CRPD "Equality and Non-Discrimination". Those with psychosocial disabilities are explicitly included in the UN CRPD.

Experience Led Reform

It is crucial that all reform and policy relating to mental health is led by persons with lived experience.

The Department and legislature must ensure that the voices and perspectives of those with lived experience are at the heart of the reform. This must not be a tokenistic engagement but rather a recognition of their role as experts by experience. Any legislation enacted should also recognise the role of those with lived experience in monitoring and oversight in this area.

The mental health act impacts more than persons with psychosocial disabilities, as it applies to persons with dementia and intellectual disabilities as well. It is crucial that the representative organisations of persons with disabilities are included in all processes.

Capacity and Consent

Mental Health legislation should protect and further the rights of persons with psychosocial disabilities. To that end, all persons should only be treated on the basis of free informed consent.

Under Article 17 of the UN CRPD, Protecting the Integrity of the Person; “Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others”. To this end, all medical treatment must be done on the basis of free informed consent, and without coercion.

Inclusion and recognition of less restrictive mechanisms within the legislation is essential. Any legislation enacted must recognise an individual’s legal capacity, will and preferences and their right to make an unwise decision or disagree with professional opinion as enacted under the Assisted Decision Making (Capacity) Act. It should also provide for the use of supported decision making to ensure free and informed consent.

Advanced Healthcare Directives

Advanced Healthcare Directives (AHDs) were introduced in the 2015 Act, but have limited applicability in mental health settings. We support the introduction of advanced healthcare directives in a mental health context. They are an important tool in ensuring the best treatment options are open to a person, and that their rights are respected.

AHDs should only be used with the concerned persons ongoing consent.

ECT and Psychosurgery

There is a gender disparity in the administration of ECT. ECT should only ever be performed with the explicit, free, informed consent of the person involved.

There are no facilities or practitioners able to perform psychosurgery in Ireland at present, which raises a question as to why a measure which allows it to be performed without consent exists in law.

Seclusion and restraint

We call for an end to seclusion and restraint.

Current mental health practice includes measures of seclusion and restraint that are believed to be within the mental health act. This includes refractory grounds, and other tools in the management of high-risk patients. The existence of such practices makes clear that the current limitations of seclusion and restraint are ineffective.

Perinatal Mental Health

An area of particular concern for our members is the treatment of pregnant people and new parents with psychosocial disabilities. In particular, there is a concern that inpatient mental health care operates in such a way as to unreasonably separate new mothers from their children.

We wish to highlight the States obligations under Article 23 of the UN CRPD: “In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents”. We call for

legislation which prevents mental health or perceived risk due to psychosocial disability being used to remove children from their parents. The separation of a parent from their child in order to provide treatment without consent or under coercion is a violation of multiple rights of the convention.

All frameworks which apply to new parents with psychosocial disabilities should recognise the state's obligation to provide support to parents with disabilities; “States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.”.

Children and Young People

Reform must establish parity between consent to physical and mental health interventions.

We call for incorporation of Article 7 of UN CRPD in establishing greater decision making power for children and young people with psychosocial disabilities. “States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children.”

Every child and young person should be given the same rights safeguards as the adults under the Act. Children and young people should have access to legal representatives, and an advocate.

We call for the incorporation of accessible age-appropriate assistance to support children and young people in decision making.

Older children should have a right to consent to and refuse treatment, the UN CRPD recognises the evolving capacity of children to make decisions. It is important to bring Irish law in line with this.

Many submissions will refer to the difficulties faced by transitioning out of paediatric services, and we recognise that this is a particularly difficult time for many people. These difficulties should be addressed through frameworks which respect the rights, will and preferences of young people.

Blanket expansions of paediatric psychiatric services are patronising, and fail to address the root of the issues with transition. We call for support in the community in order to ensure that young persons are better equipped to deal with the transition.

Advocacy

All mental health patients should have a right to an advocate. Advocates are essential in order to ensure that the rights and wishes of persons with psychosocial disabilities are respected.

While greater support and resourcing of peer advocacy and advocates is not within the scope of the legislation, it is possible to insert a clear unambiguous right to an advocate for all patients.

Mental Health Centres should also be obliged to inform all patients of their advocacy options, along with complaints mechanisms. We particularly call for a right to peer advocacy for children and young people.

Voluntary patients

Should the commission continue to draw a distinction between voluntary and involuntary, the safeguards under existing mental health law must be extended to voluntary patients. Voluntary patients in services are often voluntary in name only. It is important that their rights are

protected. The coercive element of this is a particularly pernicious impact of a system reliant on forced treatment.

Inspection, regulation and registration of mental health services

All mental health centres should be approved and subject to inspection. The current provisions surrounding inspection and regulation of mental health services is insufficient. We have a number of reports of unfit or unsanitary conditions in inpatient services where persons are detained under the mental health act.

There is a need to establish accessible complaints mechanisms for those in mental health services. This is alongside the expansion of advocacy rights mentioned earlier in this submission.

Deprivations of Liberty

The extent to which persons with psychosocial disabilities are deprived of their liberty under the current framework is a significant concern.

We are particularly concerned as to how people in patient psychiatric units are unable to leave the hospital. We call for all persons in mental health units to be allowed to leave, for exercise or other reasons.
We believe that the act should include a specific right to time outside of a unit for all patients. If the person requires support to leave, the unavailability of support should not be used as a basis to deny someone the opportunity to leave.
Many patients spend months in inpatient units, and being unable to leave is a violation of their rights, and contrary to good practice. We are particularly concerned with some units using recreation outside of the facility as a punishment/reward system.