



INDEPENDENT LIVING
MOVEMENT IRELAND

FREEDOM • RIGHTS • EMPOWERMENT

www.ilmi.ie

(Image shows ILMI logo with Text: Independent Living Movement Ireland. Freedom, rights, empowerment and website address www.ilmi.ie)

Independent Living Movement Ireland submission to the Department of Equality, Children, Disability, Integration and Youth (DECDIY) review of Equality Legislation

Introduction to Independent Living Movement Ireland

Independent Living Movement Ireland (ILMI) is a campaigning, national cross-impairment Disabled Person's Organisation (DPO) that promotes the philosophy of independent living and seeks to build an inclusive society. Central to the way we work is to ensure that policy decisions that impact on the lives of disabled people have to be directly informed by those whose lives are directly affected.

Our philosophy can be summed up as: 'Nothing about us without us!' and 'Rights Not Charity'. Our vision is an Ireland where disabled persons have freedom, choice and control over all aspects of their lives and can fully participate in an inclusive society as equals.

Social model of disability

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) at its core is framed through an understanding of disability known as the social model of disability. From ILMI's perspective, it is vital that there is a clear and full understanding of what the social model of disability is and how it should inform future discussions on policy development and improvement and policy implementation.

The social model looks at how society is structured and how it disables people. It is not based on a person's impairment, it is focussed on the barriers that exist in terms of attitudes, policy development, access or lack of supports that prevent people from participating in society as equals, with choice and control over their own lives. In this

model it is society that disables people from achieving their hopes and dreams, not a person's impairment. The social model informs all aspects of the work of ILMI.

Language and representation of disabled people

Independent Living Movement Ireland recognises that language is a very powerful and evocative tool. Therefore, the language and terminology used in this review has been carefully chosen to reflect the values of equality and empowerment which is at the core of this organisation. The term 'disabled people' has been used throughout this review in accordance with the UPIAS classification of disability and impairment which has been developed by disabled people themselves (UPIAS 1976). Where disabled people are referred to in the submission this should be understood to include all disabled people, including those with learning difficulties, people experiencing emotional distress and physical and sensory impairments.

Executive summary

Disabled people continue to experience considerable systemic and individual discrimination yet there is a significant gap between those experiencing discrimination and casework taken to the Workplace Relations Commission (WRC).

ILMI recommends:

- The definition of "disability" in current equality legislation is medicalised and pathologises disabled people. A new definition needs to reflect the social model equality and human rights definition of the UNCRPD.
- The Equal Status acts definition of "reasonable accommodation" needs to be updated to reflect commitments under UNCPRD.
- Reasonable accommodation needs to be extended to anyone who needs additional supports to pursue justice under Equality Legislation.
- Remove exemptions for disabled "non-nationals" under current legislation which limits where disabled people can challenge discrimination.
- Differential payment rates for disabled people under the Employment Equality Act need to be scrapped as they provide for de-facto discrimination of disabled people.

- The Intoxicating Liquor Act, 2003, section 19 needs to be repealed and issues of discrimination relating to licenced premises needs to be returned to the WRC.
- There needs to be a structured engagement between the Irish Human Rights Equality Commission (IHREC) and the WRC and DPOs to develop a training plan for all staff in relation to disability equality
- WRC to engage with DPOs to develop and publically disseminate procedures and supports on reasonable accommodation for disabled people taking cases under Equality Legislation.
- Significant investment in awareness raising of Equality Legislation for disabled people by working alongside their representative organisations (DPOs).
- Recognition of the intersection of discrimination based on impairment and other forms of discrimination and a need for additional sanctions to reflect that intersection.
- The need to include grounds based on socioeconomic disadvantage and for the review of gender ground to include Transgender, Non-Binary and Intersex people

Policy context

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Ireland ratified the UNCRPD with legally binding obligations to “undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability (Article 4).

