



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

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SEANAD ÉIREANN

Dé Máirt, 10 Samhain 2015

Tuesday, 10 November 2015

Chuaigh an i gceannas ar 2.30 p.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

An Cathaoirleach: I have received notice from Senator Michael Mullins that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Health to ensure that the HSE provides a nurse on a permanent basis to Ballinasloe Social Services which provides day-care services to the elderly in Ballinasloe and surrounding areas, and to provide a significant increase to its section 39 funding to enable it to continue to provide a very valuable service, which is widely used, and currently has a waiting list.

I have also received notice from Senator John Kelly of the following matter:

The need for the Minister for Health to invest in rural GP practices and reverse the FEMPI cuts so as to make it financially sustainable.

I have also received notice from Senator Denis O'Donovan of the following matter:

The need for the Minister of State with responsibility for the Office of Public Works to outline whether he can provide adequate accommodation for social welfare services (details supplied) in Bantry, County Cork, to enable them to be housed under one roof as they are currently in four separate locations, which is most inconvenient for the general public.

I have also received notice from Senator Paschal Mooney of the following matter:

The need for the Minister for the Environment, Community and Local Government to clarify the situation relating to the taxation of tractor units following the recent court ruling which stated that a trailer is not a vehicle.

I have also received notice from Senator Thomas Byrne of the following matter:

The need for the Minister for the Environment, Community and Local Government to urgently review the income thresholds for social housing in light of the fact that some

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households which are in receipt of family income supplement are in excess of the income limits.

I have also received notice from Senator Catherine Noone of the following matter:

The need for the Minister for Children and Youth Affairs to clarify the issue of a second year of free child care for children who are currently receiving their first year of free child care.

I have also received notice from Senator Trevor Ó Clochartaigh of the following matter:

The need for the Minister for Agriculture, Food and the Marine to outline whether he has full confidence in the Connemara Pony Breeder Society's inspection and classification programme for the Connemara pony.

I have also received notice from Senator Fidelma Healy Eames of the following matter:

The need for the Minister for the Environment, Community and Local Government to acknowledge the current funding model for local authorities is not sustainable with more funding required to be devolved centrally, drawing on the experience of Galway city and county councils.

I regard the matters raised by the Senators as suitable for discussion on the Commencement of the House. I have selected the matters raised by Senators Mullins, Kelly, O'Donovan and Mooney and they will be taken now. Senators Byrne, Noone, Ó Clochartaigh and Healy Eames may give notice on another day of the matters they wish to raise.

Commencement Matters

Care of the Elderly Funding

An Cathaoirleach: I welcome the Minister of State at the Department of Health, Deputy Kathleen Lynch.

Senator Michael Mullins: I also welcome the Minister of State. I am delighted she could attend to discuss this matter regarding Ballinasloe Social Services. It is a wonderful organisation that provides an amazing service to the elderly in Ballinasloe and in the outlying areas of Kiltormer, Lawrencetown, Clontuskert, Kilconnell, Aughrim, Cappataggle, Taughmaconnell, Moore and Clonfad.

Ballinasloe Social Services has a minibus and it brings people to the centre four days a week. People who avail of the services are referred by general practitioners, GPs, public health nurses, social workers and family carers. Ballinasloe Social Services has a range of activities. It provides lunch for the elderly, music every Tuesday, exercise programmes, computer classes, arts and crafts and card playing. A Health Service Executive, HSE, community physiotherapist visits on a regular basis to maximise the independence and support or improve the quality of life of the older person. A chiropodist provides a clinic on a monthly basis.

There are two elements in the service. There is a day care service which is availed of by

62 elderly people. There is currently a waiting list of 13 for this service. The meals-on-wheels service is availed of by 65 elderly people, 27 of whom also avail of the day care service. Approximately 100 elderly people can remain in their own homes and communities as a result of the service provided by Ballinasloe Social Services.

The centre is staffed by a HSE nurse and a part-time social services nurse. However, since January 2013 the HSE post has not been filled on a permanent basis. Cover is provided from St. Brendan's community nursing unit in Loughrea on a daily basis from a pool of seven or eight nurses. The inconsistency gives rise to uncertainty as a different person could be there every day providing the service. That is not the best type of service to provide to elderly people.

With regard to its funding, the section 39 grant from the HSE has decreased over the years from €146,700 in 2008 to €131,000 in 2015. In 2014, it cost approximately €259,000 to provide the service to the elderly. This figure is similar to the figure for other years as the centre watches its costs very closely. A balance of €128,000 must be raised through fund-raising and service charges. This is unsustainable in the long term and puts enormous pressure on the staff and volunteers. Much time and effort is spent fund-raising each year which could be better spent in providing much needed services to the elderly citizens. This is compounded by the fact that Ballinasloe is a RAPID programme town, in which there are high levels of deprivation and where the opportunities to fundraise are limited. We are looking for two things: for the nursing embargo to be lifted in this exceptional case to allow one person to be appointed to this post and for an immediate increase in the section 39 grant to enable Ballinasloe Social Services to continue providing the necessary services for the elderly people of Ballinasloe and surrounding areas.

Ballinasloe Social Services provides an amazing facility. The staff and volunteers are kind and caring and provide a warm and homely environment for the elderly persons in their care. I pay particular tribute to the staff but also to the large number of volunteers who give generously of their time to improve the lives of others. There is a wonderful atmosphere in the place which I have seen on the many occasions I have been there and I want it to continue to develop. Through this wonderful service, many elderly persons are enabled to remain in their homes, something the Minister of State and the Government are promoting very strongly and as a result of which, there are significant savings to the State.

To repeat my request, we want a nurse appointed on a full-time basis and an increase in the section 39 grant to enable the huge burden of fundraising that has to be borne by staff and volunteers to be reduced in the coming years. I thank the Minister of State for attending to deal with this matter.

Minister of State at the Department of Health (Deputy Kathleen Lynch): I thank the Senator for raising the issue. The overarching policy of the Government is to support older people to live in dignity and independence in their own homes and communities for as long as possible and to support access to quality long-term residential care, where this is appropriate. The Health Service Executive is responsible for the delivery of health and personal social services, including home help and home care packages, meals on wheels, respite or day care and a range of other community-based services.

Day centres such as those provided by Ballinasloe Social Services provide invaluable support, advice and social interaction for older people who may, for any number of reasons, be experiencing isolation and loneliness. Ballinasloe Social Services has been operating as a social

outlet in the area since 1972 and operates Monday to Thursday. Traditionally, the services provided have included services within the remit of what is now Tusla, Ballinasloe Social Services and the HSE. Personnel, including public health nurses and physiotherapists, have collaborated in the provision of services for older people.

The day care service is provided four days a week and staffed on a full-time basis by one nurse whole-time equivalent. This post is filled by a number of nurses from the pool at St. Brendan's CNU, Loughrea, as the Senator outlined. There is no embargo on the filling of this post. On the basis that the post of permanent, full-time nurse is a stand-alone position, the HSE has experienced difficulties in filling it. However, every effort is made to provide continuity of care through the pool of nurses.

Since 2011, the HSE has provided €131,000 annually for Ballinasloe Social Services through a section 39 grant. As we are all aware, the Health Service has been through a number of very difficult years, probably the most difficult in modern times. However, there is good news on the resources front and we have a little more money than previously. This year we secured the first increase in health spending in seven years and next year we will have nearly €900 million more compared to budget 2015. Notwithstanding the better economic news recently, resource availability remains tight across the health service. However, the Government remains fully committed to using the resources available in the most effective way possible and in a way that best matches the needs of service users. The HSE is continuously working to develop services on this basis. A priority for 2016 will be the development of an integrated model of care, with a strong emphasis on home and community care. The level of services to be provided by the available funding will be set out in the HSE's 2016 national service plan which is currently being prepared by the Executive.

While I welcome the increase in funding for the health services in 2016, I do not underestimate the continuing challenge of delivering the services required against a backdrop of growing needs. It is essential that we continue to focus on cost containment, productivity and efficiencies, as these will continue to be a major cost pressure on the health service into the future. These pressures include an increased and aging population, an increase in chronic conditions and new and expensive medicines and treatments.

The HSE acknowledges the significant and valuable contribution made year after year by Ballinasloe Social Services and it looks forward to continuing its collaboration in the future with the mutual goal of providing the best possible care for older people in that area. The negotiations on funding are always carried out between the service and the HSE on a service level agreement. The service provided is appreciated.

Senator Michael Mullins: I thank the Minister of State and I concur with her. The service is appreciated and I welcome the fact that there is no embargo on filling the post. I assume that efforts will continue to be made to fill the post on a permanent basis because it is not sustainable to have somebody coming every day from the service in Loughrea. I hope to see some progress there. I welcome the fact that there are additional resources available this year. I hope that the negotiations and discussions between the service providers, Ballinasloe Social Services, and the HSE management will result in a significant increase in the resources it receives in the coming year. I thank the Minister of State for coming in and I would like her to visit the service if she is in the area. It is a model service and is certainly something that can be replicated in other areas of the country.

Deputy Kathleen Lynch: The difficulty in recruitment is not only in areas such as Balinasloe. It exists across the range, including in some of our very high tech hospitals, where one would imagine nurses would want to work. It is getting easier. That is all I will say. There are still vacancies but not as many as there were. If the right person becomes available the post will be filled.

General Practitioner Services Provision

Senator John Kelly: I welcome the Minister of State to the House. I want to raise the plight of small rural GP practices. They seem to be in a state of crisis. I am not concerned with practices that have 1,600 or more patients. Many small rural GPs have fewer than 600 patients. There are 21 vacancies for full-time GPs in rural Ireland - 22% have been vacant for two years and 17% have been vacant for one year. Recruitment seems to be the problem. It appears that our investment in rural practice only amounts to 2.5% of the health budget whereas in the UK it is up to 9%. During the crash, rural GPs lost approximately 40% of their income. That included the rural practice allowance that was taken away and travel allowance to call-outs, which was put in place 35 years ago. A higher rate was paid if a longer distance was to be travelled. Now that things have improved, I ask the Minister of State to reverse the financial emergency measures that were introduced in 2008 and 2009 in order to entice GPs into rural practice. Their present situation is being reviewed but the outcome of that review will not be known until the end of 2016.

There is another problem. If rural GPs are forced out because their practice is unsustainable, patients cannot transfer to another local doctor. They are at the mercy of various locums who will be at their disposal and who are not familiar with them to the same degree as the full-time GP. I am also aware that some GPs are earning less than their practice nurses. There is a crisis and investment is the only thing that can solve it. We are talking about the resuscitation of general practice in rural Ireland.

Deputy Kathleen Lynch: We need to be careful about the language we use. There are 18 vacancies in total and percentages can often give a false view when one is talking about a small cohort of people. All 18 vacancies are covered by locums. In some cases, as this has been on a prolonged basis, they will not be unfamiliar to the people they see on a daily basis. There is, however, an issue, with which we are not unfamiliar. We recently had two meetings on the subject.

I thank the Senator for raising this issue, as it provides me with an opportunity to update the House on it. I am very much aware of the issues facing general practice in rural areas. My colleague, the Minister for Health, Deputy Leo Varadkar, and I recently held separate meetings with the Irish Medical Organisation and the National Association of General Practitioners, at which we discussed general practice in rural areas, among other things. Under the general medical services capitation contract, GPs are eligible for a rural practice allowance when they live and practise in an area with a population of less than 500 where there is not a town with a population of 1,500 or more within a radius of 4.83 km of that centre and where the HSE considers it necessary to pay an allowance to retain a doctor in the area. The rural practice allowance under the capitation agreement is currently set at just over €16,000 per annum. GPs who satisfy the criteria for payment of the allowance are also entitled to claim practice support subsidies towards the employment of a practice nurse, secretary and manager at the maximum

applicable rate which they would otherwise only be entitled to claim if they had a panel size of 1,200 and over. Qualifying GPs can also claim the maximum applicable contribution towards locum costs for periods of leave such as sick, annual, study, maternity and adoptive leave.

The HSE has recently reviewed its guidelines for dealing with applications for a rural practice allowance from GPs applying for a GMS contract in a rural area. The purpose of the new guidance is to ensure consistency, transparency and fairness in decision-making in respect of the relevant discretionary provisions of the GMS contract pertaining to the granting or otherwise of the allowance to new applicants. The new guidance does not, however, affect existing holders of the allowance. The HSE, the Department of Health and the IMO are engaged in a review of the GMS and other publicly funded health sector contracts involving GPs. The review is taking place within the context of the framework agreement which was signed by the parties in June 2014 and the memorandum of understanding signed in February 2015.

Among the topics comprehended by the review is the issue of supports for general practice in rural areas. With regard to the reversal of fee reductions introduced under the Financial Emergency Measures in the Public Interest Act 2009, FEMPI, I recognise that general practice has contributed its fair share under the Act, some €122 million, but others in society, including other health professionals, have also played a pivotal role in the country's recovery. A review will take place shortly of the fee adjustments introduced under the FEMPI legislation for contracted professionals in the health sector, including GPs. This follows on from engagement earlier this year between the Minister for Public Expenditure and Reform and public sector unions on an orderly unwinding of the legislation.

There is a lot of information included in my reply. This is not an issue about which we are unconcerned or with which we are unfamiliar. We hope that, through negotiation and regular contact, there will be some improvements.

Senator John Kelly: It is positive that negotiations are ongoing, but I ask that they be fast-tracked lest more GPs are lost from rural Ireland.

Deputy Kathleen Lynch: The key to ensuring hospitals are not overrun lies in the community, while the key to the delivery of services in the community is GPs and nurses. We cannot emphasise that enough, and it is on that basis that I hope we will go forward in terms of the negotiations.

Social Welfare Offices

An Cathaoirleach: I welcome the Minister of State, Deputy Phelan, to the House.

Senator Denis O'Donovan: I submitted a similar Adjournment matter on 4 March 2014, the response to which I have before me. I will not go into the detail but there is a severe difficulty from a practical point of view in my home town of Bantry where approximately six different offices provide various social welfare services. We all want the one-stop-shop facility but when somebody goes into a particular office the file might be in another office, and people end up swapping files. In terms of security and an onus to be fair to the general public, the system in our town is 40 or 50 years out of date. Ten or 15 years ago it was mooted that a new premises should be acquired where the various branches of the relevant Department would be located under the one roof. I ask the Minister of State for an update on that and hope the response I

receive will be more positive and enlightening than the one I got 20 months ago.

Minister of State at the Department of the Environment, Community and Local Government (Deputy Ann Phelan): I thank the Senator for raising the issue and giving me this opportunity to update the House on the Department of Social Protection's plans to integrate its services in Bantry.

Since the transfer of responsibility for community welfare services and employment services from the Health Service Executive and FÁS, respectively, to the Minister for Social Protection, the Tánaiste and her officials have been looking at ways to better integrate services to provide a more streamlined and consistent service for their customers. The Office of Public Works has been working with the Department of Social Protection to support this process.

This vision has been given expression under the Intreo programme. Intreo is a very important step in transforming the way income and employment supports are provided. The role of the Office of Public Works in assisting the Department of Social Protection to deliver the Intreo programme is to provide appropriate, modern and efficient accommodation that meets the Department's business requirements and allows it to deliver its services to customers efficiently and effectively. This programme of works represents a very significant investment in terms of both funding by the Government and the allocation of administrative, architectural and technical resources by the OPW.

I am pleased to inform the House that by the end of 2015, the OPW will have modified or fitted out 73 buildings for Intreo in 61 cities and towns throughout Ireland. While priority has been given to delivering the Intreo programme, the Department of Social Protection has also commenced a programme of consolidating services in a number of towns, such as Bantry, where traditional signing services are provided under contract by a branch office, rather than a local office, and where other services such as community welfare and employment services operate from separate locations. This will likely result in a further programme of works for the OPW that will be delivered over the next two years.

It is a feature of the model of integrated services developed by the Department that the public facing side of operations such as waiting areas, serving hatches, interview rooms and group engagement rooms is significantly larger when compared with traditional local social welfare offices.

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While this is a welcome development, it also creates its own challenges for the Office of Public Works. In some locations, particularly smaller regional towns, the size of existing office accommodation required to deliver the range of consolidated services may simply not be available, or may be in a less central and readily accessible location in retail parks on the edge of town. This can make access for those dependent on public transport more challenging. It may also be the case that there may be several years left to run on existing leased accommodation.

In such cases, the OPW and the Department are trying to balance the aim of consolidating services with the desire to avoid paying rent on premises that would be vacated prematurely if all services were consolidated in one location. This is particularly relevant where there is no alternative requirement for the accommodation that would be vacated. These types of considerations, together with the underlying demand for services in the various towns and the availability or lack of suitably-sized and located buildings, is feeding into the prioritisation of

individual projects.

The Senator has outlined the particular circumstances that exist in Bantry where, in addition to the branch office on Bridge Street which is operated under contract by a third party, the Department's own staff deliver services from four other locations around the town. It is unfortunate, however, that none of the existing OPW-leased properties in Bantry is big enough to support an integrated operation.

A search for viable accommodation has been under way in Bantry for some time, but a lack of suitable buildings has hampered progress. Recently, however, the situation improved and my officials are now in preliminary negotiations with four potential landlords. Officials were in Bantry on 8 October to inspect these properties and meet their respective owners. This search process is ongoing, so if the Senator is aware of potentially suitable premises he should please feel free to forward the details to the Minister of State, Deputy Harris.

As the House will no doubt appreciate, I would prefer not to say anything more specific about the options identified to date, as doing so could inadvertently undermine discussions with potential landlords. Having said that, I am hopeful the OPW is moving to a position where it will be able to secure a suitable building in Bantry that will support the delivery of integrated social welfare services in the town and surrounding region. I trust this clarifies the situation for the Senator.

Senator Denis O'Donovan: I thank the Minister of State. I needed an update and I have noted her advices and will pass on the information to the appropriate people. I hope a solution will be found because it is unfair to the general public and the staff. It is not the most ideal situation to have four different offices in a relatively small town with a population of 3,000 people.

Deputy Ann Phelan: I understand the Senator's concern and will pass the information on to him. I am not sure how this compares with the previous-----

Senator Denis O'Donovan: There is a little more light at the end of the tunnel.

Deputy Ann Phelan: We will forward this to the Senator.

Motor Tax Rates

Senator Paschal Mooney: I thank the Cathaoirleach for placing this motion on the Commencement debate. I welcome the Minister of State. I hope events have moved on since I tabled this motion, which was to be taken last week. Due to pressure on the Cathaoirleach, it was deferred until today. I hope this extra time means the clarification required has already been given.

