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An Comhchoiste um Leanaí, Comhionannas, Míchumas, Lánpháirtíocht agus Óige

Tuarascáil maidir leis an nGrinnscrúdú Réamhreachtach ar an mBille um Fhaisnéis Bhreithe agus Rianú

Nollaig 2021

Joint Committee on Children, Equality, Disability, Integration and Youth

Report on Pre-Legislative Scrutiny of the Birth Information and Tracing Bill

December 2021

CDEI 33 005

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JOINT COMMITTEE ON CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH

Report on pre-legislative scrutiny of the General Scheme of the Birth Information and Tracing Bill

December 2021

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Joint Committee on Children, Equality, Disability, Integration and Youth


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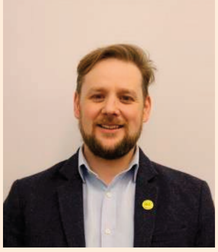
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Fine Gael


Senator Ned O’Sullivan
Fianna Fáil

FOREWORD

Firstly, to those who contributed to the pre-legislative scrutiny process, through submissions or attendance at Committee meetings, my sincere thanks. The Members of the Committee and I are grateful for the compelling evidence everyone has brought before us. I also want to acknowledge the many others who may have been affected by the issues this legislation seeks to address and those who felt they could not come forward to engage formally with this process.

Following the publication of the report of the Commission of Investigation into Mother and Baby Homes in January 2021, the Committee agreed, as an absolute priority, to progress work on any legislation arising from the report. The Minister referred the General Scheme of the Birth Information and Tracing Bill to the Committee on the 11th of May 2021 for pre-legislative scrutiny. As a Committee we have strived to emphasise the rights and perspectives of the people affected, and to have those rights and perspectives reflected in the legislation. To this end, we urge the Minister to consider the testimony the Committee received with compassion and to implement the recommendations in this report.

The Committee acknowledges the genuine efforts made in the current draft of the Bill to enable the release of more information than previously available to those with questions about their origins and past. It is, thankfully, a new departure compared to previous efforts to legislate in this area. However, the Committee is of the view that the Minister needs to make some significant changes during the redrafting process in order to maximise the potential for this legislation to vindicate the rights of those affected. To this end, the Committee has identified key issues and arrived at 83 recommendations. I hope the work of the Committee will assist the Minister in strengthening the provisions contained in the Bill. A copy of the report has been sent to the Minister for Children, Equality, Disability, Integration and Youth.

In closing, I want to thank the staff of the Secretariat and the Library and Research Service for all their assistance in preparing this report. I wish also to acknowledge the dedication and professionalism shown by all the Members of the Committee in their engagement with witnesses and the preparation of this report.

Kathleen Funchion

Kathleen Funchion T.D.

Cathaoirleach
14 December 2021

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INTRODUCTION AND WITNESSES

The predecessor of this Bill, the Adoption (Information and Tracing) Bill 2016, sought to balance the identity rights of applicants and the privacy rights of birth/natural parents. In doing so, it fell short of allowing full access to information to applicants. It did this through two provisions: a requirement for applicants to sign an undertaking that they would not contact their birth parent and a facility whereby natural parents could make a case for information not to be released.

That Bill followed a period of debate around balancing both rights. The focus of the debate might best be characterised as concerning how to balance the rights of adopted persons to information about their birth and identity with the privacy rights of birth parents. The debate also concerned the different considerations around the question of access rights to birth or identity information, and the separate issue of contact between adopted persons and birth parents.

Since the publication of the 2016 Bill there have been other important developments. GDPR came into effect in 2018. It has had a huge impact on those seeking information. There have been significant legal developments, at both national and EU level, that favour an interpretation of GDPR which facilitates individuals seeking information about themselves[1]. There is now an international recognition of the right of people who have been adopted to have access to birth and other information and this has played out in the European Court of Human Rights[2]. One legal expert explained this to the Committee as follows:

> "*In nearly every other EU jurisdiction, there is a system of open access to adoption information under exactly the same legislation, namely, the GDPR. That included Great Britain and Northern Ireland before they left the EU. If there is a constitutional issue, the GDPR takes primacy; it does not matter what the Constitution says*"[3].