According to Article 1 the purpose of the CRPD “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” It acknowledges that all disabled persons are right holders and that impairment cannot be used as a justification for denial or restrictions of human rights. It recognises disability as a social construct which is caused when impairment interacts with

societal barriers. It is a as a paradigm shift from the medical to the social model of disability.

Article 5 (“Equality and non-discrimination”) specifically shows that:

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

The UNCRPD makes specific references to state party commitments to ensure disabled people are effectively involved in all policy forums. **Article 4.3 states:** “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

General Comment 7.13 of the CRPD states that: “Organisations of persons with disabilities should be distinguished from organisations “for” persons with disabilities, which provide services and / or advocate on behalf of persons with disabilities, which, in practice, may result in a conflict of interests in which such organisations prioritise their purpose as private entities over the rights of persons with disabilities.

States parties should give particular importance to the views of persons with disabilities, through their representative organisations, support the capacity and empowerment of such organisations and ensure that priority is given to ascertaining their views in decision-making processes.“

Article 29. B outlines actively promoting an environment in which disabled people can “effectively and fully participate” in public affairs, without discrimination and on an equal basis with others. Article 29 B also states participation of disabled people in non-governmental organisations and associations concerned with public and political life. Most importantly article 29 B states disabled people should be involved in “forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels”. For far too long disabled people have been excluded from participation in decision making structures at all levels.

“Nothing about us without us”: the role of Disabled Persons’ Organisations (DPOs)
DPOs, unlike disability services providers, are led by and for disabled people. It is vitally important that this is understood to ensure that disabled people have their contributions heard, represented and recognised in policy development.

Article 12 – Equal recognition before the law specifies that disabled people are equal before the law and have the right to recognition everywhere as persons before the law. It states that disabled people should enjoy legal capacity on an equal basis. The state should take appropriate measures to provide access by disabled people to the support they may require in exercising their legal capacity and that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.

1. The functioning of the Acts and their effectiveness in combating discrimination and promoting equality

Reasonable Accommodation and the Equality Legislation

In consultations with ILMI, disabled people have repeatedly expressed frustrations that the “nominal cost” aspect of “reasonable accommodation” under Equality Legislation reduces any onus for real change in the delivery of goods and services in the private sector. Too often, equality legislation reasonable accommodations sought are regularly often only framed in an individual’s access needs as opposed to obligations to promote access of any disabled person looking to access goods and services.

In reviewing equality legislation, the new definition of reasonable accommodation needs to be updated to meet Ireland’s commitments under UNCRPD Article 2 and Article 5.3.

Reasonable Accommodation and Employment

Employment practices, such as requesting medicals for all roles within organisations, need to be covered by the Employment Equality Acts, as these can act as a systemic barrier to potential disabled employees. Employment Equality legislation also needs to reflect the complexity in relation to disclosure of impairment, from interview to employment and throughout the employment journey.

Reasonable Accommodation under Employment Equality legislation needs to be extended to ensure that if it is denied to a disabled person that a case can be taken to the WRC. This should include requests for reasonable accommodations during recruitment, including the provision of Irish Sign Language (ISL) and other supports to access employment, such as Assistive Technology and Personal Assistance Services, for example.

Section 35 (1) of the Employment Equality Act legislates for differential payment rates for disabled people. Differential payment rates for disabled people under the

Employment Equality Act need to be scrapped as they provide for de-facto discrimination of disabled people as they contravene Article 5 of the UNCRPD.

2. The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action

Awareness of Equality Legislation

In consultations with disabled people for our UNCRPD submission and to inform this submission, many disabled people identified that lack of awareness of the equality legislation was a significant barrier to challenging discrimination.

According to the IHREC 2020 annual report, disability discrimination was the highest area of public contact representing 54% of all equality related concerns in 2020. The WRC annual report showed that in 2020, 91 complaints were made to the WRC under the disability ground of the Equal Status Act (albeit an increase from 73 complaints in 2019).