Since the ruling by the Court of Appeal on 21 October in the case of the DPP v. Perennial Freight Limited, Freight Transport Association Ireland, FTA Ireland, has been active in this regard. It has been in receipt of multiple queries by telephone and e-mail on whether articulated tractor units should now be weighed separately for the purpose of calculating motor tax. Despite the fact FTA Ireland has contacted the Department of Transport, Tourism and Sport, the Department of Finance, the Department of the Environment, Community and Local Government and the Revenue Commissioners it has received no clarification. I understand that at the beginning of this month there was some further clarification on the amount the owners of

articulated tractors will have to pay, and the rate for articulated vehicles is now €333, which is the rate for non-agricultural tractors.

I have a number of questions on this, which are combined, and I hope the Minister of State will address them in her response. Is the €333 an annual rate for articulated vehicles from now on? Will the Minister of State confirm this sum is the rate applicable for vehicles whose tax is to be renewed in November and December before the tax reductions announced in the budget kick in? This is important. Does it apply for November and December? Will the Minister of State confirm this to the local tax offices? I understand they are being forced to handle calls from confused hauliers nationwide. I have heard a few of these responses and there is most definitely confusion in the local authority offices. Different answers have been given to queries raised by hauliers. When will the Minister reflect the announcement in law? Will it be done in a statutory instrument or amending legislation? As a result of the successful case taken, will the Minister of State confirm that the several thousand prosecutions outstanding against hauliers for under-taxation of articulated units will now be dropped by the DPP? Will the Department refund the motor tax unlawfully overcharged on hauliers due to this misreading of the legislation by the local authorities and An Garda Síochána?

The conclusion of Mr. Justice Peart is summarised in paragraph 42 on page 28 of his judgment. He stated that the practice which had seen hauliers such as the appellant bring a trailer to be weighed in association with the tractor for the purpose of being licensed for the coming period had in his view no statutory basis. That was the reason the case was won by the freight company. That more or less sums up what I am attempting to find out and what Freight Transport Association Ireland members are attempting to find out. I will be grateful for the Minister of State's response.

Deputy Ann Phelan: I thank the Senator for raising this issue. Last month in budget 2016, the Minister for Finance announced that the rates of motor tax on larger goods vehicles are being reduced. The reductions apply to goods vehicles with an unladen weight exceeding 4,000 kg and will take effect for vehicle licences taken out with a commencement date of 1 January 2016 or after. As part of the changes announced, the rate structure of 20 bands is being simplified to five bands of motor tax, which will range from the current level of €92 per annum for electric goods vehicles up to €900 per annum for all goods vehicles in excess of 12,000 kg. The cost of the reductions is some €43 million annually. This change will benefit the owners of more than 28,000 goods vehicles.

A week later, on 21 October, the Court of Appeal made a judgment in a case between the Director of Public Prosecutions and Perennial Freight Limited. If I was to summarise briefly the import of the judgment, it is that only the mechanically propelled element of an articulated vehicle - in other words, the cab of the vehicle - falls to be taxed on the basis this is the only part of the vehicle that is independently capable of mechanical propulsion. Up to that point, articulated goods vehicles had been taxed based on the weight of the cab and the heaviest unladen trailer or combination of trailers that would have been drawn by the cab. The judgment further ruled that articulated vehicles are more appropriately taxed as a different class of vehicle than had been the case up until this judgment. This is the category under which non-agricultural tractors are taxed and it has a single annual rate of tax of €333. The judgment does not affect rigid trucks which continue to be taxed on unladen weight.

The necessary technical adjustments have now been made to the national vehicle and driver file to apply the €333 rate. This has been done pending fuller consideration of the implications

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of the judgment and the appropriate response to it. Legal advice on certain elements of the judgment has been sought by my Department through the Office of the Attorney General and once it is received and considered, a decision on how best to proceed will be taken.

On that basis, I hope the Senator understands that at this point in time, I am not in a position to comment further on the matter.

Senator Paschal Mooney: I thank the Minister of State. I appreciate that this matter is not within the her direct area of responsibility and that she is therefore relying on what her officials are telling her. I understand from the latter part of her reply that because legal advice has been sought, many of the questions I have raised in terms of refunds probably cannot be answered. My reading of the situation - perhaps the Minister of State can confirm this - is that the necessary technical adjustments have now been made to the national vehicle and driver file, NVDF. This would answer the question as to whether the local tax offices have now been informed of the change, which would eliminate any confusion in this area. The only question I can ask is if the Minister of State has any idea at all, or has any extra information apart from the response, as to how long it will take for the legal advice to work its way through the system so that there can be further clarification.

Deputy Ann Phelan: I do not have any further clarification, nor do I have a timeline. If the Senator sends me an e-mail stating the specific issues he has raised, I will undertake to try to get clarification on them from the Department.

Senator Paschal Mooney: Perhaps the Minister of State would address by letter the questions I asked, which were specific to the matter.

Sitting suspended at 3.12 p.m. and resumed at 3.30 p.m.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, the Assisted Decision-Making (Capacity) Bill 2013 – Second Stage, to be taken at 4.45 p.m. with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes.

Senator Marc MacSharry: The Cathaoirleach will have been aware of job losses in recent days at Aurivo, a co-operative in the north west. Against its own ethos, Aurivo now plans to produce butter in Cork instead of Connacht. It was originally the North Connacht Farmers' Co-operative Society. In addition, 37 jobs will be lost at Avantcard. If we add up all the retail businesses, restaurants and bars in the small towns of the north west, we can see many hundreds of job losses that have not reached the national media in recent times.

I am calling for the establishment of a strategic employment task force for that region, a proposal I am sure is supported by many colleagues throughout the north west. Some 46% of Ireland's total GNP is produced in the greater Dublin region. This is not sustainable for the Dublin region and is not fair on the rest of the economy.

I would like to see the establishment of a strategic employment task force with clear powers in respect of strategic investment in broadband, motorway infrastructure and the urgent development of the north west university of technology. These are three tangible inputs, as opposed

to glossy brochures filled with promises, that can take pressure off this region which is responsible for almost 15% of our national GNP and create much-needed employment in the north west. It is not too much to ask for. Indeed the same could be done for the Leader's region and some of the pressures taken off the greater Dublin area.

This is urgent and should be done. It should not just be a strategic task force in name only but should be one that is empowered and provided with the significant resources that are required to do those three things: broadband, motorway infrastructure and the university of technology for the north west. These are three issues of access: education, transportation and information technology. I ask the Leader to take that on board and pass it on to the Taoiseach.

The main point I want to raise today concerns the commission of inquiry into IBRC. It is simply not credible to this side of the House that the Department of Finance, the Taoiseach and the Minister for Finance are saying that problems only emerged last Thursday relating to whether or not documentation or evidence would be treated as private in the context of documentation provided to Judge Brian Cregan by the Department of Finance or IBRC. I have a copy of a newspaper article from 22 August 2015 written by Cliff Taylor. The headline read, "Legal issues could delay statutory inquiry into IBRC". Clearly, it is not credible for the Taoiseach, the Minister for Finance and his officials to claim that they were unaware of these issues until last Thursday. That is factually incorrect. What is the position as things stand? How quickly can emergency legislation be introduced to ensure this work can be completed by the end of the year? Clearly, there was advice from the Attorney General. I suggest the State would benefit from that advice being published, given that almost €1 billion of the people's money is involved. Perhaps there is nothing to see, as Ministers have suggested, but evidence elsewhere in the public domain gives us cause to wonder. At an absolute minimum, the people are entitled to know why a write-down of €119 million was afforded in the context of the sale of Siteserv.

Obviously, the commission of investigation is also to investigate 37 other IBRC transactions of over €10 million. It is imperative that the Siteserv transaction, in particular, be fully investigated and the outcome published in advance of a general election. With due respect to the Government, the Minister for Finance, the Department of Finance and IBRC, the people are entitled to know how €119 million of its money was potentially thrown away and squandered by the actions of departmental officials, the Minister, people in IBRC, the receivers or whomever. I ask the Leader to impress this point on the Taoiseach in the first instance. As soon as is humanly possible, we should debate the issue in the House.

Senator Ivana Bacik: It is welcome that we are taking Second Stage of the Assisted Decision-Making (Capacity) Bill 2013 today. It is long-awaited legislation and I know that it will receive a broad welcome from everyone in the House, as it did in the Dáil. I know that we will have a full debate on it.

I also welcome today's announcement of the new package of housing measures to give some rent certainty to tenants. It has just been published and is entitled, *Stabilising Rents: Boosting Supply*. The Minister for the Environment, Community and Local Government, Deputy Alan Kelly, has described it as a significant overhaul of tenants' rights. I know that colleagues will very much welcome that we will see real protections for tenants, in particular, an increase in the rent review period to two years. There must be at least 24 months between all rent reviews. Therefore, if somebody has had his or her rent increased in 2015, he or she will not see another increase until 2017. That will be inserted in legislation. As has been heralded, we will also see a requirement for landlords to sign a statutory declaration of intent to sell to avoid any abuse

of procedures in raising rent. We will see new procedures in dealing with rent arrears. We will also see some tax relief measures to assist landlords and increases in some of the housing assistance payment limits. It is a really welcome package of measures and some doubted if it could be put in place. Senator Aideen Hayden, in particular, staunchly said for some time that we would see a decent, adequate and effective package of measures put in place. It is welcome that we have it today. I hope we will have an opportunity to debate these measures in more detail once we have had a chance to absorb the measures to be put in place, noting, of course, that nearly one in five families is in private rented accommodation and that, therefore, we need an overhaul of the private rental sector.

I certainly welcomed the establishment of the commission of investigation into IBRC transactions, about which issues had been raised in the other House. The issue that has come to the fore puts the spotlight on the 2004 Act. The difficulty is that there was no better mechanism to carry out the inquiry that needed to be carried out into these transactions. The net point that has arisen concerns a difference of legal view on whether the commission has the power to overrule the confidentiality of documents in the public interest of disclosure. Mr. Justice Brian Cregan is reported as having accepted the legal view of the special liquidators for IBRC that there was no such express power. It has certainly been reported that he accepts that there is an inherent power to conduct a balancing exercise for the chairperson of the commission. Indeed, the Department of Finance and the former Irish Bank Resolution Corporation, IBRC, directors and management apparently have legal advice to that effect, namely, that the commission does have the power to override implicitly. We should recall that the process of commissions of investigation was set up in 2004 to replace the costly and cumbersome tribunals of inquiry. Previous commissions have been hugely successful in inquiring into delicate and sensitive matters around, for example, child sex abuse in institutions, and have navigated the balance of interests in these procedures. Of course, any commission of investigation is always subject to legal challenge by individuals who may be affected. I would urge a word of caution to those rushing to judgment. I do not believe there was an alternative mechanism that could have been put in place to effectively investigate these transactions. I believe the commission of investigation is the right method. Nobody can rule out the prospect of individuals taking a legal challenge to any commission of investigation.

Senator David Norris: I would like to raise the question of the forthcoming Seanad by-election and point out that it is a complete and absolute farce. It highlights the utter inability, or unwillingness, of the Government to take on board any question whatever of Seanad reform. There is an electorate of a couple of hundred voters, almost entirely from political parties, who are directed by head office on what way to vote. In other words, it is a nomination process; by no stretch of the imagination is it an election. For that reason, it is very regrettable that we have this in the dying days of Seanad Éireann.

I listened to a debate between three of the candidates on “The Late Debate”. There was a very articulate young woman from Sinn Féin, a decent doctor from the west and Mr. Beades. I thought they were excellent and the debate was terrific. It was a real vote of optimism and hope in the Seanad that people of this calibre should put themselves forward. Of the fourth candidate, there was no sign whatsoever of Ms Máiría Cahill who is a nominated person for the Labour Party.

An Cathaoirleach: That is not a matter for the House and the Senator should not refer to people who are not Members.

Senator David Norris: It most definitely is, a Chathaoirligh. How could you possibly maintain that? This is a matter of who will be elected to this House. Of course, it is appropriate.

An Cathaoirleach: It is not a matter for the Order of Business.

Senator David Norris: It is completely appropriate.

There was no standing from this woman at all. Questions have been raised about her involvement with dissident republicans.

Senator Ivana Bacik: On a point of order-----

Senator David Norris: There has been no explanation, whatsoever. I have received a communication from one of the sisters of Robert McCartney asking for an investigations into this matter in advance of the election.

An Cathaoirleach: Senator Norris, I have called Senator Bacik on a point of order.

Senator Ivana Bacik: I understood there was a convention in this House that we do not name or cast allegations about people who are not currently present. I ask the Senator to withdraw his comments.

An Cathaoirleach: Senator Norris knows the rule quite well.

Senator David Norris: I have made my point and it is one on which I feel very strongly. I have also been attacked by this person on social media for daring to nominate somebody else.

Today, I visited the Clerys workers outside the Department of Jobs, Enterprise and Innovation. I would like to endorse their demand that the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, should effect a change in the law to ensure that employers must engage in a 30-day period of consultation with employees before redundancies can occur. If they fail to consult their employees, there should be consequences and that staff would still be entitled to wages. In addition, workers and unions should be able to apply to have company directors who act in this abominable fashion disqualified for at least five years.

Senator Terry Brennan: I do not want to steal Senator Mary Moran's thunder this afternoon but I want to congratulate Dundalk FC on winning the double, the FAI cup and league, on Sunday, the first time in 27 years. I congratulate all concerned.

Since statistics began, 38,500 people have been killed on our roads, of which 23,700 were in the Republic and 14,700 in Northern Ireland. These are alarming and frightening statistics. On Sunday next, people from both North and South will come together to remember all the lives lost on the roads of this entire island. Thankfully, many lives have been saved and injuries prevented as a result of the collaborative work of road safety agencies on both sides of the Border in recent years. It is fitting, therefore, that we come together on World Day of Remembrance for Road Traffic Victims to remember those who tragically died on the roads and think of their families. Many generations and thousands of families, including my own, have been devastated by the grief of loss and the heartache of road tragedies. We must all play our part to do everything possible to prevent this loss and suffering from touching more lives. We all have a responsibility to make the roads safer. In addition to those to those who lost their lives, thousands more have suffered serious, life changing injuries. The world day of remembrance will remind us of how easily tragedy can happen but by making small changes to our own be-

haviour on the roads, we can all help to prevent future tragedies. The number of people killed on the roads since statistics began is the equivalent of the population of Drogheda or Dundalk, which is alarming.

Senator Paschal Mooney: I am curious to know when it is proposed to take the Social Welfare Bill 2015 which is currently going through the Dáil.

Senator Mary Moran: Like Senator Terry Brennan, I congratulate Dundalk FC on achieving a fantastic double by winning both the league and the cup, culminating in the cup final win in the Aviva Stadium on Sunday last which was attended by more than 25,000 people, the majority of whom were from Dundalk. It has been 27 years since the club last achieved the double and it was worth the wait as most of the people of Dundalk and surrounding areas attended the match to cheer on the Lilywhites. It was also great to see some long-time supporters there such as Dessie Casey, a man who is well known through both Dundalk FC and the FAI and who has been involved in the club all his life through thick and thin.

An Cathaoirleach: The Senator cannot name people in the House.

Senator Mary Moran: It was a remarkable achievement for a remarkable club which just three years ago was facing both relegation and bankruptcy. This is a story of what can be done when the right man is at the helm.

An Cathaoirleach: This is not relevant to the Order of Business.

Senator Mary Moran: I pay special tribute to the team and the manager who steered them to become the best in the country for the second year in a row.

Senator Trevor Ó Clochartaigh: Ba mhaith liom tacú leis an éileamh atá déanta le go mbeadh díospóireacht againn sa Teach seo maidir leis an “fiasco” a bhaineann le Siteserv. That the Government parties could state they were not aware of the issues around the inquiry into Siteserv and related matters was quite incredible as issues around the terms of reference for the commission of inquiry had been raised as far as back as June in the Houses. There were specific media reports in September on the particular issue that has arisen. It is an absolute disgrace that, when we have an issue as significant as this, with hundreds of millions of euro of taxpayer’s money in question in the context of how the deals were made, the Government has botched it yet again. However, the Government parties were dragged kicking and screaming to set up the inquiry in the first place. It was pointed out previously that this inquiry was not fit for purpose. There are also concerns around other institutions such as NAMA.

The House has an important role to play and the person who should show leadership on this issue and come in to address the House is the Taoiseach. He should come to make a statement to clarify exactly what will be done to ensure the commission will be put back on the right track and that whatever legal impediments there are will be overcome as quickly as possible to make sure the Siteserv issue and related matters will be dealt with this side of a general election. The obvious claim being made is that the Government parties are trying to kick to touch, that they do not want the truth to come out and that this has been the track from day one. It would be appalling if that were to happen. The matter is so serious that the Taoiseach should grace us with his presence in the House. He has not been here often but this issue is of sufficient magnitude that it should be addressed here as soon as possible by the Taoiseach.

Senator Colm Burke: I refer to the elections in Myanmar, formerly Burma. Aung San Suu

Kyi has made tremendous progress in securing a move towards a democratic system. In the first speech I made to the European Parliament in 2008 I called for her release. She was under house arrest for over 21 years and was eventually released in 2010. It shows that taking the road of peaceful means and the democratic system is best. She should be congratulated for the work that has been done by the party with which she is working. May the change she is trying to bring about be achieved in the not too distant future.

I am aware that Senators are tired of me raising this matter on an annual basis, but in November the issue of the recruitment of junior doctors arises. A simple issue has changed for them over the last four to five years. In 2009, the average junior doctor was able to get approximately €1,900 every six months to go on training courses. That is now reduced to the provision of less than €2,000 over a four-year period. We are anxious to keep junior doctors in this country but we are not doing enough to achieve that. Junior doctors must train to progress their career. It is a very simple matter that could be resolved. It must be dealt with, particularly when one considers that more than six hospitals in this country are now paying doctors under agency contracts, with over 50,000 hours per annum under agency contracts. There appears to be no joined-up thinking for dealing with this issue. Very little progress has been made in the last four years since I first highlighted it.

We are burying our heads in the sand on this matter. There must be a review of what has been done, what can be done and how fast it can be done. It is important that the Minister come before the House to outline the plan to deal with this extremely important issue during the next 12 months to two years. We cannot get the doctors we require to provide the health care that is needed by the people of this country.

Senator Sean D. Barrett: After the controversies surrounding the telephone licence, the IBRC, Siteserv and the National Asset Management Agency, NAMA, is it not time to establish that, as a general principle, we should sell assets openly? By taking the secret route behind closed doors, the insider dealings become tied up in knots and involve huge numbers of accountants and lawyers. Open auctions are superior. They are open, the transaction costs are low and the time lapse is much quicker. It is not out of the question to suggest that something be put on eBay or that an auctioneer be found to sell things. We have tried the hugger-mugger method for too long and it always becomes tied up in knots.