Furthermore, many reports and testimony given by birth/natural mothers over recent years have shown that birth/natural mothers themselves did not always endorse the secrecy around adoptions, rather it was enforced upon them[4]. Many do wish for contact. Conversely, a very small proportion have explicitly expressed a wish for no contact[5].

The 2021 Bill will bring Ireland more in line with other developed countries in terms of information rights for adopted people. Ireland is now the only EU country that does not grant adopted people the right to access adoption files[6].

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[1] *Nowak v Data Protection Commissioner of Ireland is* a good example. This case, and others are detailed in the submissions from IHREC, Aitheantas and CLANN.

[2] IHREC, 13th July meeting.

[3] Fred Logue, November 2nd meeting.

[4] See submissions from CLANN, ARA etc.

[5] CLANN submission.

[6] Aitheantas report: Adoptee Voices - EPRS on Adoptee Rights

In this pre-legislative scrutiny report, we propose several recommendations to ensure that the Bill provides information rights for adopted persons, while carefully laying out how this will work practically and legally. The Committee recognise the need for a robust legislative framework to enable agencies to provide information to adopted persons. After a period of uncertainty and criticism for some of the relevant statutory agencies, and severe disappointment for applicants, this Bill now needs to provide clear parameters for all involved.

The General Scheme of Birth Information and Tracing Bill 2021 was referred to the Joint Committee on Children, Equality, Disability, Integration and Youth ('the Committee') on 11th May 2021. The Committee agreed at its meeting on 18th May 2021 to undertake pre-legislative scrutiny of the General Scheme.

The Committee engaged with various stakeholders at pre-legislative scrutiny meetings, detailed below. The Committee also issued a public call for submissions and invited a number of relevant stakeholders to make written submissions on the General Scheme and these are linked in Appendix 3.

Tuesday 11th May 2021

Private briefing with Minister O'Gorman on the provisions of the Bill.

Tuesday 15th June 2021

<u>TUSLA</u>

- Mr Bernard Gloster CEO
- Mr Cormac Quinlan Director of Transformation and Policy
- Ms Siobhan Mugan National Manager for Adoption

<u>Adoption Authority of Ireland</u>

- Ms Orlaith Traynor Chairperson
- Ms Patricia Carey CEO

<u>Special Rapporteur on Child Protection</u>

- Mr Conor O'Mahony

Tuesday 29th June 2021

<u>Barnardos</u>

- Ms Suzanne Connolly CEO
- Ms Christine Hennessy Head of service

The Clann Project

- Dr Maeve O'Rourke
- Ms Claire McGettrick

Adoption Rights Alliance

Ms Susan Lohan	Co-Founder
Ms Mari Steed	

Aitheantas

- Ms Maree Ryan-O'Brien
- Mr Rody O'Brien B.L.

Tuesday 13th July 2021

Session Number 1 - 15:30 - 16:30

Data Protection Commission

Mr Dale Sunderland	Deputy Commissioner
Mr David Murphy	Assistant Commissioner

Session Number 2 – 16:30 – 17:30

The Irish Human Rights and Equality Commission

Ms Sinead Gibney	Chief Commissioner
Prof. Ray Murphy	Commission Member
Ms Maria Mullan	Policy & Research

Tuesday 28th September 2021

Roderic O'Gorman, Minister for Children, Disability, Equality, Integration and Youth.

Ms Laura McGarrigle	Assistant Secretary
Mr Karl Duff	Principal Officer
Ms Eimer Cowan	Assistant Principal Officer

Tuesday 5th October 2021

Aitheantas – consideration of *Adoptee Voices* report

- Ms Maree Ryan-O'Brien
- Mr Rody O'Brien B.L.

