



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

TO: Oireachtas Joint Committee on Health

FROM: Law Reform Commission

DATE: 15 February 2021

SUBJECT: Opening Statement of Ms Justice Laffoy, President of the Law Reform Commission, to Committee on the Commission's Project, A Regulatory Framework for Adult Safeguarding (16 February 2021)

Introduction

On behalf of the Law Reform Commission, I thank the Chairman and members of the Committee for inviting us here today to discuss our project, *A Regulatory Framework for Adult Safeguarding*. I am joined today by two of my colleagues on the Commission, Dr Andrea Mulligan, who is the coordinating Commissioner on the project, and Mr Raymond Byrne. I am also joined by Rebecca Coen, Director of Research, and Leanne Caulfield, Principal Researcher on the project. My colleagues will take questions from the Committee when I have completed the opening statement.

The Law Reform Commission is a statutory research and advisory body. Our purpose is to review the law independently and objectively, and to make proposals for reform. While our title includes "law reform", we cannot actually do law reform as that is, of course, a matter for the Committee members as legislators. But we undertake research, and we consult widely, and we make recommendations that aim to make the law modern, accessible and fit for purpose.

We are delighted that the Committee has taken an interest in this particular project in the context of the Committee's discussion on a regulatory framework for adult safeguarding and the relevant recommendation of the Special Committee on Covid-19 Response.

The Commission's project is aimed at making recommendations for a human-rights based, cross-sectoral regulatory framework for adult safeguarding that achieves an appropriate balance between empowerment and protection. I should emphasise that the Commission is very much aware of the parallel work concerning the national policy on adult safeguarding in the health and social care sector, which is currently being developed by the Department of Health, and to which the Department intends to give legislative underpinning through the Health (Adult Safeguarding) Bill. The Commission and the Department have been in regular contact since the beginning of our project to ensure consistency in approaches to, and terminology in, proposed policy and legislation given the importance of an effective cross-cutting, whole-of-government approach to adult safeguarding.

Genesis of the Project

As the Committee is aware, the Adult Safeguarding Bill 2017 passed Second Stage in the Seanad in April 2017. It was discussed in further detail by the Joint Oireachtas Committee on Health during debates on adult safeguarding in October 2017. The Joint Oireachtas Committee on Health agreed that the issues in the 2017 Bill required further research, and the Committee and the Minister for Health suggested that the Law Reform Commission could consider undertaking that research as part of its Fifth Programme of Law Reform. The Commission was at the time engaged in public consultation on the development of its Fifth Programme. The Commission had also received detailed written submissions from the Department of Health and other bodies, including several state agencies and non-governmental bodies, suggesting the inclusion of this project in the Fifth Programme of Law Reform. Having applied the relevant selection criteria, the Commission concluded that the project was suitable for inclusion in the Fifth Programme. The Joint Oireachtas Committee on Justice, to whom the draft Programme was referred, was satisfied with the content of the Programme, and it was approved by the Government in March 2019 in accordance with the Law Reform Commission Act 1975. The Commission has given priority to this important project, and our consultative Issues Paper on a Regulatory Framework for Adult Safeguarding was published in January 2020, and we have been consulting on it since.

Previous Work Undertaken by the Law Reform Commission on Adults at Risk

The Commission has previously completed work in this general area, including its 2006 *Report on Vulnerable Adults and the Law*, which recommended the replacement of the adult wardship system with legislation on adult capacity based on a functional test of capacity, and those recommendations are largely reflected in the Assisted Decision-Making (Capacity) Act 2015. It is a matter of some concern that the key elements of the 2015 Act have yet to be fully commenced. The Commission is taking a keen interest in progress on the development of the Decision Support Service and the commencement of the 2015 Act. The Commission was pleased to hear that the Decision Support Service, established under the 2015 Act, received the funding required in Budget 2021, and that Minister O'Gorman expects the legislation to be fully commenced and services to be operational by mid-2022.

Overview of the Issues Paper on Adult Safeguarding

We are conscious that the Committee has previously taken a great interest in the area of adult safeguarding and we have benefited from the reports of Committee discussions on the Adult Safeguarding Bill 2017 and the Committee's Report on Adult Safeguarding, published in 2017.

Given the time constraints today, I will not go into detail on all the issues raised in the Issues Paper. Instead, I will give a brief overview. Through a human-rights lens, the Commission is seeking to identify who may need additional regulatory arrangements in the form of supports and, where relevant, protections under adult safeguarding legislation, and in what circumstances those regulatory arrangements may be needed.

The task that the Commission has been set is substantial, and involves numerous intersecting aspects and areas of law: our work includes identifying regulatory gaps and recommending that additional regulatory powers may need to be conferred on an existing body or bodies, or that a new body may need to be established, as well as possible recommendations regarding regulatory oversight functions, such as whether a body should have the power to deal with individual complaints as opposed to regulating systems. The Commission is also considering possible recommendations in relation to criminal offences where gaps in the law are identified, as well as specific measures relating to financial abuse, safeguarding powers and duties, and reporting models where suspected – and indeed actual - abuse or neglect are encountered. We are also looking at independent advocacy, interagency collaboration and information-sharing, because we want to ensure that our assessment of the law on this area is comprehensive, and that the recommendations we make are solutions-focused, practical and workable and provide adults at risk of abuse and neglect with the best possible legal protections within a comprehensive regulatory framework.

The Commission hopes to publish the Report on a Regulatory Framework for Adult Safeguarding early next year.

We recognise that it will be up to the Government and the Oireachtas, including this Committee, to decide whether the Commission's recommendations ought to be implemented. On behalf of the Commission, I welcome the Committee's interest in this area. My colleagues and I will be very happy to take any questions that members might have.