Regarding the powers at the centre of the current dispute, Members will have received copies of the Finance Bill and the explanatory memorandum relating to it. Regarding section 71, the explanatory memorandum states, "In particular, this Chapter provides the Revenue Commissioners with the power to seek records and documents from taxpayers and other third parties, including financial institutions." I do not know what is at stake in this regard but certainly the indication is that we must find a new way of selling these assets because it always appears to end up with insider dealing leading to political controversies. In addition, it takes far too long. Keeping it simple might be one of the ways we should proceed in the future. It appears there are powers in the Finance Bill to ask financial institutions to provide information. Certainly, my reading of the Bill, which will be brought before the House in a matter of days, is that bank accounts do not have the secret status that appears to be assumed in the current debate.

Senator Aideen Hayden: As Senator Bacik said, an agreement was reached by the Cabinet today regarding measures that will be put in place to provide what is termed a new deal for tenants and to provide better support for families who are facing homelessness.

4 o'clock

I want to start by thanking colleagues on all sides of the House. I know many colleagues have made written representations on this issue to the Taoiseach and various Ministers. I would particularly like to thank our Fine Gael colleagues because, while the media have presented this as a Labour Party-Fine Gael battle, I know many Fine Gael colleagues have been behind the issue and very keen that a resolution is found. I also know the media have presented it as a very one-sided situation which is a new deal for tenants and nothing for landlords. I want to make the point that there are issues that will be in the package in terms of a better tax relief situation for landlords and improved operations of the PRTB, for example.

The fact remains we have discussed this in this House on many occasions. Tenants are being driven into homelessness because of rent increases, and that is the bottom line. The only question we have to ask ourselves here today is whether the measures that are being announced by the Cabinet are going to help or hinder that situation. I am absolutely confident they will help to stem the flow of people entering homeless services. That is the only question we have to ask. Does that mean we finish here? No, it does not. One in five Irish families lives in rented housing so it is a major issue going forward. More needs to be done in order to secure the future of those households, and I have personally asked the Minister, Deputy Kelly, to ensure we put in place a formal review in regard to the private rented sector. It is not the Cinderella of Irish housing any more. It is where a very significant number of Irish families live and will continue to live in the future.

I want to thank colleagues because I know representations were made on this issue right across the House to everybody concerned, in particular to Ministers, the Taoiseach and the Tánaiste.

Senator Gerard P. Craughwell: I do not want to get into the Seanad by-election name-calling but serious e-mails have been sent to me and other Members of this House in recent days, and I think somebody somewhere needs to deal with them fairly quickly.

I rise today with respect to the Order of Business of 22 October, where Senator John Crown asked the acting leader of the day, Deputy Paul Coghlan, to amend the Order of Business to allow No. 51, the Seanad Electoral Reform Bill, to be taken before No. 2. The acting leader in reply said, "As I understand it, there is a Government implementation body and I am afraid I will not be able to accept the amendment." I am sure the acting leader spoke in all honesty, believing what he was saying to be true. However, a member of the public has contacted me and has had correspondence with the Taoiseach's office, asking questions about this implementation body. The reply from the Taoiseach's office is as follows:

I refer to your recent email to the Office of the Taoiseach, Mr. Enda Kenny, T.D., regarding the membership of the proposed Seanad Reform Implementation Body.

As you will be aware, the Taoiseach established an independent Working Group on Seanad Reform earlier this year and gave it a wide remit to propose Seanad reform within existing constitutional parameters. When the Group's Report was published, the Taoiseach welcomed it, saying it was innovative and radical and contained some far-reaching recommendations on the way members are elected to the Seanad and on how the Seanad should perform its functions and that there needed to be public and political discussion and consultation on it.

In that context, the Seanad debated the Working Group's Report On 5 May last and again on 8 July; also the Taoiseach met with the opposition party leaders in July to discuss its contents.

Arising from that meeting, the Taoiseach gave a commitment to having a debate in Dáil Éireann on the Working Group's Report. No decision has been taken in advance of the Dáil debate on the establishment of an Implementation Body on who the membership might be.

I do not believe anybody set out to deliberately mislead the House but we need to be told straight out whether there is an implementation body in place. If there is not, that needs to be made clear in the House today.

Senator Michael Mullins: I want to support the comments made by Senator Hayden in welcoming the progress made to address the housing crisis, and I agree much more needs to be done. I compliment her on her personal commitment and efforts to bring about a workable solution and see real progress made in addressing in a meaningful way the scourge of the housing crisis. Her record in that regard stands on its merits.

Senator Sean D. Barrett always makes very interesting comments and contributions which demonstrate a lot of common sense. I agree with him, as I would love to see the way of disposing of assets being much more open and transparent and it being done through public tender or auction. I assume the scale of the crash and the level of distressed assets must have been the reasons the previous Government established NAMA and for all of the difficulties we have seen since. In the cool calm of day I would like to have a debate in the House on the lessons to be learned from what happened and how we can avoid them in the future, as well as how we might deal with issues such as this if they were to arise in the future.

I support my colleague, Senator Terry Brennan, in welcoming the fact that the Minister for Transport, Tourism and Sport, Deputy Paschal Donohoe; the Minister in Northern Ireland, Mr. Mark Durkan, MLA, An Garda Síochána, the Police Service of Northern Ireland, local authorities and road safety groups are coming together to call on road users throughout the island of Ireland to reflect on the number of lives being lost on the roads as we mark international day of remembrance for road traffic victims. As the Senator said, 38,500 lives have been lost on the island of Ireland during the decades, which is a frightening statistic. We can all play our own small part in ensuring we heighten awareness. We have discussed the issues of drink-driving and speeding, but small things such as checking our lights, brakes and the state of our vehicles as we head into winter would certainly make a contribution. I urge people to attend the various commemorative events being organised throughout the country and ask all of us to think long and hard when we sit behind the wheel of a car. It is so easy to end our life or that of another person. This winter and Christmas we should ensure no family suffers the loss of a loved one through our carelessness or negligence.

Senator Fidelma Healy Eames: I believe nominations for the Seanad by-election close tomorrow. Serious questions arise about the bona fides of one candidate, the candidate being nominated by the Labour Party.

An Cathaoirleach: That is not a matter for the House.

Senator Ivana Bacik: On a point of order-----

Senator Fidelma Healy Eames: I am sorry; I believe I have the floor. I am not about to

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name anybody and I would appreciate it if Senator Ivana Bacik took her chair.

An Cathaoirleach: Senator Fidelma Healy Eames to continue without interruption. The matter is not relevant to the Order of Business.

Senator Ivana Bacik: I was raising a point of order.

An Cathaoirleach: What is the point of order?

Senator Ivana Bacik: I am raising a point of order because I believe the practice is that we do not identify people-----

Senator Fidelma Healy Eames: Did the Senator hear me identify anybody?

Senator Ivana Bacik: -----and even without naming a person, he or she may be identifiable.

An Cathaoirleach: That is not a point of order.

Senator Fidelma Healy Eames: The defensiveness of the Labour Party on this issue is telling in and of itself. I have one question. I was inclined to vote for the candidate, but now I have questions.

An Cathaoirleach: That is not a matter for the Order of Business.

Senator Fidelma Healy Eames: Hold on one minute - what happens in this House is a matter for the Order of Business.

An Cathaoirleach: What happens in the House is, not candidates.

Senator Fidelma Healy Eames: The people who take seats in the House matter. Their bona fides matter.

An Cathaoirleach: There is legislation which deals with all of these issues.

Senator Fidelma Healy Eames: We have serious questions about one candidate's character and her previous associations.

An Cathaoirleach: There is legislation which deals with all electoral issues.

Senator Fidelma Healy Eames: I am only asking the question. Perhaps the person is being done down.

Senator Paul Coughlan: The Senator should solve her own problems.

An Cathaoirleach: It is not a matter for the Order of Business. Does the Senator have a question for the Leader besides this issue?

Senator Fidelma Healy Eames: I have a question. I ask the Deputy Leader to clarify the bona fides of the candidate in relation to previous associations.

An Cathaoirleach: That is not a matter for the Order of Business.

Senator Ivana Bacik: On a point of order-----

An Cathaoirleach: Will the Senator please resume her seat?

Senator Ivana Bacik: The Cathaoirleach has ruled that the matter is not in order.

An Cathaoirleach: It is not in order. Does Senator Fidelma Healy Eames have a question for the Leader, other than on what she is speaking about?

Senator Fidelma Healy Eames: I do. Honestly, I really think it is absolutely appalling that Senator Ivana Bacik thinks she can rule over this House whenever she wishes.

Senator Ivana Bacik: On a point of order-----

An Cathaoirleach: What is the Senator's point of order?

Senator Ivana Bacik: My point of order is that it is not up to me or anyone else in the House to clarify the bona fides of anyone else. The Cathaoirleach has ruled that the matter is out of order.

An Cathaoirleach: I have ruled on the issue. Will the Senator, please, resume her seat? Does Senator Fidelma Healy Eames have a question for the Leader? She is out of time.

Senator Fidelma Healy Eames: Yes, indeed I do.

An Cathaoirleach: Let us hear it.

Senator Fidelma Healy Eames: My question relates to very sick children in Galway.

An Cathaoirleach: Does the Senator have a question for the Leader because she is out of time?

Senator Fidelma Healy Eames: I am dealing with the cases of three sick children, but the Cathaoirleach today and last week ruled out of order motions I wished to table. I was looking for those motions to be heard by the Minister for Health last week and the Minister for Children and Youth Affairs today.

An Cathaoirleach: I ruled those matters out of order due to repetition.

Senator Fidelma Healy Eames: I am not done.

An Cathaoirleach: It was repetition. An answer had already been given to a Senator in the House.

Senator Fidelma Healy Eames: I am not done.

An Cathaoirleach: The Senator should resume her seat.

Senator Fidelma Healy Eames: The Cathaoirleach said they did not apply. These children are under 18 years of age.

An Cathaoirleach: The Senator is out of time. I call Senator Paul Coghlan.

Senator Fidelma Healy Eames: This relates to the cervical cancer vaccine. Why are we hiding something? What have we got to hide?

An Cathaoirleach: Senator Mooney raised this very issue a number of days ago-----

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Senator Fidelma Healy Eames: It is absolutely time these children were assessed and treated.

An Cathaoirleach: -----and on several other occasions.

Senator Fidelma Healy Eames: It is appalling.

An Cathaoirleach: I call Senator Coghlan.

Senator Paul Coghlan: As ever, Senator MacSharry displays his ignorance and rushes in on a perceived populist line. I did note, however, that he prefaced his remarks today by referring to his home base and some Sligo issue.

Senator Marc MacSharry: A north-west issue.

Senator Paul Coghlan: A north-west issue.

Senator Marc MacSharry: I mentioned the south east as well.

Senator Paul Coghlan: I thought he mentioned Sligo but maybe I misheard.

An Cathaoirleach: Does Senator Coghlan have a question for the Leader?

Senator Paul Coghlan: Of course. We need to be reasonable about all of this. It was only last Thursday or Friday that the judge came to a conclusion on the matter. The Senator should not be distracted so much by speculation and half-baked idle gossip. Of course there was all of that over the past few months but we do not have to rise to any of it. The judge has come to a conclusion on the matter. There was legal argument, which we all understand. I have no doubt the right and correct mechanism will be found.

An Cathaoirleach: Has Senator Coghlan a question for the Leader?

Senator Paul Coghlan: The Cabinet gave the matter consideration and it will give it further consideration following the advice of the Attorney General. I urge the Senator more caution and less haste. We might make more progress that way.

I compliment Senator Hayden, as did my colleague Senator Mullins, on her efforts. I am delighted the Cabinet reached a conclusion on the matter dealing with housing and homelessness today.

Senator Fidelma Healy Eames: It is not sorted yet.

Senator Catherine Noone: We all know that hotels in Dublin have become very expensive. We have been hearing that across the board. I read with interest in the past few days that the journalist, Billy Keane, suggested hotels sign a pledge not to increase prices for certain events in this city. We are in the process of recovering from the crash. Hotels obviously suffered during it but no one benefits in the short term, other than the hotels, from huge prices being charged for particular events in the city and there is no long-term gain. The special 9% VAT rate for hotels introduced by this Government has been a major benefit to the tourism sector in general.

Senator Paul Coghlan: Absolutely.

Senator Catherine Noone: The Minister for Finance, Deputy Noonan, gave what was really a warning to Dublin hotels in the budget. One does not need to be the Minister for Finance

to see that hotels are overcharging in Dublin on an ordinary day in many cases. However, when there is a special event on in the city, they seem to really go for it. Billy Keane's idea is a good one and I agree with it. It would be good if we were able to get hotels to come together and pledge they would not charge extortionate prices for certain events. We do not want to be shooting ourselves in the foot. The tourism industry has recovered and is booming. We do not want to get the international reputation for being a city, or a country, that is very expensive again. It took a long time to get rid of that reputation. Hotels are shooting themselves in the foot by this sort of behaviour.

Senator John Crown: Will the Leader bring to the attention of the Minister my concerns on the issue of whistleblower protection and the attitude towards those who point out deficiencies in the health service? This issue has been alluded to on a number of occasions but it is fairly obvious from recent events - I will not personalise the issue by mentioning the name of the doctor or the hospital - that there is still grave concern that there is a culture of shooting the messenger rather than dealing with the problem in our health service.

Senator Fidelma Healy Eames: Hear, hear.

Senator John Crown: Perhaps we should schedule a debate in this House to discuss the issue of whistleblowing and have the Leader consider arranging one of our special sessions to examine some specific examples of whistleblower intimidation which have occurred. I propose an amendment to the Order of Business that No. 48 be taken before No. 1.

Senator Rónán Mullen: Is léir go bhfuil bagairt an-mhór ann do theanga na Gaeilge san am atá i láthair, go háirithe sna ceantair Ghaeltachta. Tá an Ghaeilge i riocht níos laige agus níos leochailí anois ná mar a bhí sí riamh. I second Senator John Crown's excellent amendment to the Order of Business.

Senator David Norris: Well caught.

Senator Rónán Mullen: Caithfear aghaidh a thabhairt ar an bhfadhb thromchúiseach seo agus céimeanna practiciúla a ghlacadh chun an teanga a chosaint agus a bhuanú. Ní mór sin a dhéanamh go práinneach, ach cén chaoi? Sin an cheist. Creidim gur chóir dúinn é seo a phlé sa Teach seo ach tacaím go mór leis an éileamh a rinne Conradh na Gaeilge ar na mallaibh maidir le coiste seasmhach Oireachtais ar mhaithe leis an nGaeilge agus an Ghaeltacht. D'fhéadfadh an coiste sin a chinntiú go gcomhlíonann an Stát a chuid dualgais reachtúla i leith an phobail agus go mbíonn na seirbhísí cuí curtha ar fáil ina theanga féin do phobal na Gaeltachta mar atá dlite dó faoin mBunreacht. Ina theannta sin, bheadh sé ar chumas an choiste céanna seo féachaint chuige go bhfuil dóthain cainteoirí inniúla Gaeilge sa Státseirbhís. Sin ceist mhór mar ní sin mar atá i láthair na huair.

Although we often speak about it during the week in which St. Patrick's Day falls, Seachtain na Gaeilge and so on, the challenges facing the Irish language in the Gaeltacht and elsewhere in the country are ongoing. In that context, Conradh na Gaeilge's campaign to have a standing Oireachtas committee for the Irish language and the Gaeltacht is very laudable and one which I support. It is not a question of talking about the Irish language for the sake of it but of ensuring the State fulfils its statutory duties to the Irish-speaking public and those who wish to conduct their business through Irish. The State has a duty to ensure services are available through the medium of the people's own language, the first official language of the State. That is their constitutional right, as well as their human right. A full Oireachtas committee could help to

achieve this objective. It really is important to ensure there are enough Irish speakers in the public service to provide for people's needs and meet their aspirations. We often find that Government and public policy leaders speak out of both sides of their mouths in this matter. Everybody is for the promotion of the Irish language, but when it comes to providing the necessary resources and institutional change, we do not see it happen. I would like to see progress on this matter and think we should debate it in the House at the earliest opportunity.

Senator Maurice Cummins: Senator Marc MacSharry called for the establishment of a strategic task force for the north west. I will bring the matter to the attention of the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton. I remind the Senator that 125,000 jobs have been created. We still have a long way to go to reach the 200,000 jobs lost in the three years prior to the Government taking office, but we are making progress. Some 70% of the jobs created last year were outside Dublin. We all agree that it is a case of "A lot done. More to do," as the Senator's party stated many years ago in one of its election slogans. I can assure him that job creation is our number one priority and that it will continue to be prioritised in the coming months.

On IBRC, the letter was received last Friday by the Taoiseach. Senator Trevor Ó Clocharthaigh and several other Senators have mentioned that there were rumours in July and August that there were difficulties. Regardless of whether there were difficulties, the Taoiseach was only written to and informed by the judge last Friday. Senators have said it is incredible that nothing was done about the matter, but one cannot do anything until one is notified. The judge only came to the conclusion and wrote to the Taoiseach last Friday. The Government will be examining the matter and will deal with it as promptly as possible. Senator Bacik questioned whether there is a better mechanism than the 2004 Act to investigate transactions in IBRC. Obviously, it must be dealt with. The Government is totally committed to accountability and transparency on this issue and will do whatever is necessary to ensure that this happens.

Senator Norris spoke about Clerys workers and the need for consultation with workers prior to any liquidation. I agree with him that workers need to be protected in this regard. I know the matter has been brought to the Minister and I will raise it again with him. I will not comment on the question of the Seanad election, which was raised by some Members, because it was ruled out of order by the Cathaoirleach.

Senators Brennan and Moran spoke about Dundalk FC. We all compliment the team on winning the double after 27 years. Senators Brennan and Mullins also reminded us about an event to remember all those who died in road traffic accidents since statistics began and the need for all of us to be more vigilant on the roads, particularly during the winter.

Senator Mooney spoke about the Social Welfare Bill. I expect that it will be in here in a fortnight's time. I think I have addressed the point raised by Senator Ó Clochartaigh. Senator Colm Burke spoke about Myanmar and the victory of Aung San Suu Kyi. Let us hope her victory and that of her party will bring about the necessary changes and prosperity for her people, which they certainly deserve after so many years of dictatorship. Senator Colm Burke also raised the plight of junior doctors and called for the Minister of Health to come up with a plan to address it. I will bring the matter to the attention of the Minister.

Senator Barrett spoke about IBRC and the need to find new ways to openly sell assets. He also argued that section 71 of the Finance Bill should be looked at in this regard. Senator Hayden spoke about the new deal for tenants and the proposals that will come from Cabinet

today. She welcomed the proposals and suggested they will stem the flow of people becoming homeless. A question was asked about whether we will have legislation to deal with that. I am sure we will have legislation - be it in the form of amendments to the Residential Tenancies Act or a stand-alone piece of legislation to deal with these matters. I have not been informed about the situation but I am sure we will see action in the coming week and it will be clearer whether it will involve amending the Residential Tenancies Act or not.