Tuesday 19th October 2021

Adoption Loss/Natural Parents Network Ireland

- Ms Muriel Thornton
- Ms Rhoda Mac Manus

The Collaborative Forum

- Ms Terri Harrison
- Ms Alice Coughlan

Solas for Mothers

- Ms Alice McEvoy
- Ms Joan McDermott

In it together – Who am I?

- Ms Lisa Kiernan
- Ms Chris Wallace

Tuesday 02nd November 2021

McGarr Solicitors

- Mr Simon McGarr

FP Logue Solicitors

- Dr Fred Logue

Data Protection Commission

• Mr Dale Sunderland	Deputy Commissioner
• Mr David Murphy	Assistant Commissioner

KEY ISSUES

Stemming from its engagement with stakeholders, the Committee have identified a number of key areas of concern in the proposed Bill and have made recommendations as to how these should be remedied.

1. Language, Terminology and Definitions

Language

Many who came before the Committee and who provided written submissions criticised the tone and language throughout the Bill, finding it insensitive to the traumatic experiences that necessitate it, and suggested alternative terms to better represent what happened to survivors. A particular passage in the Heads of Bill document flagged by many as insensitive reads:

> "*It should be noted that a significant minority of birth mothers gave more than one child up for adoption and may have different preferences in relation to each child."*[7]

It appeared to the Committee that a disconnect exists between the language used in the Heads of the Bill, and the lived experience of adopted persons, in particular those who are survivors of mother and baby homes. While the Committee are conscious of the difficult task faced by those drafting sensitive legislation, this disconnect needs to be minimised in order to avoid the retraumatising of survivors.

The power of language to express lived experiences cannot be underestimated. One natural/birth mother thoughtfully drew the following parallels:

> "*Members know that people used to use all sorts of racist and discriminatory language, especially to LGBT groups. Miraculously, that attitude has changed with the language used being changed"*[8]*.*

Some stakeholders considered the Bill's title inappropriate, stating that it is presumptuous in that it assumes that it is primarily adopted people who are "the seekers"[9]. It was pointed out that many people were not legally adopted but still require a tracing and information service.

The Adoption Rights Alliance commented:

> "*We also object to the tone and language of the Bill, which is certainly not representative of a transitional justice approach. It does not reflect the grave human rights abuse suffered by natural mothers and their children in various institutions"*[10]*.*

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[7] Composite Heads of *Birth Information and Tracing Bill 2021*, pg 34.

[8] Alice McEvoy, 19th October meeting.

[9] Muriel Thornton, Adoption Loss/Natural Parents Network Ireland, 19th October meeting.

[10] Adoption Rights Alliance, 29th June meeting.

The Committee recommends that:

1. Plain text should be employed in so far as it is possible, both in the Bill and in any accompanying documentation, particularly given the sensitive context of the legislation.

2. The feedback the Committee received in this respect should be incorporated into the Bill and into the design of the information campaign and other communications around the Bill's provisions.

3. Consideration should be given to the establishment of a stakeholder advisory or consultation group. This group could provide input into the design of communications, the information campaign and the review of the legislation.

4. The use of the word *may* instead of *shall* should be addressed throughout the Bill, in order to strengthen its provisions.

Terminology

The Committee heard strongly held and differing viewpoints on the most appropriate terminology to be used within the Bill. For example, the use of birth mother, birth father or birth parent is offensive to some. Natural parent or natural mother or natural father are offensive to others. The Committee acknowledges that finding terms that can be used in legislation and are acceptable to all parties is a huge challenge and appreciates that Minister O'Gorman has engaged directly with those affected to try to resolve the issue.

Several submissions received pointed to work ongoing around *Language, Terminology, and Representations* in collaboration with birth/natural mothers and the National University of Ireland, Galway (NUIG).