Given that cases taken under the Equal Status Act under all nine grounds are falling year on year since 2017, there clearly is an issue with how the WRC is promoting its role as a crucial part of Ireland's Equality and human rights Infrastructure. The name and role of the WRC (workplace relations) means that people who experience rights violations and discrimination in the workplace (including disabled people) are more likely to take cases under Employment Equality to the WRC. However, it is less clear about the link between the WRC and disabled people experiencing discrimination in accessing goods and services.

Whilst disabled people experiencing rights violations and discrimination in the workplace are aware of the WRC, there is a direct link with the name and role of the organisation (Workplace Relations) that perhaps makes the process easier to manage.

ILMI has developed a "[Guide to the Law in Relation to Disability](#)" and has created specific workshops for disabled activists to discuss the role and function of the Equality infrastructure as a vehicle for achieving systemic change.

There needs to be structural engagement between IHREC and the WRC with DPOs such as ILMI to develop specific messaging to ensure disabled people take cases under Equality Legislation. Both IHREC and the WRC need to develop and publically disseminate procedures and supports on reasonable accommodation for disabled people taking cases under Equality Legislation.

When disabled people contact the WRC, staff need to have had training (including disability equality training) to provide clear guidance in place that identify supports for disabled people to take cases under Equality legislation.

Barriers to taking legal action

Time Scale to take cases

The current time period to take cases (two months in Equal Status, six months in Employment Equality) is restrictive and places a burden not found in other forms of legislation. Restrictive time scales can impact on disabled people in specific ways, such as:

- Lack of appropriate supports to fill in forms (Personal Assistance, advocacy or ISL) which could mean that when supports are available the time has lapsed for an ES-1 form to be filled in and sent to the respondent.
- Some disabled people have complex medical needs. It is possible that accessing medical supports, including urgent and lengthy medical treatments, could result in some disabled people being unable to meet the restrictive time periods.

The time period to take cases under Equality Legislation needs to be extended to twelve months to embed reasonable accommodation measures to ensure disabled

people and anyone who experiences discrimination can take a case within an appropriate time period.

Lack of legal supports

Many disabled people who have looked to take cases are confronted by the fact that employers or service providers typically have legal support. Previously equality cases heard by the Equality Tribunal supported people who experienced discrimination to self-advocate. The increasingly legalistic approaches taken in the WRC mean that those who lack the economic means to access legal advice will be at a distinct disadvantage.

Given systemic barriers to employment that many disabled people face this approach has a specific impact on disabled people (and an intersectional impact for disabled Travellers, disabled people in direct provision and disabled people disadvantaged by exclusion due to socioeconomic status). The additional costs of disability will also impact on disabled people's means to access legal supports.

Taking cases without legal or advocacy supports relies on an individual to gather and process complex legal and procedural information. Some disabled people may not have the supports they need to do this (such as ISL, assistive technology, Personal Assistance Services) which means that challenging discrimination becomes even more challenging without legal support. Whilst ILMI supports the role of IHERC, DPOs are woefully under-resourced to provide additional legal supports when disabled people take cases.

In order that complaints taken under Equality Legislation bring about systemic change and redress infringements on disabled peoples' rights, Legal Aid should be available for those who require it in Equality Cases.

Reasonable Accommodations

Reasonable accommodation needs to be extended to anyone who needs additional supports to pursue justice under Equality Legislation. Many people experiencing discrimination will have additional and overlapping support needs. Some people

experiencing discrimination may require additional supports to fill in an ES-1 form, due to barriers such as:

- Some disabled people may require support from a Personal Assistant to physically fill in a form on their behalf. Due to unmet need in the provision of Personal Assistants, this could also impact on disabled people meeting time limits under equality legislation.
- Some people may require an advocate to fill in a form on their behalf because the forms are not always accessible
- Lack of access to suitable software for screen-reading for blind and visually impaired people who have experienced discrimination.
- Language barriers, including lack of access to ISL translation for Deaf People.
- Literacy issues in filling in forms
- Lack of access to broadband or technology to access forms online.
- Restrictions to face to face supports services due to Covid-19 where people experiencing discrimination need additional supports

Move of cases of discrimination in Licenced Premises to District Court

The Intoxicating Liquor Act, 2003, section 19 meant that instances of discrimination in a licenced premises are heard in a District Court rather than before the Equality Tribunal (whose function the WRC has now absorbed). This has resulted in a significant drop in casework taken to challenge discrimination in licenced premises.

