

**September 2024**

NDA Submission to Coimisiún na Meán concerning the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs

# Introduction

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design. The NDA welcomes the opportunity to input into Coimisiún na Meán’s (‘the Commission’) consultation on the revised Broadcasting Codes and Rules for radio and television broadcasters.

The NDA has primarily focused its comments on the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. However, some of our observations are of wider applicability and will be relevant to the other Broadcasting Codes and Rules undergoing review.

# Responses to Stage 1 Review Consultation Questions

The NDA notes that the Stage 1 review relates to amendments to the Broadcasting Codes and Rules for radio and television broadcasters which are necessary to give effect to the Audiovisual Media Services Directive and the Online Safety and Media Regulation Act 2022.

## Question 10 - Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?

The Commission has not proposed any significant changes to the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs on the basis that no substantive amendments are necessary to transpose the Audiovisual Media Services Directive. The NDA does not have any comments on the proposed minor language changes to this Draft Code.

# Responses to Stage 2 Review Consultation Questions

The NDA notes that once the Stage 1 review is completed, the Commission intends to carry out a further review and consultation on the media service codes and media service rules relating to broadcasting, and is seeking submissions on matters relevant to the Stage 2 review.

In undertaking the Stage 2 review, the NDA recommends that the Commission considers how to engage with disabled people and Disabled Persons Organisations (DPOs) as part of the consultation process.[[1]](#footnote-1) This may require consideration on how to make such a process more accessible and inclusive.

The NDA also underscores the importance of information and communications being accessible to everyone, including information and communications connected to consultations. In this regard, the NDA notes that all public bodies are required to adhere to the **Code of Practice on Accessibility of Public Services and Information provided by Public Bodies.** This Code of Practice outlines how public bodies can meet their obligations under Part 3 of the Disability Act 2005. In addition, the NDA’s Centre for Excellence in Universal Design has prepared a **Customer Communications Toolkit for Services to the Public – A Universal Design Approach** which provides guidance on written, spoken and signed communications, plus specific guidance on designing forms, documents and signage.[[2]](#footnote-2)

## Question 12 – Are there any other additions or amendments that you believe should be made to the Commission’s broadcasting codes and rules?

The NDA advises that the Commission’s revised Broadcasting Codes and Rules should be further amended to:

1. Take measures to increase the representation and promote the positive portrayal of disabled people in radio and television broadcasting, in particular news and current affairs programmes;
2. Reflect the requirements of the Assisted Decision-Making (Capacity) Act 2015 (as amended).

### Take measures to increase the representation and promote the positive portrayal of disabled people in radio and television broadcasting, in particular news and current affairs programming.

The NDA has consistently underlined the need to both increase the representation and promote the positive portrayal of disabled people in the media, in line with the provisions of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). However, despite advances, media coverage tends to categorise and portray disabled people as either the ‘hero’ – a person who is assumed to have ‘overcome’ their disability to accomplish great things – or the ‘victim’ – a person who is vulnerable and an object of pity.

The NDA opposes such narrow portrayal and stereotyping of people in radio and television broadcasting, including in news and current affairs programming. The NDA advises that the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs should be amended to caution broadcasters against the negative portrayal and stereotyping of diverse or under-represented groups, including ‘hero’ and ‘victim’ stereotypes concerning people with disabilities.

Relatedly, the NDA emphasises the importance of news and current affairs broadcasters using objective and inclusive language when covering stories connected to diverse or under-represented groups such as people with disabilities, and avoiding negative labelling, euphemisms and stereotypical language. The NDA has developed an advice paper which provides guidance on the use of language when speaking and writing about disability and may be instructive to broadcasters in this regard.[[3]](#footnote-3)

In addition, the NDA advises that the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs should address the need to facilitate disabled people and voices in news and current affairs programming, beyond issues connected to their lived experience. The Online Safety and Media Regulation Act 2022 requires the Commission in performing its functions to endeavour to ensure that the broadcasting services and audiovisual on-demand media services available in the State are open, inclusive and pluralistic, and that the Commission’s policies in relation to those services best serve the needs of the people of the island of Ireland, bearing in mind their levels of participation in those services and their levels of representation in programmes on those services.

The NDA convenes an annual listening session with Disabled Persons’ Organisations (DPOs) and disabled people to listen to their views, experiences and expertise in relation to the chosen theme. In 2023, the listening exercise focused on **‘Raising Awareness (Article 8 UNCRPD)’** and the summary report of the session highlighted the importance of increasing and improving the representation of disabled people in the media.[[4]](#footnote-4)

In a recent study by Dublin City University, entitled **RTÉ AND COVID-19: Diversity and inclusion and meeting public needs**, interviewees noted that some minority groups rarely appear in news and current affairs to speak about issues unrelated to the identity of their communities. This corresponds with the findings of the 2009 research undertaken by the NDA and the former Broadcasting Authority of Ireland on the representation and portrayal[[5]](#footnote-5) of people with disabilities in Irish broadcasting.[[6]](#footnote-6) The study highlighted that disability was rarely portrayed as incidental in the programme sample and there was little evidence of the kind of ‘mainstreaming’ developments similar to the UK, whereby disabled people feature in all varieties of programmes without necessarily drawing attention to their disability. Furthermore, a content analysis carried out as part of the same research found that people with disabilities are more likely to be present in drama, comedy and lifestyle programming and are less evident in news, sports and music programming.[[7]](#footnote-7)

The NDA welcomes the recent publication of the **Gender, Equality, Diversity and Inclusion Strategy for the Audio and Audiovisual Media Sector**, which outlines actions to mainstream diverse groups across programming genres and to invite members of diverse groups or under-represented groups to participate in the media to discuss issues beyond their lived experience – as experts in other fields relevant to society as a whole. The NDA notes that the Strategy also recognises that best practice includes avoiding stereotyping of characters in drama and entertainment, however this does not explicitly extend to news and current affairs programming.