Recent research from Adopted persons rights group Aitheantas found that most adopted people prefer the term birth mother over natural mother. Conversely, the majority of birth mothers or their advocates who engaged with the Committee prefer natural mother. A number of mothers who came before the Committee advocated for the term mother to be used, as in just the word mother alone, to refer to the birth/natural mother[11]. While there is some division around terminology there has been a universal push from all stakeholders and affected individuals to get this legislation drafted and enacted as soon as possible, so it is important that deliberations on terminology do not cause undue delay, to allow for services provided for in the Bill to be accessed.

The Committee recommends that:

5. The aim must be to have terms that are respectful to adopted people, birth/natural parents and adoptive parents.

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[11] See discussion at 19th October meeting.

6. While the terms used are not without consequence for those affected, the impasse in this regard should in no way delay the progression of the Bill.

7. The drafters of the Bill should be cognisant of the impact particular terms could have relative to other legislation and should strive to future-proof the provisions of the Bill in this regard.

Definitions

Problematic definitions were a common issue identified among stakeholders and Committee Members alike during pre-legislative scrutiny, with the common thrust of these observations being that key areas are too narrowly defined. The aim of the Bill is to offer access to birth and early life information, but it also seeks to put measures in place in order to safeguard the privacy rights of birth mothers. Stakeholders expressed concerns that parts of the Bill are deliberately restrictive, and contradict the explanatory notes, by not allowing for full access to information.

As put by IHREC:

> "*the purpose of the legislation is to make information available to affected persons. Using restricted definitions will have a significant impact on the type of information is available and those who can access it*"[12].

They proposed a significant broadening of the key definitions in line with human rights and to the benefit of those seeking information under the Bill[13].

Throughout the Bill, the definition of "affected persons" only includes "(c)where the entry in the Registry of Births was made before the 31 day of December 1970". The committee heard that this is extremely concerning and excludes affected persons who were illegally registered and unlawfully adopted after 31st December 1970. The definition of "affected persons" should be expanded on to coincide with either (a) the closure of the last home or (b) the date that all files were handed over to the Adoption Authority of Ireland (AAI) and Tusla or other relevant body.

Care Information

This was flagged as a problematic definition within the Bill. Of most concern is that care information in the Bill is linked to the very limited list of institutions identified in Schedule 1, which, as detailed elsewhere, confines the Bill's application to just 44 institutions. The Committee are aware of a list of 182 institutions, agencies and individuals that were involved with forced family separation in Ireland and Schedule 1 therefore represents only a fraction of that number.

This follows on from two other recent attempts to impose such limits on access and participation that received widespread criticism; firstly, the limited participation in the Mother and Baby Home Commission of Investigation and secondly, the limited list of institutions allowed access to the Burial Bill's provisions. In both cases the inclusion of

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[12] IHREC, 13th July meeting.
[13] IHREC, 13th July meeting.

some affected by these issues and exclusion of many others was criticised and complicated prospects for justice among survivors. Rather than dealing with the issues and victims comprehensively this division creates more complications for the state and survivors in dealing with the past.

Also concerning is that the definition of care information explicitly excludes care provided by:

(a) a birth parent or guardian of the child, or
(b) a relative of the child who is providing care other than as part of a nursed out, boarded out, or foster care arrangement, or
(c) a person who is, or becomes, the adoptive parent of the child.

This information should be provided where information is in existing files or already in existence**.**

These issues were also raised by the United Nations, see appendix 4.

The Department and associated agencies have historically come under criticism for the non-release of mixed personal data[14], and this Bill has been presented as a new departure due to the way in which it now draws on GDPR to release more information and move away from those situations. Yet the Committee heard testimony about how the definitions within the Bill risk repeating those mistakes of the past:

> "*Entire categories of mixed personal data are explicitly excluded without justification, notably the information about the care provided to a person by adoptive and natural parents and the identity of one's siblings"*[15].
>
> "*There are huge restrictions that are not permissible under the GDPR regarding categories of mixed personal data…The definition of care information to which people are entitled excludes everything about a parent's or adoptive parent's care review. There is a blanket restriction that is not compatible with all the different requirements of Article 23 of the GDPR. If you want to restrict subject rights, you need to give all the details about what you are restricting, why it is strictly necessary in a democratic society and how you will protect the essence of the right. None of that is there"*[16].