Senator Craughwell spoke about the Seanad Electoral Reform Bill and the proposed implementation body. He mentioned the report of the independent working group on Seanad reform led by Maurice Manning, which was discussed in this House. I have been informed that there was an intention to set up an implementation body to deal with that report but to the best of my knowledge, this body has not been set up.

Senators Mullins and Paul Coghlan spoke about housing and complimented the work of Threshold and Senator Hayden. Senator Healy Eames raised a health matter that was ruled out of order. Senator Noone spoke about the need for hotels to be more vigilant regarding their prices and the raising of prices for special events. People should remember that the 9% VAT rate is not there in perpetuity. Hotel owners should remember that they have it good now when tourist numbers are at a record high, which is due to the 9% VAT rate and should not be hiking prices to exorbitant rates when special events take place.

Senator Crown spoke about whistleblower protection and intimidation of whistleblowers. He called for No. 48, the Seanad Electoral Reform Bill 2013, to be taken before No. 1 but I am afraid I cannot accede to that request.

Senator Mullen spoke about Conradh na Gaeilge proposals for the Irish language and setting up an Oireachtas committee. I certainly agree with those sentiments. There were also some comments about having a full-time senior Minister for the Irish language. I do not know whether that is necessary. The current Minister of State has shown that one can lose the Irish that one learnt at school and get it back after practice. There is certainly a question as regards the teaching of the Irish language when people can be in school for so many years and lose the ability to speak the Irish language in a short period of time whereas people can take up other languages and learn them in a matter of months.

Senator Gerard P. Craughwell: The Leader should not blame the teachers.

Senator Maurice Cummins: There is certainly a question mark in that regard. I take on board the sentiments Senator Mullen expressed.

An Cathaoirleach: Senator Crown has proposed an amendment to the Order of Business, “That No. 48 be taken before No. 1.” Is the amendment being pressed?

Senator John Crown: Yes.

Amendment put:

The Seanad divided: Tá, 16; Níl, 25.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Bradford, Paul.	Brennan, Terry.

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Craughwell, Gerard P.	Burke, Colm.
Crown, John.	Coghlan, Eamonn.
Daly, Mark.	Coghlan, Paul.
Healy Eames, Fidelma.	Comiskey, Michael.
Leyden, Terry.	Conway, Martin.
MacSharry, Marc.	Cummins, Maurice.
Mooney, Paschal.	D'Arcy, Jim.
Mullen, Rónán.	Hayden, Aideen.
Norris, David.	Keane, Cáit.
O'Donovan, Denis.	Kelly, John.
Ó Domhnaill, Brian.	Landy, Denis.
van Turnhout, Jillian.	Moloney, Marie.
Walsh, Jim.	Moran, Mary.
Zappone, Katherine.	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegard.
	Noone, Catherine.
	O'Brien, Mary Ann.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Sheahan, Tom.
	Whelan, John.

Tellers: Tá, Senators John Crown and Rónán Mullen; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

Order of Business agreed to.

Sitting suspended at 4.40 p.m. and resumed at 4.45 p.m.

Assisted Decision-Making (Capacity) Bill 2013: Second Stage

Question proposed: "That the Bill be now read a Second Time."

Minister of State at the Department of Health (Deputy Kathleen Lynch): I am very pleased to present the Assisted Decision-Making (Capacity) Bill 2013 to the Seanad. This is a ground-breaking Bill which fulfils the commitment in the programme for Government to intro-

duce mental capacity legislation in line with the UN Convention on the Rights of Persons with Disabilities. The Government's aim has been to reform the law on mental capacity to ensure the greatest degree of autonomy for people with intellectual disabilities or suffering with mental illnesses.

The Bill proposes a fundamental reform of Ireland's laws on capacity. It is intended as a key element in enabling Ireland to ratify the UN Convention on the Rights of Persons with Disabilities. The philosophy underpinning the Bill is one of respect for the rights of those with capacity difficulties. The Bill focuses on enabling them to exercise their decision-making capacity to the greatest extent possible. The archaic laws which have governed this area for too long will be repealed. Accordingly, the Marriage of Lunatics Act 1811 and the Lunacy Regulation (Ireland) Act 1871 will be repealed. Wardship will be abolished for those over 18. We will consign to the past the system under which a person's decision-making capacity could be removed absolutely. Instead, the Bill will enable a person to take the decisions he or she is in a position to take, while putting supports in place to cover situations where the person is unable to take decisions in general or to take a particular type of decision.

We have sought to underpin the enabling philosophy of the Bill with guiding principles that must be taken into account for all actions foreseen under this legislation. These are the heart of the Bill and will reach into every decision taken under it. They require the actions taken under this legislation to reflect what the person would have wanted. They also require that any actions taken must intrude as little as possible onto the person's autonomy.

This is a very complex area. The people that it will benefit are vulnerable and their needs are diverse. It is difficult to find the right solutions that will suit everyone. When the Bill was published, I undertook to listen to the concerns of people with capacity difficulties, their families and organisations working with them to see how we could improve the Bill. A consultation symposium was organised in September 2013. The Joint Committee on Justice, Defence and Equality organised a call for submissions on the Bill in spring 2014. I thank the committee for its key role in enabling stakeholders to communicate their priorities and concerns. The Bill I am now introducing is fundamentally different from the version published in July 2013.

The co-decision-making option, which allows a person with capacity difficulties to appoint another person as a co-decision maker to take decisions jointly with him or her, has been moved from the courts. This restores the person's right to choose the co-decision maker that best suits him or her and to decide on the type of decisions which will be covered by the co-decision-making arrangement. I see this as a key change to protect the person's autonomy. It enables the person to have control of the process at all times. The Bill provides for the establishment of the office of the public guardian in the Courts Service as the body designated to undertake the functions arising from the Bill. I have responded to criticism that the name of the body was overtly paternalistic by proposing that it will be called the decision support service. The name change is designed to reflect the purpose of the body which will be to provide services to people with capacity difficulties, to those taking decisions for them and to those interacting with them in a professional capacity.

I propose the removal of provisions on informal decision making in response to concerns that they would have allowed informal decision makers to circumvent the safeguards built into the Bill. I have also sought to improve the safeguards to protect vulnerable persons against abuse, particularly financial abuse. New offences have been introduced which will enable a co-decision maker to be prosecuted, for example, for exercising undue influence or coercion over a

person with capacity difficulties. The director of the decision support service will be given the necessary powers to investigate complaints. Those responsible for taking decisions on another person's property and affairs will have to submit detailed accounts as part of their report to the director of the decision support service.

A new part has been inserted into the Bill which provides for advanced health care directives. An advanced health care directive is a statement made by a person with capacity setting out his or her will and preference regarding treatment decisions that may arise in the future and in the event that he or she lacks the capacity to consent to or refuse those treatments.

I proposed a series of amendments on Committee Stage in the Dáil to the provisions on wardship which clarify that the property and income of a ward will be restored to him or her when he or she is discharged from wardship. Where a decision-making representative has to be appointed to take decisions on the ward's behalf, he or she will have responsibility for the management of the ward's funds. The decision support service will be able to point the representative towards financial expertise but will no longer take a role in managing the ward's funds. The amendment fulfils the obligation under the UN convention to enable a person with a disability to maintain control over his or her own property and income.

I have also proposed tighter provisions on the circumstances in which constraints can be used or authorised. Decisions on the restraint are restricted to decision-making representatives and attorneys only. No other category may use or authorise restraint. Decision-making representatives and attorneys may use or authorise restraint only in exceptional emergency circumstances. Where there is an imminent risk of serious harm to the person with capacity difficulties or to another person, I proposed and secured agreement on Report Stage in the Dáil that the definition of restraint should include chemical restraint. The strict conditions on the use of restraint reflect my intention that restraint should be kept to a minimum and used only in exceptional circumstances.

I will now provide a detailed outline of the provisions of the Bill. Part 1 - sections 1 to 7 - provides standard provisions relating to criteria, commencement and laying of regulations. Section 3 provides for a fundamental approach to determining capacity. This is a significant step forward from the current wardship model which totally removes the person's capacity to take decisions or to enter legal transactions. Instead, this new approach assesses capacity in a time-specific and issue-specific way. It allows for a person to have capacity in one matter but not in another, enabling the person to retain the possibility of taking such decisions even when needing support on more complex matters. The fundamental model of capacity represents the most widely accepted modern capacity model internationally and is fully consistent with the UN convention.

I proposed a series of amendments to section 4, which addresses decisions on the withdrawal of life-sustaining treatment, organ donation and non-therapeutic sterilisation. All decisions on the donation of an organ from a living donor who lacks capacity will have to be determined by the High Court. Similarly, where an application in connection with the withdrawal of life-sustaining treatment from a person who lacks capacity has been made it will be determined by the High Court rather than the Circuit Court. The Bill will prohibit anyone from giving consent for a non-therapeutic sterilisation procedure on behalf of a person lacking capacity. This provision will strengthen the Bill's protection for vulnerable adults and bring it into compliance with international human rights conventions.

Part 2, section 8, sets out guiding principles which apply to every intervention under the Bill. They are intended to embed the ethos that the person's autonomy is to be safeguarded to the greatest extent possible. The first guiding principle is that a person is presumed to have decision-making capacity, unless it is proven that this is not the case. Legal capacity is, of course, presumed. The second guiding principle is that all practical steps have to be taken to support a person's decision-making capacity before a decision can be taken that he or she lacks capacity. The third is that a person cannot be deemed to lack decision-making capacity just because of a risk that he or she might make an unwise decision.

The fourth principle is that interventions should be made only if absolutely necessary. The fifth principle is that interventions, where necessary, must be made in a way that is least restrictive of a person's rights and freedom of action. They must respect the person's right to dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property. The sixth guiding principle is that the person must be permitted, encouraged and facilitated, as far as possible, to participate in these decisions. The next principle is that any intervention must give effect, as far as possible, to the person's current will and preferences. The interveners must also act in good faith and for the benefit of the person. Finally, no action should be taken if the matter is not urgent, or if the person is likely to recover capacity shortly.

Part 3, sections 9 to 12, provides a statutory framework for decision-making assistance agreements. These are formal agreements under which a person with capacity difficulties can appoint a trusted person to act as their decision-making assistant. The person retains control over his or her decisions. The decision-making assistant's task is to access information or to help the person to understand, make or express a decision. The form and formalities of decision-making assistance agreements will be set out in regulations to be made by the Minister for Justice and Equality.

Part 4, sections 13 to 31, outlines the provisions on co-decision-making that will apply. A person with capacity difficulties will have the option of appointing a trusted family member or friend as a co-decision maker to make joint decisions with him or her. These provisions are considerably different from those contained in the Bill as published. I considered that the provisions needed to be reformed fundamentally to ensure the person had the right to enter voluntarily into a co-decision-making agreement. I wanted to ensure that co-decision making could not be imposed on a person. Furthermore, I wanted the person to have the choice of co-decision maker. The option has now been moved from the courts. The director of the decision support service is now tasked with verifying that everything is in order with the agreement and that the agreement reflects the will and preference of the appointer. There is no requirement for a declaration of capacity from the courts in order for someone to enter into a co-decision making agreement. However, an assessment of capacity by a medical professional and another health care professional is required in order to have an agreement registered by the decision support service. A capacity assessment is needed because the co-decision-making option should be selected by a person only if necessary. This is in line with the Bill's philosophy and the option chosen should be the least intrusive possible. If a person has significant capacity to make his or her decisions the suitable option is that of assisted decision-making.

5 o'clock

A number of safeguards have been built into co-decision-making, including the supervision of co-decision-makers by the decision support service. The co-decision-maker will have to report annually to the service. A complaints mechanism has been introduced that will enable

complaints to be made to the decision support service about various aspects of co-decision-making agreements, ranging from the appointer's capacity and preferences, to the suitability or conduct of the co-decision-maker. An additional safeguard allows the director to investigate a co-decision-making agreement if there are concerns in relation to fraud, abuse, incompetence or unsuitability. As I have previously indicated, new offences are proposed relating to fraud and coercion in drawing up, varying or revoking a co-decision-making agreement.

Part 5, sections 32 to 43, inclusive, sets out the court-based procedures that will apply when a person's capacity difficulties are sufficiently severe to prevent him or her from availing of the decision-making assistance or the co-decision-making options. The court will have the power to make a series of declarations to respond to a range of possible capacity needs. The court can make a declaration that the person lacks capacity unless he or she has the assistance of a co-decision-maker. The court can alternatively make a declaration that the person lacks capacity even with the assistance of a co-decision-maker. As each person enjoys a presumption of capacity unless otherwise determined, the court will not make a declaration other than where the person lacks capacity. If the person is found by the court to lack capacity, the court can appoint a decision-making representative to take specified decisions on the person's behalf, either on property and affairs or on personal welfare. The representative will be supervised by the decision support service and will be required to report to it on the performance of the role. The decision-making representative will ideally be a family member or friend who knows the person's will and preferences. Where there is no suitable decision-making representative to undertake the role, the court can select a decision-making representative from a panel maintained by the director of the decision support service.

Part 6, sections 44 to 49, inclusive, sets out how the Bill's provisions will apply to existing adult wards of court. Each ward will be reviewed in accordance with the provisions of the new system and will be discharged from wardship and appropriate decision-making support options will be put in place for the former wards where required. Reviews of all adult wards of court will have to take place within three years of the Bill's commencement. This is a demanding timescale as it requires that adult wardship must come to an end within that period.

Part 7, sections 50 to 64, inclusive, re-enacts the provisions of the Powers of Attorney Act 1996 but requires enduring powers of attorney to comply with the guiding principles and subjects them to the supervision of the director of the decision support service. I plan to introduce a series of amendments to this Part on Committee Stage to transfer jurisdiction to the Circuit Court so as to reduce legal costs arising for donors and attorneys. I also plan to propose a series of additional safeguards to protect the donor and his or her interests.

Part 8, sections 65 to 76, inclusive, was introduced on Committee Stage in the Dáil and provides for advance health care directives. In order to make an advance health care directive a person has to be an adult, that is, over 18 years of age, and must have capacity. In order for a refusal of treatment in an advance health care directive to be considered legally binding, the person must lack capacity to consent to the treatment at the time in question. The treatment being refused must be clearly identified and the specific situations in which the treatment refusal is intended to apply must also be clearly outlined. The provisions will also enable a person to outline specific treatment requests in his or her directive. These requests would not be legally binding but would have to be taken into consideration during the decision-making process relating to that person's treatment.

The provisions introduce a mechanism through which an adult with capacity may nominate

in his or her directive a legal representative, who is aware of his or her will and preference, to be involved in the health care decision-making process on his or her behalf if he or she were subsequently to lose capacity. This nominee is known as the designated health care representative. Advance care directives represent an important tool by which people can exercise their autonomy in terms of their health care and treatment, which is an integral component of a patient-focused model of health care.

Part 9, sections 77 to 87, inclusive, provides for the decision support service to be established within the Courts Service and for a director to be appointed to head the service. The director will be appointed for a renewable six year term on terms and conditions determined with the Minister's consent and in consultation with the Minister for Public Expenditure and Reform. The staff of the decision support service will be staff of the Courts Service. The functions of the director of the decision support service will be to promote public awareness of the legislation and to provide advice and guidance to public and private sector bodies in this regard. The director will supervise co-decision-makers, decision-making representatives, attorneys appointed under enduring powers of attorney and designated health care representatives in the exercise of their duties and responsibilities. He or she will have the power to deal with complaints against decision-making assistants, co-decision-makers, decision-making representatives, attorneys, and designated health care representatives. The director will prepare and issue codes of practice for persons concerned with the capacity of others, in particular, for the guidance of persons assessing capacity, decision-making assistants, co-decision-makers, decision-making representatives, attorneys, health care professionals and carers generally. Codes of practice are envisaged as a key tool in promoting organisational practice that supports vulnerable people and safeguards their rights more effectively.

Part 10, sections 88 to 92, inclusive, provides safeguards to enable wards who are the subject of detention orders to be eligible for regular reviews of their detention. Persons so detained will be reviewed within three months and then within six months. The time-periods are in line with those of the Mental Health Act 2001.

Part 11, sections 93 to 119, inclusive gives effect in the State to, and allows for the ratification of, the Hague Convention on the International Protection of Adults, which Ireland signed in 2008. The convention sets the legal framework for dealing with the cases involving individuals with capacity difficulties where there is an international dimension to their situation.

Part 12, sections 120 to 129, inclusive, contains miscellaneous provisions. Section 120 ensures that there is no conflict between the Bill and the Mental Health Act 2001 with respect to the treatment of a patient for mental disorder. Section 122 retains the law in force concerning capacity in relation to marriage, civil partnership, judicial separation, divorce or non-judicial separation agreement, dissolution of a civil partnership, placing of a child for adoption, making of an adoption order, guardianship or sexual relations. I proposed an amendment, agreed on Committee Stage in the Dáil, to remove voting from this list. As Senators may be aware, there is no barrier in Irish legislation which prevents persons with capacity difficulties from voting. I am looking at the feasibility of a possible amendment on Committee Stage on the issue of serving on a jury. I proposed and secured Dáil agreement for the removal of provisions preventing a person from authorising a person with capacity difficulties to participate in a clinical trial. I believe it is important that persons with Alzheimer's for instance have the chance to participate in clinical trials of potentially life-changing drugs for their condition. There are safeguards in place already governing the participation of incapacitated persons in clinical trials. In addition, the Clinical Trials Regulation (Regulation (EU) No 536/2014), which is due to come into force

in 2016, also contains extensive provisions relating to protection of those participating in clinical trials, including incapacitated persons.

Section 126 amends the Courts (Supplemental Provisions) Act 1961 to allow the specialist judges appointed under the insolvency legislation to perform and exercise the functions, powers and jurisdiction conferred on the Circuit Court by this Bill in relation to capacity matters. Section 128 makes it an offence for a decision-making assistant, a co-decision-maker, a decision-making representative, or attorney of a relevant person or a designated health care representative to ill-treat or wilfully neglect a person with capacity difficulties. It sets out the penalties that will apply. Section 129 requires the Minister to review the functioning of the Act before the fifth anniversary of the date of enactment of the Act. This is an important Bill which may potentially affect every person in the country at some stage.

Any of us may suffer capacity difficulties at some point in our lives. Any of us, our family members or friends faced with supporting a person with capacity difficulties may be taking the difficult decisions that may need to be taken on the person's personal welfare or financial matters.