This specifically impacts on disabled people seeking redress to inaccessible licenced premises (along with barriers due to nominal costs in reasonable accommodation, above). Due to the intersection of discrimination of impairment and ethnicity, disabled Travellers are more likely to be refused access to service in licenced premises.

Given the societal barriers and lack of employment opportunities for many disabled people, taking a case under the Intoxicating Liquor Act 2003 is prohibitively expensive (including the risk of costs being ruled against the complainant). District courts are often ill-equipped on the nuances of structural or systemic discrimination

as opposed to a specific space like the WRC. This needs to be addressed by changes in legislation to ensure people can take cases against licenced premises holders. These cases need to be heard by adjudicators in the WRC

The Intoxicating Liquor Act, 2003, section 19 needs to be repealed and issues of discrimination relating to licenced premises needs to be returned to the WRC.

3. The scope of the current definitions of the nine equality grounds

The definition of “Disability” under the Equality legislation needs to be reformed. The current legislation defines disability from an outdated medical model of disability. Ireland needs to adopt a social model equality and human rights definition of disability as per the UNCRPD. The current definition inappropriately identifies disability as a medical, deficit model as opposed to the disabling societal barriers that limit disabled people’s participation in society as equals.

ILMI is a member of the *Add the 10th Alliance*, which is calling for the additions of socioeconomic status as an additional ground under Equality Legislation. The Alliance Submission notes “We have a moral obligation to protect the vulnerable of society and it is argued by the Alliance that the current nine grounds often fail to do this for all. Current labour market practices, social welfare conditionality and neoliberal work-centric attitudes have gradually engendered barriers for those in, or approaching poverty, to rights and social inclusion”.

The intersection between impairment and disadvantage due to socioeconomic status means disabled people can experience additional barriers in terms of lack of investment in accessible built environment, investment in accessible public transport and will also lack additional income supports that some disabled people can access through family networks to purchase supports where there is a lack of statutory provision, such as Assistive Technology (AT).

The review of gender ground needs to include Transgender, Non-Binary and Intersex people who experience significant discrimination and are not currently

protected under Equality Legislation. The intersection between impairment and gender and sex identity further impacts on LGBTIA+ disabled people who are often not included in discussions on gender and sex identity.

4. Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds

ILMI's core values are Independence, Options, Rights and Empowerment and are the foundation of our organisation. We recognise and promote equality within our members, in terms of gender, sexuality, ethnicity, age, marital status, socio-economic status and impairment. Due to the medical model of disability, impairment based-labels typically overshadow other identities based on class, ethnicity, gender identity, sexuality and so on.

Through consultations with members, disabled people have frequently discussed where assumptions are made about disabled people's lives based on their impairment(s). Specific social-model led training will need to inform staff in the Equality infrastructure, specifically adjudicators, to ensure that disabled people can bring cases under multiple grounds and where discrimination is based on the intersection of more than one identity that rulings and sanctions need to reflect that intersection.

The WRC will need to promote cases taken which demonstrate the intersection of discrimination, the outcome of the cases and the sanctions issued to create awareness amongst rights holder and their representative organisations to encourage people to higher levels of casework to challenge discrimination.

5. Whether existing exemptions in the legislation should be modified or removed

Currently, Section 14(1) exempts certain actions by public authorities relating to 'non-nationals'. Given the extreme marginalisation of disabled people in direct provision, their lack of recourse to challenge systems that discriminate against them based on impairment needs to be addressed in this review.