The Data Protection Commission (DPC) told the Committee:

> *"While it [mixed data] is not referenced in the GDPR, it is a reality that comes into play in scenarios where a birth certificate contains information about more than one person. The rights of the other person have to be taken into*

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[14] For example See O'Mahony, Logue, O'Rourke and others, Opinion on the application of the Irish Constitution and EU General Data Protection Regulation to the Adoption (Information and Tracing) Bill 2016 and the Government's 'Options for Consideration (5 November 2019).
[15] CLANN, 29th June meeting.
[16] CLANN, 29th June meeting.

> *account. One cannot say that a person cannot have access to one's own data because there is an equality of rights for both data subjects. This is what Article 15.4 is also trying to get around in order to ensure that there is some mechanism by which the risk of an adverse impact on another person is taken into account. In the context of the proposed Bill, as we understand it, the constitutional requirements and also commitments given to mothers in the past all have to be taken into account in trying to strike the right balance"*[17].

The Committee heard compelling arguments for the provision of care information to birth/natural mothers and children, with some referring to 'deprived care'. This touches on the fear among many birth/natural mothers that their children may not understand that they were not allowed to provide care themselves, as they told the Committee that nuns kept babies under lock and key and many women state they were coerced into agreeing to adoption or mislead when signing documents[18]. This is elaborated on in the section on *Reciprocal Rights to Information*.

The Committee heard suggestions that a Ministerial direction note, memo, instruction or circular could be issued now to the agencies and Departments currently involved in releasing data, that rectifies any potential misinterpretation of mixed data in line with existing GDPR rights. In addition, an explanatory piece should be provided on the proposed website with an accompanying leaflet to provide context for information for individuals. This would go some way towards releasing more information to those currently seeking it, in line with existing GDPR rights. This memo or similar should make clear that in situations where data relates to two people it is personal data to both of them and should be released. This recommendation takes account of the age profile of some such persons.

The rights of siblings to information about each other are also ignored in the Scheme. In the Committee's view, many adopted people and their siblings (whether adopted or not) are eager to learn about each other and be in contact, and they must be facilitated in doing so. In this respect it is useful to consider the Australian model. The Access to records by Forgotten Australians and Former Child Migrants: Access principles for records holders and best practice guidelines in providing access to records (DSS Access Principles) state that:

> *"Every person, upon proof of identity, has the right to receive all personal identifying information about themselves, including information which is necessary to establish the identity of close family members, except where this would result in the release of sensitive personal information about others. This includes details of parents, grandparents, siblings – including half siblings, aunts, uncles and first cousins. Such details should, at*

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[17] Dale Sunderland, 2nd November meeting

[18] Terri Harrison, 19th October meeting.

> *minimum, include name, community of origin and date of birth where these are available"*[19]*.*

The Committee heard evidence about the practice of illegal or unlawful adoptions and the false or incorrect registration of birth information; this is addressed in the interpretation section (Head 3) and in later Heads of the Bill. Many witnesses argued for express recognition of the practice of illegal adoption, alongside provision for a procedure to rectify incorrect registrations.

The Committee recommends that:

8. The list of institutions in Schedule 1 should be expanded to incorporate the full list of known institutions, agencies and individuals that were involved with forced family separation in Ireland, without limiting the bill solely to these bodies. There should also be a mechanism for the Minister to designate additional entities as being subject to the Bill, via statutory instrument.

9. The definition of care information should be amended to include a broader category of care, including, but not limited to, care provided by a birth parent or guardian of the child, a relative of the child who is providing care other than as part of a nursed out, boarded out, or foster care arrangement, or a person who is, or becomes, the adoptive parent of the child. There is an intersection between care and personal data. Any regulation or guidelines for use by the relevant bodies must interpret information, items and all personal data through the lens of this intersection.