This Bill has been refined repeatedly over the past two years so that it can respond to the needs of a diverse target audience. Its enactment is urgently needed to enable Ireland ratify the UN convention but also to sweep away the archaic legal architecture currently in place. Vulnerable persons deserve to have access to modern and more nuanced supported options. I plan to bring forward more amendments on Committee Stage to improve the Bill further. The Bill, if enacted, will be transformational for people with capacity difficulties. It will enshrine the principles of autonomy, respect and the primacy of the person's will and preference. It will put the person at the heart of decisions on his or her life. I commend the Bill.

Senator Denis O'Donovan: I welcome the Minister of State to the House. This is large, significant and groundbreaking legislation. Fianna Fáil broadly welcomes the Bill as the present legislation governing mental capacity in Ireland dates back to 1871 and is regarded as outdated and unsuitable for dealing with people whose ability to make decisions is affected through illness, injury or any other cause. The Lunacy Act of 1871 has no place in modern Ireland. While the Bill is not perfect, it is nevertheless a milestone. The Bill, when enacted, will result in the end of the wards of court system and the discharge of people currently within the system. As a practising lawyer, I felt the system was well overdue a total overhaul and this will result in significant improvements in these people's lives.

Human rights and advocacy groups have long been calling for the legislation to be revised with a shift from substitute to supported decision making, so that individuals are enabled to make their own decisions wherever possible. This legislation is needed in order to enable Ireland ratify the UN Convention on the Rights of Persons with Disabilities. While the progress of this Bill has been slow and subject to many amendments, we believe that although it is not perfect, it is nevertheless essential legislation that replaces and updates 144 year old legislation. This Bill represents a move away from our past and our often inhumane treatment of people, so it is important that we progress with the legislation.

The Assisted Decision-making (Capacity) Bill 2013 as first published advocated the replacement of the wards of court system with a legal framework to support people in exercising their decision-making capacity, so they can better manage their personal welfare, property and financial affairs. I was dealing with a situation where a young man was made a ward of court

as a result of an accident. He subsequently married. One had to apply to the High Court to buy him a suit. It was a most awkward and difficult situation which took a lot of time. On this occasion, it was for a family wedding. I think it was their second anniversary by the time we got the suit. That is the type of stuff that went on; that is the reality of it.

As first published, the Bill proposed to change the existing law on capacity from the current all-or-nothing status approach to a functional one, whereby decision-making capacity is assessed on an issue-specific and time-specific basis. It proposed to provide a range of supports on a continuum of intervention levels such as decision-making assistance, co-decision-making, decision-making representation and informal support to support people in maximising their decision-making capability.

As the time available to me is limited to eight minutes, rather than going over ground on which we all agree, I will bring to the attention of the Minister of State some issues we may raise by way of amendments. The thrust of the Bill is good but there are outstanding issues, in particular, issues raised by Eilionóir Flynn from the Centre for Disability Law and Policy at the National University of Ireland, Galway, and a coalition of groups representing old people, disability and mental health organisations. They have raised concerns in relation to a number of aspects of the Bill.

The first of those is the definition of “capacity” which defines mental capacity in a way that suggests that if a person is found to lack mental capacity it will result in the loss of his or her legal capacity to make decisions. We must remember that Article 12 of the UN convention makes plain that persons with disabilities must enjoy legal capacity on an equal basis with others in all aspects of life.

Another area of concern is advanced health care directives. An advanced care directive, sometimes known as a living will, is a statement about the type and extent of medical or surgical treatment a person wants in the future, on the assumption that he or she will not be able to make the decision at the relevant time. These will not be legally binding if a person has been detained under the Mental Health Act. It is argued that this can undermine people’s rights and they will not be respected in the event of mental health crises that lead to involuntary treatment under mental health law.

Another issue of concern is that of chemical restraint. I have received correspondence on this matter from Mervyn Taylor, who was a former leading light and a progressive and forward-thinking Minister some three decades ago. He, among others, shares a concern about chemical restraint. The Bill recognises that medicating people is a form of restraint. It is argued that the Bill needs to be strengthened in this area and that intentionally using chemical restraint to control or modify a person’s behaviour to ensure a person is compliant or not capable of resistance where no medically identified condition is being treated needs to be subject to greater scrutiny. Furthermore, the use of chemical intervention as a consequence of the collapse in supports and budgets in this area is something that is also a cause of great concern. On Saturday, 10 October the United Nations special rapporteur on the rights of persons with disabilities made a comprehensive statement specifically on this area and said:

The concept of “medical necessity” behind non-consensual placement and treatment falls short of scientific evidence and sound criteria. The legacy of the use of force in psychiatry is against the principle “*primum non nocere*” (first do no harm) and should no more be accepted [in modern society].

It is argued that the legal aid provisions of the Bill must be strengthened to ensure that there is an automatic right to legal representation, regardless of means, when an application is made to court for a declaration on an individual's mental capacity for a decision. This is essential to ensure effective access to justice for people affected by the Bill.

Fianna Fáil welcomes the legislation, in particular, the repealing of the Lunacy Act which has no place in 21st century society. More than 600,000 people in Ireland, which is not far off one in five of the population of the State, have some form of a disability. More than 57,000 people have an intellectual disability. This legislation, although not perfect, is an important step in improving the rights of people with disabilities. If needs be, let us learn from this law's application and how it blends in and let us consider what changes can be made. It touches on fundamental human rights including equality before the law, liberty of the individual as a default position protected by law and the autonomy of citizens in making decisions concerning their own lives.

It is long-awaited legislation and we welcome many of its provisions. However, significant cuts to services introduced by this Government have had very serious negative impacts on the lives of people with disabilities. Long waiting lists for essential services, reductions in social welfare payments and a completely overburdened and overwhelmed health care system have done untold damage. While the legislation is fundamentally important it will be undermined unless we address the issues in our health service. I say all this to be constructive. It is major reforming legislation. The Bill is probably one of the most important enactments since the likes of the Succession Act 1965. It is of huge importance and we will, by and large, support the Bill. However, it is important to realise at Cabinet level in this Government or the next that unless there is a financial underpinning of the proposals in this Bill, including sufficient monetary support for our health services, it will have huge problems in the future. I acknowledge that the Minister of State, Deputy Kathleen Lynch, has put much work into the Bill. No legislation, however, is perfect. I remember when I studied law how we dealt with the Companies Act 1963 which had been modelled on the 1948 English Companies Act. In five years it had started to evolve and change. Company law has changed significantly since. No doubt some future Minister will have to revisit this legislation and make changes after it has been implemented. I do not want to take from the importance of this legislation, but when the Minister of State's political epitaph is being written, this will be a significant plus for her.

Senator Martin Conway: That is a long time down the road.

Senator Denis O'Donovan: I did not mean shortly. I hope the Minister of State will have a long and significant contribution to make in the next Government or Opposition. This is an important milestone and legislation in which she should take some pride.

Senator Martin Conway: Like everyone else, I welcome one of our most frequent visitors to the House, whether it is in Private Member's time or to deal with extremely important legislation, the Minister of State, Deputy Kathleen Lynch. The Assisted Decision-Making (Capacity) Bill 2013 is extremely important legislation. For several weeks in Seanad Éireann we have seen some momentous legislation. One can only look back with pride at the jubilation when the Marriage Equality Bill was passed into law. It was subsequently signed by the President and the commencement order is being signed in Dublin Castle by both the Minister for Justice and Equality, Deputy Frances Fitzgerald, and the Tánaiste and Minister for Social Protection, Deputy Joan Burton.

This is also a good day because we finally get to deal with Second Stage of the Assisted Decision-Making (Capacity) Bill 2013. During the past four years I have travelled to Vienna on several occasions to attend an international conference, the Zero Project, which is funded by the Essl Foundation, a non-governmental philanthropic organisation based in Vienna. Martin Essl, an extraordinarily wealthy and very successful businessman, has a philosophy of employing people, irrespective of ability, disability, etc. A significant proportion of his workforce comprises people with various levels of ability, or whatever way one wants to describe it. He also donates a significant portion of his profits to the arts and culture, as well as promoting equality. He funds the Zero Project conference every year which monitors implementation across the world of the UN Convention on the Rights of Persons with Disabilities which I hope will have been ratified next year by Ireland. One of the principal reasons we could not ratify it was our archaic capacity legislation, some of which dated back to 1871 when Queen Victoria was in charge of the country. It is totally unacceptable that it has taken until now to update the legislation. In fairness, the Minister of State's predecessor, former Deputy John Moloney, made an effort to deal with the issue.

Since she entered office, the Minister of State has been developing the legislation which has been evolving. It has had the assistance of the Oireachtas Joint Committee on Justice, Defence and Equality, of which Senators Ivana Bacik, Denis O'Donovan and I are members. There were also public submissions, reports and recommendations. Even the language used in the legislation has evolved and language is important when one is discussing these issues. The tone of the language used in the legislation is positive, strong and has a positive disposition, as opposed to what could be construed as negativity. There are guiding principles - the mission statement - outlining what we want to achieve with the legislation. That the Minister of State altered the legislation significantly on Committee Stage in the Dáil is testament to the fact that she wants to get it as right as possible. I am confident that when we reach Committee Stage in this House, there will be further Government amendments to strengthen it even more. I am also confident that constructive amendments tabled by Members on all sides of the House which would assist the legislation will be considered. Ultimately, we want to deliver the guiding principles to the nth degree.

The legislation involves the principle that somebody should not be told what to do, if he or she knows what to do. He or she should be equipped to make the decision with whatever resources are necessary, even though it may not be what others might regard as the correct one. Once he or she is making a decision for himself or herself, equipped with whatever supports are necessary to make it, that is his or her decision. That is equality, even when others may not agree. The safeguards outlined by the Minister of State to ensure there will be no undue influence exerted by somebody assisting an individual making a decision are very important. This, no doubt, will be tried and tested in the courts. It is our responsibility to ensure the legislation is as tight, fair, reflective and does as much as possible to support the guiding principles. It will be ground-breaking, not just because of the fact that we will be in a position to ratify the UN Convention on the Rights of Persons with Disabilities which society has a duty to do but also because it will promote the principle that every citizen is equal in society. That is the guiding principle we all have.

This legislation will go a long way. I have no doubt that when it is signed into law and implemented, issues will be identified that will need to be addressed and tightened, but that is what amending legislation is all about. That will be the responsibility of future Members of the Oireachtas. Nothing is set in stone. The objective is to give all those who live in our society

the optimal degree of independence to allow them to live a fulfilling life.

The Minister of State has spoken about ensuring the right to vote is protected. As she said, it was always the case, whether people had limited capacity, that they had the right to vote. It is absolutely appropriate that this be protected. The Minister of State spoke about serving on juries and other various elements of civic responsibility. These all need to be protected. She also referred to organ donation and the High Court, an issue on which Members have received e-mails. I wonder if the Mervyn Taylor from whom we have been receiving e-mails is the former Minister.

Senator Marie-Louise O'Donnell: No.

Senator Fidelma Healy Eames: It is not the same one.

Senator Martin Conway: I am correcting the record in that regard. I was also of the view that it was not the same one. That is most important because the former minister introduced ground-breaking legislation in the mid-1990s. He has an unblemished record of political service and it is most important the record be corrected in that regard. Overall, the legislation is very welcome. I look forward to a comprehensive debate on it, not only this evening but also on Committee and Report Stages.

Senator Katherine Zappone: I welcome the Minister of State and congratulate her on the process to date and her great dedication to it. It is very impressive and none of us doubt her commitment to this. I am happy to have participated as a member of the Joint Committee on Justice, Defence and Equality in some of the process. The Assisted Decision-Making (Capacity) Bill represents a global innovation in laws related to legal capacity and the rights of people with disabilities, those with mental health problems and older people. It seeks to implement the principles of the UN Convention on the Rights of Persons with Disabilities by ensuring that people are provided with support to exercise their legal capacity and that people enjoy respect for their will and preferences rather than having their decisions made for them based on outdated and patronising concepts, such as best interest. The Minister of State has removed many of those outdated and patronising concepts as the Bill has progressed over the past number of years.

Changes are still needed to the Bill to ensure it fully respects the human rights of people with disabilities, mental health problems and older people. I agree with the principles guiding the Bill the Minister of State enunciated so clearly in her speech. I have some questions on some of the ways in which those guiding principles will be legally implemented. The Bill currently states that a person's legal right to make a particular decision can be removed based on a functional assessment of mental capacity. That is how I read it. When I introduced my Private Members' Bill on consent to sex in 2014, the Criminal Law (Sexual Offences) (Amendment) Bill, I set out the problems with applying a functional test of mental capacity to many areas of a person's life, including decision-making about relationships and sex. The functional test requires a person to demonstrate that she understands the nature and the consequences of her decision before it will be legally respected. This test is applied with discrimination to people with cognitive disabilities, as it is represented in the Bill, while the rest of us would not allow our own mental capacity to be questioned in this way. Which of us could say with confidence that we fully understood all the consequences of major decisions in our lives, for example, decisions about marriage, where and with whom to live, or voting? I accept the comments on amendments and voting, and I welcome that. The reality is that, if tested, many of us would

be shown not to have had mental capacity, as it is defined in the Bill, to make these decisions. The standard of mental capacity required under the Bill is too high for most ordinary people to meet even on major decisions affecting their lives. Most of us enjoy the dignity of risk to make decisions that we do not fully understand. People with intellectual disabilities, mental health difficulties and older people have generally been denied this dignity of risk to make decisions without understanding all the foreseeable consequences. These groups are more likely to be asked to prove their mental capacity rather than the rest of the population. The UN Committee on the Rights of Persons with Disabilities has said:

The concept of mental capacity is highly controversial in and of itself. It is not, as it is commonly presented, an objective, scientific and naturally occurring phenomenon. Mental capacity is contingent on social and political contexts, as are the disciplines, professions and practices which play a dominant role in assessing mental capacity.

Of equal importance, the UN committee stated - Senator O'Donovan referred to this - that under Article 12 of the convention "perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity". If the Bill is enacted in its current form, it will not meet the requirements set out by the UN committee which monitors compliance with the UN Convention on the Rights of Persons with Disabilities. Amendments are required to replace the current assessment of mental capacity with a process aimed at discovering the person's will and preferences. This would comply with the articulation of the guiding principles identified by the Minister of State. There should be a process of discovering the person's will and preferences that places the person's wishes at the centre of all decision-making processes and that replaces the testing of mental capacity with an empowering and supportive process. An amendment is required to change the definition of capacity in section 3 from a functional test of mental capacity to a universal approach to legal capacity, something that can be applied to everyone. Further amendments are required to ensure that mental capacity does not form the basis for making a binding decision-making assistant agreement and that a lack of mental capacity is not the trigger for the appointment of a decision-making representative.

Section 122 states that "nothing in this Act shall be construed as altering or amending the law in force on sexual relations." The Minister for Justice and Equality, Deputy Fitzgerald, recently introduced the Criminal Law (Sexual Offences) Bill 2015 in the Seanad. The general scheme of the Bill prepared by the Department of Justice and Equality stated that it would replace the existing law on sexual offences that applies to people with disabilities, namely, section 5 of the Criminal Law (Sexual Offences) Act 1993. However, the provision to replace section 5 was not included in the text of the Bill introduced to the Seanad in September and is proposed to be added on Committee Stage. I have already communicated my disappointment about this matter to the Minister, Deputy Fitzgerald. If the new provision is based on the concept of sexual offences against vulnerable persons as set out in the general scheme published by the Department in 2014, it risks further disempowering people with disabilities and undermining their ability to give valid consent to sex. A more appropriate approach, as I set out in my Private Members' Bill, is to develop disability-neutral sexual offences based on the concept of abuse of a position of power or authority to obtain consent to sex. This should be combined with reform of evidence law to ensure that people with disabilities are supported throughout the criminal process. Support to give evidence and testify in court is particularly important for disabled survivors of sexual violence and more reform is greatly needed in this area.

Those are my substantive comments. I look forward to a robust debate on areas that I have developed an interest in and made recommendations on as the Bill progresses through the

Seanad. Ireland has a unique opportunity to show world leadership on legal capacity reform and the Minister of State has done an amazing job to get us to this point today. I would like to see further amendments that help us to move away from a discriminatory assessment of mental capacity towards empowering approaches that respect the will and the preferences of the individual.

Acting Chairman (Senator Diarmuid Wilson): I thank the Senator. She was right on the button - exactly eight minutes. Senator Bacik has eight minutes and an excellent example to follow.

Senator Ivana Bacik: I will try to follow Senator Zappone's example. I welcome the Minister of State to the House. I also welcome those in the Public Gallery who are here for this debate. I recognise many of them as they have appeared before us in the Joint Committee on Justice, Defence and Equality and I acknowledge their long involvement in seeking reform in this area. I also acknowledge the Minister of State's immense contribution to the development of this legislation and her strong personal commitment to this area to ensure that we have a modern statutory framework in place for the support of vulnerable adults. I use the language that the Law Reform Commission used in its report in 2006 which set out a blueprint for the sort of legislation that we are only now enacting. We have all acknowledged how long awaited and hugely important this Bill is.

I am glad it has had such a general welcome, both in the other House and in this House.

Senator Conway said that as we have been speaking, the Minister for Justice and Equality and the Tánaiste have been signing the Marriage Bill 2015 commencement order. I hope it will not be long before the commencement order is signed for this Bill too because it is long overdue. It will provide for an up-to-date framework to support decision making by adults where capacity has become affected or impaired and it will replace our archaic laws dating back to the 19th century.

The legislation has had a long genesis and I have already mentioned the Law Reform Commission report of 2006. I looked again at some of its recommendations and I noted that, between the date of the report and the publication of the scheme of a Bill in 2011, there had been developments and the understanding of best practice had shifted, a point the commission itself acknowledges. The Law Reform Commission recommended that the law on capacity promoted capacity by having an emphasis that was enabling rather than restrictive in nature, thus meeting the requirements of constitutional and human rights law, and this is a very important general overarching principle. In 2011, the scheme of what was then called the mental capacity Bill, on which the Joint Committee on Justice, Defence and Equality ran extensive hearings in February 2012, was published. We received more than 70 submissions and held a number of hearings. In our report we made a number of recommendations for change, most of which have been addressed. The Bill which was published in July 2013 and went again to the committee was fundamentally different and even the current Bill has changed and been vastly improved due to the amendments made in the Dáil. This has been an evolving document and it has evolved in line with our changed understanding of best practice and our international obligations.

Some Members said the Bill needed to be passed in order for us to ratify the UN Convention on the Rights of Persons with Disabilities. In our report we noted that Ireland was one of the first countries to sign the UN Convention but has not been in a position to ratify because of the fact that our legislation was so out of date in this area. There have been big changes to the Bill

as the scheme has progressed and a number of organisations have worked particularly closely in the development of the Bill, including over 15 NGOs representing persons with disabilities, older persons and mental health service users whose engagement I know the Minister found useful. Anyone who proposes changes at this stage is clearly seeking to improve the Bill but we must recognise the need to get the Bill passed, preferably before the end of this year, so that we can ratify the Convention and, more important, put in place an effective and respectful system of supports for adults who need them so badly.