The NDA would like to see this good practice reflected in the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs by encouraging radio and television broadcasters to invite disabled people to participate in news and current affairs programming and discuss issues beyond their lived experience. The NDA is of the view that such measures, which will increase the visibility and representation of disabled people in news and current affairs programmes, could promote disability inclusion and equality in television and radio broadcasting and foster a media landscape that is more representative of the diversity of Irish society.

### Capacity to make decisions following commencement of the Assisted Decision-Making (Capacity) Act 2015 (as amended)

The NDA advises that all the Commission’s revised Broadcasting Codes and Rules must be updated to reflect the requirements of the **Assisted Decision-Making (Capacity) Act 2015 (as amended)** (‘2015 Act’), including the presumption of capacity. The legislation establishes a new legal framework for supported decision-making for people whose capacity to make one or more decisions is, or may shortly be, in question.

Under the 2015 Act, there is a presumption that all adults have decision-making capacity, unless the contrary is shown. This presumption applies irrespective of any pre-existing disability or medical condition. Where a person’s capacity is being called into question on a specific decision, the responsibility lies with the person who is questioning capacity to provide sufficient evidence that the relevant person does not have capacity to make the decision at this time. It is not the responsibility of the person to prove they have the capacity to make this decision.

Where a person’s decision-making capacity is in question, or may shortly be in question, the 2015 Act requires a functional test to be used to assess their capacity. A person will be considered to have decision-making capacity if they can:

* Understand the information relevant to the decision;
* Remember the information long enough to make a choice;
* Use or weigh up the information to make a decision;
* Communicate their decision (this may be with assistance).

It appears that some elements of the Broadcasting Rules and Codes may not align with the 2015 Act, which was commenced on 26 April 2023. For example, paragraph 13.4 of the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs states that ‘The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast or availability of any interview with a child less than 16 years of age or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast or make available an interview in the absence of such consent must be justified in the public interest.’

The NDA advises that the above provision does not appear to align with the 2015 Act. Instead of a default position that all adults are presumed to have capacity to make decisions, paragraph 13.4 requires radio and television broadcasters to generally obtain consent from a parent, guardian or legal representative where an adult is considered a ‘vulnerable person’.

In addition, the NDA observes that there is no definition of ‘vulnerable person’ within the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs, although the separate Draft Code of Programme Standards defines vulnerable people as ‘individuals whose personal circumstances or well-being require that extra care be taken.’

In the absence of such a definition, the NDA is concerned that all people with disabilities may be considered ‘vulnerable’ and the consent of a parent, guardian or legal representative may be sought prior to a news or current affairs interview or broadcast. The NDA advises that the term ‘vulnerable person’ within the broadcasting codes and rules be replaced with ‘a person whose capacity to make one or more decisions is, or may shortly be, in question’ in line with the 2015 Act.

# Conclusion

The NDA welcomes Coimisiún na Meán’s consultation on the revised Broadcasting Codes and Rules for radio and television broadcasters, in particular the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. Such a review is timely given recent changes in the legislative and regulatory landscape relevant to broadcasting. We would be happy to engage with the Commission on any of the points raised in this submission, including the Stage 2 review planned for early 2025.

1. The NDA has produced guidelines, entitled Participation Matters, to support public officials at national and local level to meaningfully consult with and actively involve disabled people and their representative organisations in policy development and other decision-making processes to meet obligations set out under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The guidelines are available at the following link: <https://nda.ie/publications/participation-matters-guidelines-on-implementing-the-obligation-to-meaningfully-engage-with-disabled-people-in-public-decision-making> [↑](#footnote-ref-1)
2. The Customer Communications Toolkit is available at the following link: <https://universaldesign.ie/communications-digital/customer-communications-toolkit-a-universal-design-approach> [↑](#footnote-ref-2)
3. The advice paper is available at the following link: <https://nda.ie/publications/nda-advice-paper-on-disability-language-and-terminology> [↑](#footnote-ref-3)
4. The report is available at the following link: [Annual Listening Session 2023: Article 8 Awareness Raising - National Disability Authority (nda.ie)](https://nda.ie/publications/annual-listening-session-2023-raising-awareness) [↑](#footnote-ref-4)
5. For the purpose of this research, “representation” referred to the extent to which people with disabilities were present in the programmes, whereas “portrayal” referred to the nature of the representation (i.e. how individual or groups with disabilities were represented). [↑](#footnote-ref-5)
6. The study is available at the following link: <https://nda.ie/publications/the-representation-and-portrayal-of-people-with-disabilities-in-irish-broadcasting> [↑](#footnote-ref-6)
7. As part of the content analysis, 408 hours of programming (804 programmes) broadcast by Irish television and radio stations from February to July 2007 were analysed. The sample was drawn from prime-time television broadcasting (6-10pm), and from weekday and Sunday radio broadcasting, including national and local radio. [↑](#footnote-ref-7)