10. The definition of 'incorrect birth registration' in Head 3 should be amended to say 'falsely or incorrectly recorded'.

11. The term 'illegal or unlawful adoption' should be included in the Explanatory memorandum to the Bill, so as to clarify that the procedures for rectifying the register apply to both those whose particulars were deliberately falsified and those whose particulars were incorrectly recorded.

12. The scope and extent of care information provided should be increased.

13. An immediate Ministerial direction note/ memo/instruction/circular should be issued to the agencies and Departments currently involved in releasing data, that rectifies existing misinterpretation of mixed data in line with existing GDPR rights. The Minister should ensure that all agencies/departments receive adequate training in relation the GDPR obligations.

Early Life Information

The Committee heard that the vague definition of early life as the period following a person's birth is problematic and that the provision of such information should not be constrained. IHREC stressed that:

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[19] *Access to Records by Forgotten Australians and Former Child Migrants*, available at: https://www.dss.gov.au/sites/default/files/documents/11_2015/final_dss_branded_access_to_records_by_forgotten_australians_and_former_child_migrants_nov_15.docx

> "*The provision of birth certificates or early life information is, by definition, the vindication of the right to identity, to personality and to private and family life for adopted people"*[20].

Furthermore, witnesses suggested that early life information should not be limited to a certain period after birth, as crucial items such as letters can be sent during childhood and teenage years and into adult life [21].

Secondary Information Source

The definition of a 'secondary information source' is too narrow and should be expanded to include all individuals, agencies and institutions involved in forced family separation, not just the eight entities currently listed in the Bill.

Personal Data

Several stakeholders highlighted problems with the definition of personal data. Many suggested that the best way forward is to amend the definition of personal data within the Bill to mirror how personal data is defined in GDPR itself and then frame the other definitions around that. This would provide more clarity and a stronger legal footing. For example, it was suggested that rather than focusing on a specific timeframe of the person's 'early life', the Bill needs to spell out precisely what 'personal data' means in this context. An overarching definition of personal data akin to the definition within GDPR itself seems like a good solution.

'Personal data' has the meaning ascribed to it by the General Data Protection Regulation as transposed into Irish law by the Data Protection Act 2018. It is worth reiterating the definition of personal data as set out in the GDPR, article 4(1) which states "personal data means any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.". This implies that under this Act, all records, accounts, notes, references to or about and relating to the adoption or informal care arrangement of a relevant person are considered to be that person's personal data, regardless of whether that data also includes personal data of another data subject/another person.

All information is part of an adopted person's history and heritage and must be included in the records provided to them, including:

- information relevant to all treatment, including medical records and possible abuse
- administrative files
- the widest interpretation of Early Life Information

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[20] IHREC, 13th July meeting.
[21] See CLANN submission for further discussion on this.

- rights of access to "'birth relative information' to 'care information' and 'early life information' and 'medical information'", under GDPR.

The provision in the Bill that seeks to legislate for access to personal data is already covered by the definition of personal data set out in Article 4 of the GDPR. If 'personal data' means any information relating to an identified or identifiable natural person or data subject as the GDPR defines it, then each of those defined categories of data or records is simply a sub-set of the general set of all personal data relating to an adopted person.

Relevant body

The definition 'relevant body' relates only to (a) the Agency (Tusla), (b) the Authority (AAI), (c) a body which is designated as a relevant body for the purposes of this Act by means of regulations made under Head 34. Concern was expressed that considerable obligations and functions assigned to a relevant body throughout the Bill may inadvertently limit the ability of affected persons to access information.

Relevant Record

The definition of relevant record needs to be expanded. In line with earlier definitions discussed, it should also include a full schedule of all records held on the file relating to the person as well as relevant administrative records. This will allow for more verification though cross-checking of records and more accurate information for some.