I will mention some key points to welcome where we have seen real changes in the evolution of the Bill. First, there is a change in language. I mentioned the scheme of the mental capacity Bill and I am really glad we have moved away from such language and from the dreadful language of the Lunacy Regulation Act 1871, which will continue to govern this area until this Bill is passed. I also welcome the fact that the Minister replaced the office of public guardian, which had a paternalistic approach, with a decision support service. The old head 3 of the scheme in 2011 referred to the best interest test but we have moved significantly from that in terms of both language and substance.

I take Senator Zappone's points on section 3 on the determination or construction of a person's capacity. I listened with great interest and was reminded that, in 2012, we recommended that the Bill be about legal rather than mental capacity. There has been a real shift to that principle in the language of the Bill and reading section 3 together with section 8, I see that the Bill is now much more respectful of the autonomy of individuals and has moved away from the paternalistic best interest test. We might tease out some of the points relating to the definition of capacity on Committee Stage.

The Bill is hugely welcome in the way it moves away from the one-size-fits-all approach. It puts in place three layers of options in accordance with differences of capacity and again moves away from the dated model, the inflexible approach with which we have been stuck and will remain stuck until the Bill is passed. Again, this is in line with the recommendations of the joint committee. We recommended that a human rights based approach be put in place that would recognise that there were different levels of decision-making capacity and that the current all or nothing approach in wardship meant that virtually all the usual civil rights were taken away. This is not appropriate for those who are dealt with in that system.

We also called for changes to the enduring power of attorney and that has been done in Part 7, which has been extensively amended. The changes in wardship in Part 6 are also welcome. Serious problems remain with wardship but I will not go into them because everyone is aware of them. The new Part 8 on advance health care directives is also very welcome. Some concerns have been raised on this and I am grateful of Dr. Eilionóir Flynn from the centre for disability law and policy at NUI Galway and Fiona Morrissey and others who have raised the issue of the discriminatory application of advance health care directives in section 68 to persons involuntarily detained under the Mental Health Act. We might look at this matter on Committee Stage. I welcome the fact that the Minister of State has said there will be amendments on Committee Stage.

The provisions in section 68(6) in Part 8, relating to when a directive maker - someone who is making an advance health care directive - lacks capacity and is pregnant are troubling. I do not blame the Bill for that. They are troubling because they relate to the eighth amendment of the Constitution and are to be understood in the context of the provision in section 68 which imposes a requirement on the court to look at the impact of the refusal of treatment on the un-

born. We are all conscious of the dreadful case last Christmas which concerned exactly this, namely, a pregnant woman who had lost capacity. It is something about which we should be concerned and shows how the effect of the eighth amendment is felt, even in this area. I have always called for repeal of the eighth amendment and this gives us another reason.

Senator Martin Conway: Hear, hear. Well said.

Senator Ivana Bacik: We should not have to say this about this legislation, which is otherwise reforming and welcome.

Members have raised the issue of legal aid and the need to ensure that those who make applications for co-decision making process under Part 4 have adequate entitlement to legal aid and that is something we can also tease out. Senator Zappone spoke about the retention of mental capacity assessment.

On the overall philosophy of the Bill, a hugely important principle is that the option chosen from the three decision-making support options should be the least intrusive possible. This deserves great support and acknowledgement. The safeguards put in place were the subject of an amendment in the Dáil and the Minister said there might be others. One example of this is the provision whereby the decision support service will supervise co-decision makers, which is hugely welcome and will add to the practical positive impact of the Bill.

It is very important that we see this Bill through and do not delay any further on it while raising the important points we need to raise. We have learnt a great deal during the development of the Bill and we need to make it a best practice model. We are well on the way to doing that but section 129, which requires the Minister to carry out a review of the provisions five years after the Bill's enactment, is particularly welcome and gives us confidence that the Bill can only be improved in the future.

Senator David Norris: I welcome the developmental nature of this Bill, as demonstrated by the Minister of State in accepting amendments both from the committee and in the Dáil. I hope she will be open to other amendments which have been suggested today. I was amused to hear that she spoke about introducing a series of amendments on Committee Stage to transfer jurisdiction to the Circuit Court to reduce legal costs. As I recall, in the explanatory memorandum quite a play was made on the idea that this matter was so serious that it would go to the High Court. I am not sure that cost alone is a sufficient reason for making this change so I will listen with interest to what the Minister has to say on it.

The Minister and various speakers have said that this legislation was very necessary because we needed to ratify the United Nations Convention and that one of the reasons for our failure to do so up to now was the antiquated state of our law, as indeed is the case. One of the main Acts governing this area is the Lunacy Regulation (Ireland) Act 1871. Even the word "lunacy" is now repulsive to national sentiment. That Act was passed "to amend the Law in Ireland relating to Commissions of Lunacy, and the proceeding under the same, and the management of the Estates of Lunatics; and to provide for the visiting and the protection of the Property of Lunatics in Ireland...". It is astonishing to think this legislation still survives and it is very welcome that it is being amended. We will now rebalance things away from the concept of the best interests of the patient and the "Does he take sugar?" approach to mental impairment. This was determined by others, that is, third parties; we are, therefore, moving towards the idea of following the expressed wishes and preferences of the individual concerned. People may need

assistance in making decisions about where to live, for example, and whether they should move into a congregated setting such as a nursing home and so forth and it is good that they should be given such assistance.

I welcome the establishment of a decision support service. This is very good. However, why should it not be a stand alone body, rather than being under the Courts Service? It would be better if it was seen to be completely independent and not under the courts.

There are over 535,000 people in Ireland over the age of 65 years. As people get older, the incidence of dementia, particularly Alzheimer's disease, increases considerably. The number with dementia is rising every year. A total of 45% of people aged over 85 years are affected by dementia, a syndrome that causes a deterioration in memory, motor function, thinking, behaviour and the capacity to look after oneself independently. However, it is recognised that there are varying degrees; it is not just a blanket term of "lunatics". One of the most remarkable cases in recent years involved the distinguished author Sir Terry Pratchett. Despite being diagnosed with Alzheimer's disease which affected his spatial capacity, it did not affect his language skills and he continued to write novels up to the date of his death. It is very important that there is recognition of the variety of levels of capacity of the people concerned.

The Bill properly reflects the current idea that a person has the capacity to make a decision, unless the contrary can be shown and it can be demonstrated that he or she lacks that capacity. Frequently in the past people with dementia were considered to be incapable of making any decision, not just a particular decision, and the capacity was taken from them. I cite a case in the English courts, *CC v. KK and STCC*. It involved a patient who, in maintaining her right to stay at home, said that if she fell on the floor and died at home, she fell on the floor and died. That was her decision and it was perfectly reasonable. Many people want to stay at home. We are perishable goods and are all going to kick the bucket at some stage and she was quite satisfied with this. She indicated that the preferable option for her was to die in the emotional security of her own home, given the relative freedom she had. It was much better for her than the comparatively safer, more sterile environment of a nursing home. The judge agreed with her and cautioned against conflating a capacity assessment with beliefs about the person's best interests. We are back again to the question of best interests.

I took a particular interest in one of the many briefings I had received from interested groups. It was simply expressed, but it came from a group of people with limited intellectual capacity, the Inclusive Research Network. One of the points it made was that some of its members thought it should not give a response without an easy-to-read version of the Bill. That is a very good point. We deal with legislation all the time and, as Senator Katherine Zappone said, we often make decisions in a way in which we are not fully aware. As a legislator reading complex legislation, I am often not fully cognisant of the complete impact. I have often said in the House that it would be good if we could make the language of legislation more accessible. I do not make that point particularly with regard to this Bill, as it is no more dense than any other, but an easy-to-read version would be a good idea not just for people who are mentally impaired but for the general population. It would make the progress of legislation more accessible.

The submission from the Inclusive Research Network also states: "No one has come from the law commission to explain the Bill and ask us questions". It is an interesting observation, as its members are directly affected. It proceeds to ask: "What happens when a professional assesses your capacity? What if they get it wrong?" I do not know if there is an appeals mechanism provided for in the Bill. There is then the question of relationships. The submission states:

We know it is our right to have sexual relationships under the United Nations Convention on the Rights of Persons with Disabilities. We were told by the Law Reform Commission that the Criminal Law (Sexual Offences) Act 1993 would be changed at the same time as this capacity Bill. We feel that by asking us these questions government will say they have consulted with us. We don't see the point if our say doesn't go anywhere and seems to be made little of.

There might be answers to all of these questions and they are relevant because they come from a group of people who are affected by this legislation.

Turning to another group, I have been contacted by a family with a son who is in this category. Investments made on his behalf deteriorated very rapidly during the financial crisis, about which the family was very concerned. A report from the Committee of Public Accounts made the following points:

1. Some individual funds were severely depleted in value in the period from May 2007 to January 2009 because of the fall in the unit value of the growth fund required units to be sold in a depressed market in order to make maintenance payments to the ward. [That considerably disadvantaged the beneficiaries of this fund.]

2. While the funds, held in trust for wards of court, are invested by independent fund managers the overall performance of the fund is not subject to independent assessment.

That is extraordinary. If money is invested on behalf of people through a third party administrator, it should be independently assessed. The report continued:

3. The funds of the wards of court are not audited by the Comptroller and Auditor General.

The committee recommends as follows:

1. The management and performance of the Wards of Court growth fund in the period from May 2007 to January 2009 should now be the subject of an independent review having regard to the dramatic fall in the value of certain individual funds which have become severely depleted to the point where there may be a danger that the funds will run out.

2. The ward of court fund should be subjected to periodic independent assessment in respect of the investment performance of the fund and such reviews should be published.

3. The funds held in trust for wards of court and any funds held in trust by the proposed Office of Public Guardian should be audited by the Comptroller and Auditor General and legislative amendments to facilitate this should be brought forward by the Minister for Finance and-or the Minister for Justice and Equality.

That appears to be very reasonable. If people are charged with the administration of funds on behalf of people who lack capacity, they should be monitored.

Another question concerns the use of restraint. I have received a communication from Mr. Mervyn Taylor who states:

Chemical restraint is a violation of personal and bodily integrity, constitutes inhuman and degrading treatment and, in our experience, is being used in certain circumstances to

effectively deprive people of their liberty rather than to address underlying clinical issues. As such it is in breach of Article 3 of the European Convention on Human Rights and must be prohibited.

I have also received information from the College of Psychiatrists of Ireland on a similar related issue, engaging in restrictive practices on people in this situation where it is considered to be “in their best interests”. We come back to what is being reversed by the Bill. It states:

For example, persons with intellectual disability and other illnesses occasionally need phlebotomy (blood tests) and other painful interventions which they may resist (e.g. vaccination). [I have just had my influenza vaccination because I am 71 years old and people over 65 years of age are advised to get it.] Restraint is sometimes used in such circumstances in order to carry out the procedure in the best interests [we hear this repeatedly] of the person. It is the view of the College that this Bill’s provisions regarding informal decision-making are insufficient in view of the intrusiveness and coercive nature of such necessary actions.

6 o’clock

Finally, even more worrying to the organisation, and also I think to all of us, is the question of people of limited capacity when they discharge themselves or run away from the institution, sometimes endangering their own health and life. It states:

If the safety or life of an individual with intellectual disability is at risk because of absconding from the place where he or she lives or works, this Bill does not appear to provide any legal basis for preventing the individual from leaving. This is likely to be a key issue with families of the individuals with disabilities, who regard intellectual disability placements or residences as places of safety for their family member. This may no longer be the case under this new Bill.

Therefore, I seek reassurance from the Minister of State that this matter will be or has been addressed so that people who may be a danger to themselves may be prevented from running away from a place of security.

Senator Cáit Keane: I welcome the Minister of State and congratulate her on bringing this Bill before us. I equate the legislation with the importance of marriage equality. The Bill deals with the most vulnerable group of citizens in this State and outlines how people should be treated down the years. I hope none of us reaches such a stage but everybody, at some stage, may go through this situation. The legislation refers to people who have a reduced capacity to make decisions, which includes people with disabilities, some of the elderly or whatever. Regrettably, in the past this State had a less than admirable history of understanding when it came to the treatment of such citizens. The Bill aims to put an end to that sad tradition and to recognise in law the significant progress made in Irish society when it comes to the treatment of people with a reduced capacity.

I welcome the Bill and the efforts the Minister of State has made to ensure that this is a different Bill from what was put before us in 2013. Many changes have been made to the legislation which proves she listened to the recommendations made by the Oireachtas committee that worked on the matter. I welcome the fact that the legislation has played its part in bringing the most archaic laws in line with social progress.

As the Minister of State said, the Bill will enable the Government to ratify the UN Conven-

tion on the Rights of Persons with Disabilities. It is a further welcome sign that our laws are being reviewed to ensure that the most vulnerable in our society are recognised.

The Bill is complex and I do not pretend to understand every bit of it. I have noted what Senator Norris said about the way Bills are written. I know that many of the people who have been burdened most by the time involved have given generous amounts of their time, be it in sittings that date back to 2011 to 2013, as Senator Bacik has said, and now. This included more than 15 organisations representative of the various people, be they disabled older people, people who suffer from mental health issues or others. I acknowledge the presence of all of the people, be they from families, friends and organisations, who have put a massive amount of work into this Bill and thank them for helping us, as Senators, to raise issues on the floor of this House.

Unfortunately, there are still some outstanding concerns when it comes to this Bill. I have recognised the complexity of the Bill and the clear welcome for its arrival in the House. However, it is our role, as Senators, to ensure that the outstanding issues raised by family members or organisations are brought to the attention of the Minister of State. She has shown a capacity for listening and made changes on Committee and Report Stages in the Dáil or wherever.

The SAGE Support and Advocacy Service for Older People has said that this legislation could be one of the finest pieces of capacity legislation anywhere. That statement is an acknowledgement of the work done by the Minister of State and asserts that the legislation is fundamentally different from previous legislation.

Public interest in this legislation is testament to its importance. It is with reference to the concerns raised that I want to bring one or two issues to the Minister of State's attention. Senator Norris has mentioned one of the issues. The current reality is that neither the ward of court nor a family has a say in the management of investment funds in the ward's name. There are many cases on record, and indeed court cases on record, of such invested funds being allowed to dwindle without any reference at all to the family or the ward of court. Many investment funds have been badly hit by the recent economic downturn and crash, so many wards of court have suffered catastrophic losses. They or their families were not responsible for the investment decisions which encouraged losses. Many people have lost money in such circumstances. However, special note must be taken of what happens to the funds that belong to people with capacity issues.

A report was commissioned by the Committee of Public Accounts last July and one of its recommendations was as follows, "An annual statement which contains the sum remaining in the fund at year end and the investment performance for the previous year should be provided to each ward of court." I agree with the recommendation and would like the provision extended to provide it to each family member or assisted member who makes decisions on behalf of the person.

I welcome the introduction of a structured payment system in the Bill. The provision will help future litigants but it will not help the wards of court or minors who have already lost significant funds due to bad investments. The legislation provides for capital to be sold to provide income.

Following recommendations that the Comptroller and Auditor General might play a role in auditing these funds and their performance, the Department of Justice and Equality responded recently. It said:

First, at a policy level, we have no objections whatsoever and would support the Comptroller and Auditor General and the committee having sessions on this in terms of the audit. That is a matter for legislation and the powers of the Comptroller and Auditor General. The committee will not find any objections from the Department or the Courts Service to it getting involved in this.

The groups recommend that it will bring added value and reassurance to people, particularly minors. I ask the Minister of State to examine the matter.

Part 6 of the Bill refers to the specific interests of the wards of court. I know that there are people residing in Magdalen homes who have been deemed to lack capacity who are unable to draw the funds that are due to them. They may lack capacity or are going through the process of being made a ward of court and, therefore, decisions have been left on hold until this Bill is enacted. The legislation needs a speedy passage through the House but every issue must still be taken into consideration. We must ensure that the Bill enables the family concerned to retain the greatest amount of autonomy possible in situations where capacity is lacking. Very often, through no fault of their own, persons have been left in a home or whatever yet people manage their funds out of existence. As Senator Norris has said, if such persons were living at home then their funds might be managed differently. It is usual for families to have the best interests of such a person at heart. I welcome the facility in this Bill that a person can communicate his or her wishes to a family member. I also welcome the fact that the Bill is flexible and functional. This Bill has replaced the old ward of court system with a modern statutory framework in order to assist persons in exercising their decision-making capacity. It also provides that a person may appoint a trusted person to act as his or her decision-making assistant in order to assist them to reach a decision jointly which I wholeheartedly welcome.

Many Senators have spoken about mental capacity assessment. The Minister recommended the following amendment in section 7 which states, “A decision-making assistance agreement shall be invalidated to the extent that it relates to any relevant decision,” where the relevant person lacks capacity in respect of that relevant decision which is welcome. The UN Convention on the Rights of People with Disabilities has made it clear that an individual’s actual or perceived mental capacity can never justify a denial of legal capacity. Even if such denial is in respect of one decision, the Bill needs to clarify the legal capacity.

An Cathaoirleach: The Senator is over time.

Senator Cáit Keane: I am not. In terms of the various support stages and categories for decision-making, the Bill needs to clarify legal capacity. I know that health care directives apply equally in the general health and mental health context. Often there is a decision and a line drawn between general health and mental health but both are important. I welcome a review taking place within three years.

An Cathaoirleach: I ask the Senator to conclude. She has gone way over her five minutes.

Senator Cáit Keane: Clinical trials have been mentioned. Earlier when I was working in my office I heard the Minister of State mention clinical trials here for people with capacity issues. Serious questions have been raised about the matter which is an issue that she mentioned in her statement as well. I wish to raise a few other matters which I shall convey to the Minister of State later.

Senator Marie-Louise O’Donnell: I welcome the Minister of State to the House. This

legislation is one of the most outstanding Bills to come into the House since I became a Senator because it is a reform of the law. It provides a modern statutory framework that supports decision-making by adults. It enables them to retain the greatest amount of autonomy possible in situations where they lack or may shortly lack capacity. I congratulate the Minister of State on the legislation.

One of the most interesting things about being hear and living in Ireland is that we spend most of our time talking about property. We are always talking about property, and about the heartbeat, the communication and the place of property. We hold it up, we define our lives by it, we respect ourselves through it and we even find value in ourselves through property. However, this legislation goes to the core of having value and respect for the dignity of every human being who has individual rights, regardless of whether they have a disability or not. As most Senators have said, it is unconscionable that our Constitution sets out in Article 40.1 that all persons shall as human beings be held equal before the law, and we are only now getting around to ensuring that our law reflects that principle.