The Committee recommends that:

14. All information is part of an adopted person's history and heritage and must be included in the records provided to them, including:

- information relevant to all treatment, including medical records and possible abuse
- administrative files
- the widest interpretation of Early Life Information
- rights of access to "'birth relative information' to 'care information' and 'early life information' and 'medical information'", under GDPR.

15. Head 34 should be accompanied by an explanatory note requiring that it be interpreted and applied in as inclusive a manner as possible.

2. Mandatory Information Session

There was significant consensus among those who engaged with the Committee that the mandatory information session, as is, must be removed. The Committee acknowledges the work of the Minister to date in trying to address this very sensitive issue. The Committee heard from witnesses that may be in breach of rights and freedoms under various charters and conventions, that it is not GDPR[22] compliant and

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[22] CLANN submission: ""Any restriction on a person's access to their birth certificates will not, in our opinion, meet the requirements of Article 23 GDPR".

that is outside the trend in favour of increased unconditional access and information relating to one's biological family[23]. As the Council of Irish Adoption Agencies succinctly put it, it is:

> "*discriminatory as it treats one cohort of people differently from the others. It is also in contradiction to the spirit of the Bill which is to give automatic rights to information to everyone"*[24].

Furthermore, based on the expert testimony the Committee heard, the argument for the inclusion of a mandatory information session may be grounded in two serious misunderstandings about:
(i) the role of the Oireachtas and the Constitution in shaping the legislation
(ii) the implications of releasing information
These issues were outlined in the submission from Irish Human Rights and Equality Commission (IHREC) as follows:

> "*it is unclear how an information session has any rational connection with the balancing or protection of the birth parent's right to privacy. The session does not achieve its apparent aim, as the adopted person can simply proceed to contact the parent if they wish, within the confines of the law. It is a compulsory session which stands in the way of access. When considered in the context of there being (i) little evidence to-date of many natural parents seeking no contact and (ii) limited evidence of actual harm to any such parents, the Commission is concerned that the measure may be a disproportionate or irrational interference with a person's right to know their origins and their right to dignity and equality"*[25].

(i) The role of the Oireachtas and the Constitution in shaping the legislation
Many stakeholders before the Committee expressed the view that the mandatory information session might itself be unconstitutional; and that the Bill should provide for greater emphasis on the right to information or to know one's identity. Many witnesses and stakeholders criticised the continued citation of the IOT Supreme Court case, or advice from previous Attorneys General which appeared place undue reliance upon the IOT case, as a justification for the inclusion of the mandatory information session. The Committee are concerned that, while the Minister has stated that he will ensure the information session better emphasises the identity rights of adopted persons, it would be preferable that the session be removed altogether as a mandatory step in the process of seeking birth information.

The Committee have serious concerns about the mandatory information session. Another more appropriate safeguard must be found.

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[23] IHREC Submission.
[24] Council of Irish Adoption Agencies Submission.
[25] IHREC Submission.

(ii) The implications of releasing information

Both groups of, and individual birth/natural parents who engaged with the Committee stressed that most mothers were not promised and did not seek secrecy, rather "secrecy was imposed by the Agencies who gave a guarantee to the adopting parents that the natural mothers would never appear in their children's lives again"[26]. The Committee heard from Barnardos that in most cases the burden of not knowing about their children was extremely difficult for parents and that, thankfully, best practice in adoption now favours much more open channels of communication and information sharing, to everyone's benefit[27]. One witness who came before the Committee, who is both an adopted person and a birth/natural mother said:

> "*the right to privacy is not the same thing as a right to anonymity… we do not have a right to be anonymous to our children. We have a duty to be accountable to them and give them their identity, right to information and right to early-life care"*[28].

Another birth/natural mother told the Committee "*every person has the birthright to know from whom they came, their culture, their heritage and their gene pool"*[29].