Many Senators have referred to the Lunacy Regulation (Ireland) Act 1871, which is still on the books - what they call in Mayo the demented and the downright deranged. The European Convention on Human Rights and other international instruments to which we are obliged to adhere come into focus now. This legislation, when it is enacted, will give Ireland one of the most enlightened pieces of legislation of its type anywhere in the world. It will strengthen the rights of all individuals. It will have particular relevance for people with intellectual disabilities and older people with diminished capacity, including those with dementia. Some 20% of the population over 80 years of age have dementia, and 4,000 people annually are diagnosed with dementia. It will also have particular relevance for people whose capacity has been affected by traumatic injury. At the moment we tend to ignore the legal rights of people with intellectual disability, people with dementia and others, and we assume very wrongly that they lack capacity.

I seem to be speaking in a train station. The Senator is not even aware. This is very important legislation but, when I came in here, we were not quorate, although I did not say anything because it is such important legislation. The train station just goes on, back and forward, forward and back.

This is ignoring the capacity to make all decisions, ignoring the right to decide, to consent and to make decisions which have profound implications for them at a personal level. This legislation will oblige us all to change our current very bad practices in this regard. It will directly affect many more of us as we age. This is something we can all talk about in regard to all kinds of legislation. However, the reality is that every one of us is going to get old. According to the last census, 11% of the population is over 65 and in 30 years time that will be 26%. We are living longer and we have an obligation to plan for our lives.

I have spoken many times and brought Private Members' motions about ageing in Ireland, the capacity of the elderly, the need to look at how we are going to age and what we can do to make this the best country possible in which to age. The ratio at the moment is 5:7 people working to every one over the age of 65 but, in 30 years, the ratio will be 2:1. That points to employment for older people and older people being independent, and to providing them with the right to be treated as human beings who can make decisions for themselves and not to be put into stand-alone nursing homes, on which I have also brought Private Members' motions. The legislation will enable us to plan in advance when we have decision-making capacity through

making an enduring power of attorney or an advance health care directive, and to state our wishes for a time when we lack the capacity to make decisions personally.

One of the reasons for delayed discharges is that the person lacks decision-making capacity or there is no one with legal authority to make decisions on his or her behalf. There are many things I could say in general about living and getting older in this country.

An Cathaoirleach: The time is up, Senator.

Senator Marie-Louise O'Donnell: You will have to bear with me, a Chathaoirligh. Some people spoke way over their time. Some people had to speak during the train station and we did not have a quorum. I beg the indulgence of the Chair for just one more minute.

Let me address very generally some points I feel need to be teased out in this excellent Bill. It is necessary that enduring powers of attorney that are in existence at the date of commencement of the Act and have been registered must come within the reporting requirements to the director of the decision support service, which is dealt with at section 60(4), and must come within the functions of the court, as provided for at section 61. I am delighted the Minister of State is going to amend this and that it does not have to happen in the High Court but can be done in the Circuit Court. I hope this is not just for financial reasons.

It is my opinion and the opinion of many Senators that the decision support service should be an independent specialist body with independent functions.

An Cathaoirleach: The Senator should conclude.

Senator Marie-Louise O'Donnell: It should report to the Government, the Taoiseach or the Oireachtas. Given its remit and functions, it is not appropriate to have the decision support service as an agency of the Courts Service because it gives rise to perception issues, confines the context and mismatches the statutory functions. I will be bringing amendments in this regard. There is also the question of the deprivation of liberty. We need legislation giving older people the right to reside in the place of their own choice. Are we knowingly to continue as we are? The House knows my feelings on this through my Private Members' motion on the European Convention on Human Rights. It is an area I feel very strongly about because 80% of nursing homes are stand-alone businesses.

We need to define the area of chemical restraint and decide what we mean by it. Amendments will be necessary in this regard and I will be bringing those forward.

With regard to statutory will, the Bill, as published, as recommended by the Law Reform Commission, provided that where a person who has made a valid will loses testamentary capacity, the court may alter the will where it is satisfied that exceptional circumstances have arisen and the interests of justice so demand.

An Cathaoirleach: The Senator is way over time.

Senator Marie-Louise O'Donnell: Unfortunately, this provision was deleted from the Bill, as amended on Committee Stage. This needs to be reinstated because omitting it is a very backward step.

An Cathaoirleach: I call Senator Moran.

10 November 2015

Senator Marie-Louise O'Donnell: Thank you. I beg your indulgence. I would suggest that on a Bill such as this, the House should be packed.

An Cathaoirleach: Senator, you are way over time. I call Senator Moran.

Senator Marie-Louise O'Donnell: The train station will just have to stop.

Senator Mary Moran: I welcome the Minister of State, Deputy Lynch, to the House. I agree with Senator O'Donnell that on this day, with this important legislation, it would be great to see more Members in the Seanad. In my personal opinion, it is one of the highlights-----

An Cathaoirleach: Speakers come and go from the Chamber. Whoever wants to speak can come in. Nobody is prohibited from speaking.

Senator Marie-Louise O'Donnell: We are not quorate.

Senator Mary Moran: -----that we have the opportunity to debate the Assisted Decision-Making (Capacity) Bill in the Seanad.

Like many others, I have been seeking progress on this legislation since we entered the House, when it was included in the programme for Government. I understand that legislation takes time and also the importance for everyone's sake that legislation is correct. I commend the Minister of State for the great care and attention given to the Bill and I know amendments have been made to ensure the legislation will be correct when it goes through. I welcome the fact the amendments and changes that were necessary were accepted in the Dáil, including the removal of informal decision-making or acts in good faith. The Bill now looks very different from its original appearance.

This is a vital piece of legislation for people who have difficulty in making decisions without help. Most importantly, it provides for the abolition of the adult wards of court system and will be replaced by a less intrusive framework managed by the decision support service. When it is enacted, it will be a major step forward for Ireland in ratifying the UN Convention on the Rights of People with Disabilities.

Very few things in life are black and white. None of us know when our capacity will be impaired through accident, illness, disability or old age. Those of us here today are fortunate that making a decision for us does not require someone else's approval or consent. However, for people who have reduced capacity or those who require someone to assist them with decisions, this legislation will ensure that the person's will and preferences are respected as far as possible.

I welcome that this Bill repeals the Marriage of Lunatics Act 1811 and the Lunacy Regulation (Ireland) act 1871. This archaic and insulting language and terminology, thankfully, will be removed, along with words which refer to people as idiots and of unsound mind, and left long in the past, where it belongs. There are currently over 2,500 people in Ireland with intellectual disability, brain injury or mental illness who are wards of court under this long outdated legislation. In 2014, 322 people were made wards of court, an increase on previous years' numbers. Will the Minister outline what supports will be in place for people who will be discharged from wardship? It will be a major upheaval for some people. It can be very challenging not only for those who come out of the system but also for family members who may require guidance and even counselling.

It is also very important that the Bill provides for advance health care directives, allowing a

person to express his or her preferences and choices regarding treatment, if and when the time comes that he or she will lack the capacity to express his or her wishes. This is important. The guiding principles are intended to safeguard the autonomy and dignity of the person with impaired capacity. There are questions about the functional test that outlines a person's capacity. I am aware of what can be said on a Second Stage debate and I acknowledge the Minister of State, Deputy Lynch, will examine some of these areas before Committee Stage. I welcome the fact that each intervention will be taken on an individual basis. A person may lack the ability to make a decision on a matter at a point in time but that does not necessarily mean this will be the case at a future time.

I welcome the recognition in the Bill that capacity to make decisions can fluctuate. A presumption of capacity will hold unless the contrary is shown. When the capacity to make a decision is in question, the person can avail of a decision making assistance agreement, a co-decision making agreement or another person can apply to be a decision making representative. No intervention will be made unless deemed completely necessary. Any act or decision must also be done in a way which will be least restrictive to the person and all consideration to a person's will and desires must be given effect.

The Minister of State has set out the procedures comprehensively. Nobody knows the day or the hour when this may be necessary. It is so important to know what way things will be ordered. She referred to people with an intellectual disability. For those who look after people with an intellectual disability, all they want is the best for their loved one, so that when they are gone, a procedure is in place so that the person can make the decisions that he or she might not be able to communicate and that the person who supports him or her will allow the person to live as independently as possible and to be treated as equally as possible.

I welcome the clarification that the Minister of State intends to transfer jurisdiction to the Circuit Court when the matter goes to the court, in order to reduce legal costs arising for donors. It is imperative that costs would not be a barrier and that if legal aid is needed it is provided. I also thank the Minister of State for her clarification and attention to detail. I commend her commitment to the Bill. I welcome her openness to amendments on Report Stage so as to ensure that the Bill, although a long time coming, will ensure that our most vulnerable will be at the heart of his or her own decision on his or her life.

This is one of the most important days since I became a Member of the Seanad. This is an issue to which I am committed and is the reason I am here. I acknowledge the hard work of many people who are in the Visitors Gallery. I do not like to single people out but I know from my work with Inclusion Ireland, that Angela Edgehill from Hospice Ireland and others from the Hospice Foundation are present and work hard to ensure there is equality.

Senator Trevor Ó Clochartaigh: Cuirim fáilte roimh an Aire Stáit. Mar a dúradh romham, is píosa an-tábhachtach reachtaíochta atá anseo. Tugann sé cearta cothroma do chuide shaoránach. Sinn Féin welcomes this Bill. As republicans we believe all citizens are equal and should be accorded the rights they deserve. The United Nations Convention on the Rights of Persons with Disabilities states that people with disabilities must have equal recognition before the law. This means that those with diminished capacity must be given the same legal rights as everybody else. As we know Ireland has signed this convention but cannot ratify it until this new capacity legislation is in place. Without legal capacity, other rights guaranteed by the convention cannot be achieved. The existing legislation is old and archaic, dating back to 1871 and is in urgent need of reform.

I welcome the fact that at its core, the Bill affords the opportunity for an individual to make legally binding agreements with others to assist and support them in making their own decisions. However, there remains at least two further problems as we see it. Section 68 (7) (a) provides that an advance health care directive shall be complied with unless at the time when it is proposed to treat the directive maker, his or her treatment is regulated by Part 4 of the Mental Health Act 2001. We believe this is unacceptable and discriminates against people with mental health problems. It is precisely at a time of involuntary detention when a person is in a particularly vulnerable situation that he or she may want his or her advance directive to take effect. International research shows that people with experience of involuntary treatment do not refuse all medical intervention in advance directives, rather they make informed decisions about the treatments that work best for them in times of crisis. We accept that it will not always be possible to respect advance directives, particularly where the person's life is in danger, however, it is imperative that advance health care directives are recognised as legally binding.

The definition of capacity in section 3 sets out a functional assessment of mental capacity. The result is that if a person is found to lack the mental capacity for a certain decision, his or her legal right to make that decision is removed. This is not in keeping with international human rights norms. The UN committee on the rights of persons with disabilities has stated in general comment 1 that under Article 12 of the convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity. Since this Bill is being developed as part of Ireland's preparation to ratify the UN convention, the functional assessment of mental capacity must be replaced with the process of interpreting the will and preferences of the individual. This would ensure that when people need help to make decisions they are supported to do so.

In terms of wards of court, the Government has had adequate warnings that all is not well in the system for many years. In almost every respect, wards are second class citizens. They do not have the right to marry or to travel outside the country without the court's permission, to hold a bank account or to make decisions about their medical treatment. This we believe is a violation of their human and constitutional rights.

The Government is of the view that the proposed legislation will enable it to ratify the UN Convention on the Rights of Persons with Disabilities. Currently the wards of court system does not conform to the convention and if the issues around fairness and equality for wards are not addressed, then the new system will not be fit for purpose either. I urge the Government to give serious consideration to the recommendations in the report by the Committee of Public Accounts and to look at how these can be accommodated by way of amendments to this Bill. It is imperative that these recommendations are anchored in legislation. The Government has a duty of care for the wards of court over and above the norm. These are very vulnerable people whose only income is from funds which are to provide for their future care and services. We are asking that legislation governing the Office of the Comptroller and Auditor General be amended to allow that office to audit the wards of court funds. It is essential this is done prior to commencement of discharge of wards of court into alternative decision-making arrangements under the new Bill.

I wish to raise concerns about the proposed legislation which have implications for older people and vulnerable men and women, especially those residents in institutional settings. The Support and Advocacy Service for Older People, SAGE, has raised the issue of chemical restraint - as have other Senators - and the need to ensure that measures to address this practice come into force immediately on the passing of the legislation. SAGE is of the view that what

is required is a general provision in the assisted decision making capacity legislation to deal with chemical restraint and in particular to ensure that we do not simply limit the application of this restriction to decision making representatives and attorneys. Sinn Féin will be submitting amendments to deal with these and other issues that I raised earlier. Go ginearálta, cuireann muid fáilte roimh an reachtaíocht agus tá súil againn go dtiocfaidh sé chun cinn chomh tapaidh agus is féidir.

Senator Colm Burke: I thank the Minister of State for bringing forward this comprehensive Bill and I also thank her officials and the officials in the Office of the Attorney General for the work that has been done on the legislation.

The enduring power of attorney is an issue covered in the Bill. In highlighting this issue, which was included in legislation introduced in 1996, I am not sure the public is aware of the advantages of effecting an enduring power of attorney. I am sure my colleague, Senator Denis O'Donovan would agree that if one conducted a survey of Members of the Oireachtas, one would find that very few have signed one. The issue I want to raise is how we ensure that people have information on the advantages of effecting an enduring power of attorney because not enough people know of the advantages. The Department should consider how it would publicise it so that people get this information and are aware of the advantages. Even when, as a legal representative, I am approached to draw up an enduring power of attorney, it is normally when a person is moving into a situation in which he or she probably has 90% capacity but is worried about what is being proposed to him or her. I always have a difficulty in trying to advise people this is the best option for them and Members must deal with this issue.

The Bill sets out clearly how the process whereby people need someone to assist them or to take decisions for them will be managed and it is important to have the appropriate legislation. I recently had a case involving a person in a nursing home who was aged more than 90 and who suddenly developed dementia. The person's medical card was withdrawn and I had difficulty in trying to get information from the various financial institutions to enable me to reapply for that simple thing, the person's medical card. This was one case in which I had difficulties.

When the fair deal scheme legislation was introduced, procedures were put in place to allow people to make an application to court and to have a court decision made that would help people to fill out the fair deal application forms and to make sure all the relevant information was made available. This legislation now streamlines that entire process. However, much work remains to be done in trying to get across the message about the legislation. While it is important that the legislation is passed much work must be done in trying to explain what is its purpose and in making sure people can and will be facilitated by it. A previous speaker spoke about the aging population and how it will increase in the coming years. I understand that from henceforth, approximately 20,000 people per annum will reach the over-65 age bracket and therefore, it must be kept in mind that increasing numbers of people will be getting older and will be living for longer.

A number of problems exist in respect of the office of wards of court. Senator Moran raised a valid question about making sure adequate provisions are in place to assist people who are wards of court at present but who will be affected by this legislation. Little has changed regarding the wards of court office over the past 30 or 40 years. I can remember applying to the High Court to issue High Court proceedings on someone who was in wardship and being allowed by that court to issue the High Court writ but not to do any further work. I was obliged to wait for eight years for that person to die before being able to proceed with the litigation. This is how

restrictive was the Office of Wards of Court and while this is not a criticism of either the High Court or that office, these were the rules in place within which they were keeping. Likewise, getting access to funds is also a difficult procedure and this legislation will address much of that.

The other point I wish to mention pertains to a scenario in which someone with an intellectual disability has had a trust fund set up for him or her. Difficulties are now being experienced in trying to expend money from such a trust fund and if the Cathaoirleach allows me time I will explain the reason for this difficulty to the Minister of State. If, for instance, one wishes to buy something simple like a television for a facility, one is restricted from drawing down funds from a trust fund for this purpose because other people will share that facility and consideration must be given to this issue. The institutions are stating they are unable to accept that money, which would be for the benefit of the person for whom the trust was set up. This issue must be examined and the Minister of State's Department might reconsider it because a lot of money is being held in trust that cannot now be spent on foot of these restrictions.

Senator Fidelma Healy Eames: Cuirim fáilte roimh an Aire Stáit and I am delighted to speak on this Bill. On 1 December 2010, I brought this issue to John Moloney, the Minister of State in the previous Government, and asked him why Ireland was not ratifying the Convention on the Rights of Persons with Disabilities. The reason was, for example, because this Bill was not in place. At the time, he assured me the Bill would be ratified during the term of that Government. Others have made this point to the Minister of State but the big challenge for her is to complete this Bill during the Government's term of office. I have every confidence she will because I can see the amount of work she has done on it. This is critical.

If one considers the Bill from an overarching perspective and moving on to the aforementioned convention, what will its ratification mean, for example, for the Education for Persons with Special Educational Needs, EPSEN, Act? Once ratified, will such people be able to have their needs enforced by statute? I understood this would be the benefit of first putting in place this Bill and then ratifying the convention. Will personal budgets follow because that is a model of good practice in other jurisdictions for people with disabilities broadly, not just intellectual disabilities? This also is a critical measure in this regard and I ask the Minister of State to address this point in her response to this debate. After the Bill has been enacted, how soon does the Minister of State envisage Ireland ratifying the Convention on the Rights of Persons with Disabilities? I have spoken to Professor Gerard Quinn of NUI Galway about this and he told me it is almost ready to be ratified but I seek the Minister of State's answer in this regard.

This is a reforming Bill on which I congratulate the Minister of State. It is based on sound human rights principles but is still a work in progress. I intend to table amendments on Committee Stage. Nevertheless, the Minister of State and Members should work together to make it the benchmark legislation on mental capacity and assisted decision-making.

I wish to touch first on the issue of chemical restraint, which has been raised by many other Members. This is where medication is used to control behaviour instead of assessing clinically the underlying causes. I have spoken to a number of people in this area today, including Mervyn Taylor, who is not, as some people thought, the former politician. One example he gave me was of people with dementia who might perhaps be extremely agitated. It is very easy to throw medication at them instead of assessing the underlying causes for that agitation. Another was of somebody with a mild stroke being admitted to a hospital or nursing care facility that was short of staff and which put that person on medication and gave the person pads instead

of helping the patient to use the toilet. What greater loss of dignity can one have than when one loses control over one's bowel function? Consequently, one must be careful in this regard and my request to the Minister of State is for a general legislative provision to address the issue of chemical restraint, which is used too frequently as a first, rather than a last resort. I ask the Minister of State to address this point in her response. Does she plan to bring forward such a general legislative provision in the course of or at the end of the passage of this Bill?

It is to be welcomed that section 4 specifically rules out authorising any person to give consent for a non-therapeutic sterilisation procedure to be carried out on a person who lacks capacity. Originally, such an authorisation was included in this Bill but unfortunately, section 4(3)(a) would allow the High Court to promote the donation of organs by a person lacking capacity. One does not need to be a genius to realise that even if the person agrees to this before he or she loses capacity, there is likely to be a lot of psychological pressure on him or her to do so afterwards. This is a real bone of contention. Another application to be adjudicated on by the High Court is one provided for in section 4(3)(b) to withdraw life-sustaining treatment from a person lacking capacity. This must be read in conjunction with section 68(4)(b), in which basic care is defined as not including artificial nutrition or artificial hydration. This is an out-of-date distinction in that as the Minister of State is aware, what was artificial a few years ago now is basic care. Moreover, it is only in exceptional cases that treatment, which ordinarily is life-sustaining, does not in specific cases sustain life and I understand this happens in particular with certain types of cancer. There is a real danger that carelessness in the definition in this case could facilitate assisted suicide or euthanasia by the back door. Moreover, there is no basis for holding that a majority of the public seek this. This is a cause of real ethical concern. As Members will know, the House of Commons ruled it out and recently decided heavily against assisted euthanasia and assisted suicide.

There are many other points I wish to flag, with the Cathaoirleach's indulgence. The issue members of the legal capacity coalition group have brought to my attention - I acknowledge the members who are in the Chamber - is the retention of mental capacity assessments for all categories in providing support. As the mental capacity approach has not been replaced, it is important that we consider it on Committee Stage.

Many of my colleagues have mentioned that advance health care directives are not applied on an equal basis to those in a mental health context, when the evidence is that people actually recover better and feel better if they have an input into assisted health directives and they are applied. Although there is a lot of room for improvement, this is a great Bill and I compliment the Minister of State on having the courage to stand over it. It is 144 years since the last Bill was introduced in this area; she is, therefore, certainly making history. I have waited on this legislation for quite a long time.

Senator Hildegard Naughton: The Bill before us, once enacted, will pave the way for the long-overdue ratification of the United Nations Convention on the Rights of Persons with Disabilities. One of the commitments in the programme for Government involved the ratification of the convention; therefore, I very much welcome the legislation.

The Bill will repeal some antiquated legislation, namely, the Lunacy Regulation (Ireland) Act 1871. In that regard, I am happy to note that a separate section is included in the Bill to deal with that issue. It is very important and deserves to be dealt with in a separate section.

The Minister of State has amended the original draft legislation significantly. She and her

officials are to be commended for the manner in which they have gone about putting the Bill through the Oireachtas. They conducted what I can only describe as a consultative process and the legislation is all the better for it.

I am glad to see that the Minister of State has rightly dealt with the vexing issue of informal decision makers. It was a worry for some NGOs and experts in the area that such an inclusion might result in a watering down of other provisions. Additionally - it is hard to think it possible in this day and age - the Bill contains a provision that no person can give consent for the non-therapeutic sterilisation of a person who lacks capacity. Previously, this could have been sanctioned by the High Court. I am glad, therefore, to see this declaration stated boldly in the legislation.

There are a few queries I would like to raise. I am glad that the new section 103 provides for a prohibition on clinical trials. In that vein, I ask the Minister of State the rationale for allowing the High Court to adjudicate on organ donation. I realise it is a very complex issue. We are talking about someone who cannot decide for himself or herself having the High Court decide whether and in what circumstances that person should donate a part of his or her body. Perhaps the Minister of State might outline the reasoning behind this provision. I see the logic in the High Court having jurisdiction over decisions to withdraw medical treatment in the same way that it does in the case of persons who are in a vegetative state. This legislation seems to do nothing to change the current law and actually provides a safeguard for those who lack capacity.

There is one final provision I wish to mention. The issue was raised by my colleague, Senator Cáit Keane. The Bill contains provisions that allow people who are ready to leave wardship to apply to the court to be discharged immediately on commencement of the legislation. The status of all persons will be reviewed within three years. Additionally, the status of persons detained in approved centres under wardship will be reviewed soon after the commencement of the Bill. While all these provisions are very welcome, I have been contacted by families with loved ones in the wardship system. They generally welcome the legislation, but the Minister of State will be aware that the loss of wardship funds before and during the crash is a source of great concern to them. A figure of £50 million was floated as far back as 1990. When someone was made a ward, families and loved ones had absolutely no say in the matter. His or her financial affairs were transacted without recourse to him or her or the family. It is a common case that millions in funds were lost during the years. There was a report by the Comptroller and Auditor General which the Oireachtas considered and which was not complimentary, yet to date nothing has happened. The Courts Service states the funds perform well overall, but that does not take account of those wards who may be at a loss when they transfer out of the system on the passing of this legislation. While I accept that invested moneys were lost during the crash, it seems to be the case that no cash fund was maintained. All of the moneys were invested speculatively in the hope of a return. I am not impugning anyone; it just seems wrong, when a ward's monetary award was invested without consultation, that on leaving the system he or she could come out at a loss. I urge the Minister of State to look at the matter.

I commend the Minister of State for the manner in which she has piloted this legislation which is hugely complex and very important. It is probably one of the most important Bills to pass through this House in the past five years, although it will probably receive little fanfare, but the impact it will have on people's lives will be long lasting.

Senator Jillian van Turnhout: The good thing about speaking at this point in the debate is that many Members have raised the issues I wished to raise. I will, therefore, try to keep my

contribution succinct.

The Minister of State is very welcome. I commend her and her officials for all the work they have done on the Bill which is so important to so many people for whom we care in our lives and which has the potential to affect all of our lives.

Capacity is an ever-evolving issue and we get the sense that that is the case. I hope what is contained in the Bill will become the norm and that we all understand the importance of supporting decision-making. It seems as if advance health care directives are only discussed in hospitals, but that is not the case. In Belgium, for example, they are discussed when someone is buying a house. People make a will and an advance care directive in order that they just do not think of it when they are going through the hospital doors. These are really important decisions to be discussed as a family and with friends in order that people will understand how someone feels and what he or she is actually thinking.

Earlier in the debate Members were talking about the archaic language that we are now changing. We are moving into a field where there is legal and medical language used, yet we are human and individual and do not necessarily know the vocabulary. I am hoping the Bill will help us to provide that framework and vocabulary.

Not to take in any way from my support of the Bill, but there are some issues I want to look at on Committee Stage. One is the enduring power of attorney. While I know that Bills tend not to be retrospective, the difficulty is that if there are abuses of the enduring power of attorney, they will not come within the remit of the Bill which is setting standards. I do not understand why they do not come within its remit and why we do not ensure that wherever there is an enduring power of attorney, it will come within it.

I concur with my colleagues on the use of chemical restraints. I certainly support the letter to that effect sent on 3 November to the Minister of State by Mr. Mervyn Taylor of the support and advocacy service for older people, SAGE.

Another excellent point was raised by Senator Marie-Louise O'Donnell which we debated in the House in recent weeks on foot of a motion proposed by her. It concerned residing in one's place of choice. The difficulty is that too often the nursing home is seen as the only option, the only pathway one may take. We need to ensure we have a system similar to the one in place in England, for example, where there is equal support, whether a person chooses to move into a nursing home or to reside at home. The choices can differ for different people and for different reasons, but there has to be a choice. In Ireland we do not have that scope.

I also concur with my colleagues on the ward of court issue. I certainly concur with Inclusion Ireland which proposes that the Comptroller and Auditor General audit ward of court funds prior to the discharge of wards. My colleagues have outlined the rationale behind this suggestion.

We need to explore more the issue of advance health care directives and why certain groupings such as persons with mental health issues are not included within them. My understanding is that the issue comes within the remit of another Bill, but it is difficult to understand. It would, therefore, be good for us to delve into the issue a little more on Committee Stage.

We use the word "consent" and consider its meaning. Senator Katherine Zappone talked about the importance of allowing people to take risks. How often, when we agree to something,

do we actually know what we are jumping into and what we are doing? My father had a stroke three years ago which left him severely paralysed and I have watched him decline. It has helped me to understand what consent actually means because it has evolved and changed. It depends on the circle around him. Family is important but so is the care team around him - the nurses, doctors, catering staff and cleaners. He is in an excellent nursing home in Clonskeagh run by the HSE but the idea of consent, choice and control of one's decisions is vital. This is why I am so supportive of this Bill. It is about dignity, as Senator O'Donnell said. We must ensure it comes into law so that all of us, including my dad, have control of our lives and consent.

Senator Maurice Cummins: I am very happy to be here as this Bill goes through the House today. I commend all my colleagues who have taken the time and shown an interest in contributing to this very important debate on Second Stage. Alongside all the work this Government has had to do in stabilising the economy and creating so many jobs that were lost throughout the recession, it has also committed itself to introducing much-needed legislation to assist the most vulnerable. This Bill is long overdue and represents a radical reform of Irish law concerning decision-making by persons with capacity difficulties. Its enactment will also be a key step forward in enabling Ireland to ratify the UN Convention on the Rights of Persons with Disabilities.

Under the terms of the new legislation, capacity will be assessed only in respect of a specific matter at a specific point in time. Three new support roles are intended to maximise a person's decision-making capacity and to ensure that the person's will and preferences are respected as far as possible. The Bill also provides a series of safeguards for situations in which another person is given authority to make decisions on the person's behalf.

The Bill provides for the abolition of the adult wards of court system and its replacement with the less intrusive framework managed by the decision support services. As has been stated by many Senators, the Bill repeals the Marriage of Lunatics Act 1811 and the Lunacy Regulation (Ireland) Act 1871, thus removing archaic legal provisions from the Statute Book and consigning offensive and archaic language to the past.

The Bill also provides for advance health care directives allowing a person to state his or her will and preferences regarding treatment decisions that may arise in the future when he or she lacks the capacity to provide consent or refuse treatment. Most of us take for granted that we must make day-to-day decisions that affect our lives. Indeed not having control over our decisions would be an affront to most of us. Being in charge of personal decisions empowers people and is vital for their well-being. It offers a sense of dignity and purpose. This is why this legislation is so important in helping to address the key barriers that affect people who have difficulty in making decisions for themselves.

People with decision-making challenges are not a separate group but include us, our families and our friends. However, they and those who care for them can feel left out and powerless. We must strive to prevent this so that all members of society are looked after and respected equally. I know that many Members will table amendments on Committee Stage and I know the Minister of State will give due consideration to them as they are discussed in the House.

This Bill is practical and will be very effective when it is implemented. I look forward to seeing its progress in the years to come. Every step we take along the road will bring us closer to the society we want. I commend this Bill to the House.

Minister of State at the Department of Health (Deputy Kathleen Lynch): I thank everyone for the constructive debate. I welcome those interested parties in the Public Gallery who have been a significant part of this development. Their advice and input have had a major impact on the development of this Bill. It is a Bill that has developed, which is probably a first in this country in respect of the amount of time it has taken, the number of people who were listened to and the number of different opinions involved. We started off with best interest and it turned into will and preference. We changed so many things along the way. I am probably wrong on this but I think we had 164 amendments on Committee Stage in the Dáil, which was unique, and they were all from the Government side. I think four came from the Opposition. I may be wrong on that but it was there or thereabouts. That is significant.

The Assisted Decision-Making (Capacity) Bill 2013 is a pioneering piece of legislation that will institute a comprehensive reform of the law on capacity. The legislation is exceptionally complex but none the less, it should be easily explainable. One does not need to go into the detailed legal nuances to make the legislation understandable to the people it will affect the most. The potential beneficiaries are very wide-ranging and range from older people with dementia to people with intellectual disabilities and those with mental health issues. The solutions that will suit some people will not always suit others. The problems that need to be solved are also complex. I believe we have achieved a good balance in terms of respecting the rights of vulnerable persons and putting in place adequate safeguards as many of the decisions that need to be taken will have financial or legal implications. The legislation's solutions must be robust.

I have listened carefully at each stage of the process, including this evening. I have worked actively to respond to the concerns raised whenever possible. My starting point has always been to defend the person's right to autonomy wherever possible. People who know me will understand where I am coming from in that respect. Work on this Bill has not finished and I plan to introduce further amendments on Committee Stage.

I will deal with some issues raised but I am not sure if I will get to all of them. In response to Senator Bacik, we are considering an amendment on Committee Stage relating to legal aid. In respect of the concept of capacity and the mechanism by which capacity is assessed, legal capacity is presumed in the Bill. The person continues to hold legal capacity. The functional test is a nuanced test. The person is assessed with regard to his or her ability to understand information, retain it in a way that will allow him or her to make an informed decision and communicate that information. This is very important.

The new system will be time-specific and issue-specific. I very much take on board the points made by several contributors, including Senator O'Donovan, namely, about those of us who are always presumed to have capacity and how somehow or other that is unquestionable. I am not sure what use I would be in the World Bank in Zurich. It is time-specific and issue-specific and that is very important.

The issue of wards of court has come up on several occasions. We would be talking about people who have significant resources and how we need to be very careful and protect them not from making the wrong decision, because we all make wrong decisions, but to ensure that as far as possible, we as legislators and law makers have done our duty in respect of protection. I have been hearing concerns about wards of court, not just tonight but for a number of months.

7 o'clock

I am aware of the concerns of families of wards of court. Those concerns have been communicated to the Department of Justice and Equality and to the Courts Service. The Committee of Public Accounts exercise is separate from the Bill. The focus in this Bill is not on the current system of wardship but on its abolition. The focus is on restoring autonomy to the person to the greatest extent possible. Whereas I hear what people are saying in terms of investments that did not quite give the return or yield that was expected, nevertheless that is not for this Bill. However, I hear the message.

We should also say that in terms of the three years regarding wards, some people will be ready to come out of wardship as soon as the Bill is enacted. When they are ready that is fine. Other people will not be ready until the final phase of the three years. It is about ensuring there is a mechanism in place to support people.

As to the issue raised by Senator Moran, it will be duty of the director of the decision support services to not just undertake a public information campaign, but also to help people along the road in terms of information for them and their families on how they exit wardship and what structure they need to put in place.

The issue regarding chemical restraint is included in the Bill. Sometimes that has been lost but I take Senator O'Donnell's point very clearly. We need to define what we mean by "chemical restraint". Is the administering of two sleeping tablets at night chemical restraint? Is it more profound than that? I take the issue on board and accept that fully.

As to organ donation, it seems that the draft human tissue Bill will allow under exceptional circumstances, and subject to High Court approval, an incapacitated individual to donate an organ. That is something that could be teased out when that Bill comes before the House. I know the House will have a particular interest in that Bill.

I hope Mervyn Taylor does not feel disabused or abused by his being mentioned on several occasions. He is equally as committed and is great at giving advice in terms of complex issues such as this. We should be thankful to him and it is unfortunate that he would have the same name as someone who is probably remembered by politicians more than others.

Reference was made to the use of the Circuit Court rather than the High Court. That is the case in terms of access more than anything else. It usually takes much longer to get to the High Court. Senator Moran referred to people who have a loved one who is now in that position or who could be in that position in the future. It is essential that we now that the law will protect. That is essential.

A Sinn Féin Senator asked if the Bill is the only step remaining in terms of ratification. No it is not. No later than last month, a week and a half ago, the roadmap for ratification was approved by the Government. There are other issues but this Bill is the significant step that needed to be taken.

I spend my life trying to bring people with me rather than rowing with them. This complex legislation is to a great extent legally intrusive because it is changing so much and demanding that we change. The officials and I have spent two years ensuring this does not become a stick to beat anyone with or become an argument. For so long in this country we have used fear in order not to do anything. We cannot have that anymore.

Basic care is care that is provided in order to keep a person comfortable and, as such, it is

separate and distinct from treatment. From a legal perspective in Ireland as outlined in the ward of court case, artificial nutrition and artificial hydration are considered to be medical treatments as opposed to basic care. Therefore, artificial nutrition and artificial hydration could be refused under an advanced health care directive. For the purpose of this Bill, basic care includes but is not limited to warmth, shelter, oral nutrition, oral hydration and hygiene measures, but does not include artificial nutrition or artificial hydration.

An advanced health care directive refusing basic care would not be applicable and would not be upheld. This is in line with the view of the Law Reform Commission and the Oireachtas Joint Committee on Justice, Defence and Equality which have recommended that legal provisions should be implemented to enable individuals to refuse treatment in an advanced health care directive, but not to refuse basic care. A code of practice to accompany the advanced health care directive provision will further clarify what constitutes basic care in the context of the legislation. A refusal of treatment in an advanced health care directive, even if it results in death, is clearly distinct from permitting euthanasia or assisted suicide. It should be emphasised that any wishes or preferences outlined in an advanced health care directive must be legal within the jurisdiction. That is our greatest protection. Accordingly, an individual cannot compel another person to undertake illegal treatment demands such as a request for euthanasia or assisted suicide. We have had recent examples of this very rigorously tested in the courts and the courts have ruled that this is the position.

I will look into the implications of ratification for children with special educational needs. The aim is to ratify next year. The Government has published a roadmap as I have said, and that has been approved by the Cabinet. I have already said the decision support services will have the role of providing information to former wards and their families and directing them to sources regarding financial expertise. They will talk people through all the support options available.

I think it is essential to deal with the mental health issue. When the expert group was put together to review the Mental Health Act, part of its instructions was that it would need to be conscious of the fact that this legislation was coming on stream and it needed to dovetail one with the other. I recently received Government approval to proceed with a general scheme of a Bill to amend the Mental Health Act 2001 based on the recommendations in the expert group report published in March this year. The report contains 165 recommendations, a number of which relate to the assessment of capacity.

It is quite interesting to read the recommendations. The expert group acknowledged in its report that when revised mental health legislation is being framed a further look at the final proposals in the capacity Bill will be required. I am quoting from memory, and do not hold me to it, but the group recommended that one may well lack capacity when one is being admitted to an acute unit, but that capacity must be continuously assessed so that when it first returns one's rights are returned to one. The group's recommendations are very interesting and nuanced. I do not think it will cause us problems regarding this capacity legislation. However, we will have to take a look at both Bills to see how they dovetail and ensure one does not contradict the other.

Senator Marie-Louise O'Donnell: I thank the Minister of State for her extraordinary work. I also wish to acknowledge Patricia Rickard-Clarke who is in the Gallery and who is encyclopaedic in her commitment and the thrust of much of what is in the Bill. Without her, many of us would not have the language for today let alone the understanding.

10 November 2015

Question put and agreed to.

An Cathaoirleach: When is it proposed to take Committee Stage?

Senator Maurice Cummins: Next Tuesday.

Committee Stage ordered for Tuesday, 17 November 2015.

An Cathaoirleach: When is it proposed to sit again?

Senator Maurice Cummins: Ar 10.30 maidin amarach.

The Seanad adjourned at 7.10 p.m. until 10.30 a.m. on Wednesday, 11 November 2015.