The Committee acknowledge that some mothers and adopted people wish to maintain total privacy. It must be noted that this cohort are not vocal as they do not want to be known in public. Many speak off the record stating that their families do not know their stories and they wish for it to remain that way. The information campaign, counselling supports, and contact preference register need to be used to the maximum benefit of this cohort to help allay their fears and concerns.

The AAI released data showing that 128 natural mothers have indicated that they wish to have no contact with their daughter or son. That equates to just 5% of the 2,458 mothers on the register, or 0.13% of the roughly 100,000 birth/natural mothers in Ireland[30]. There are far more adopted people on the register who have indicated that they do not want contact. Among those who don't want contact in both cohorts there is still a strong willingness to share information. The AAI told the Committee:

> "*Quite often we talk of birth parents who want no contact but there is an equally large cohort of adopted adults who have indicated that. We are acutely aware of recognising both adult adopted people and birth/natural parents who wish to register for no contact*"[31].

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[26] Adoption Loss/Natural Parents Network of Ireland submission.
[27] Barnardos, 29th June meeting.
[28] Mari Steed, Adoption Rights Alliance, 29th June meeting.
[29] Terri Harrison, 19th October meeting.
[30] This data is explored in the CLANN submission.
[31] AAI, 15th June meeting.

This data goes to the heart of inaccurate assumptions about the nature of the parties involved and illustrates the power of the contact preference register without the mandatory information session.

Finally, it is worth looking to the international context. Ireland will remain an outlier with the conditional access proposed in the Bill[32]. The mandatory information session is seen by some witnesses as compounding misguided fears about adopted people and perpetuating the injustice they have suffered for years. An alternative should be sought.

An evolved information session

The Committee heard from the Minister that during the redrafting of the Bill the mandatory information session will be amended to remove the obligation to meet social workers or to meet in-person, allowing for online meetings. It is unclear whether these options will be for all or whether the online session is solely for those living abroad. Whatever permutation this new version of the session takes, it still does not solve the main issue at hand: the fact that adopted people whose parent registers a 'no contact' preference will be singled out for different treatment and a targeted warning about privacy rights.

Alternatives

The Committee heard some constructive suggestions about how the session can be reshaped to avoid discrimination against adopted people while containing privacy safeguards. The submissions to the Committee showed a keen understanding of the need for safeguards and the constitutional balancing required and a willingness to think outside the box on how to achieve this. Witnesses saw many such safeguards already evident within the Bill, including the 16+ age limit, the contact preference register, the information campaign, and the fact that only a relevant person can apply.

The majority of witnesses were of the view that such a session is not required by any constitutional balancing of rights and it is certainly not required under any international legal provision. What IHREC said when asked about how best to ensure a balancing of rights was:

> *"One of the ways in which this should be handled is through awareness and public information campaigns. They must reach into every home in Ireland and extensively throughout the diaspora… there are people living with these secrets whose anxieties and fears have been escalated over the past number of years as these issues were dealt with through inquiries, legislation and so on. It is the responsibility of the State, while this legislation is being passed, to allay those fears as best it can and to send the information into the homes of Ireland. This would mean an extensive campaign across all types of media, for example, a household mail drop or*

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[32] Aitheantas: Adoptee Voices - EPRS on Adoptee Rights

> *the like, whereby people would be reached in an effective way to allay concerns"*[33].

CLANN suggested a session for everyone, with the option of completing it electronically, or an information booklet for everyone, with the option of an information session. Several expert witnesses argued for the session to be optional for all as opposed to required, for adopted people whose birth/natural parent lodged a 'no contact' preference. All felt it should be supportive as opposed to a warning. By singling out adopted people whose parent lodged a 'no contact' preference it is a warning measure as opposed to a supportive one. Perhaps if the Bill enhances the information campaign, makes reference to the lack of evidence of privacy rights being violated by adopted people to date, as well as the counselling available to prevent distress and the existing laws and protections available should unwanted contact arise, then the Oireachtas can be said to have considered privacy amply.

Conversely, the Minister stated that the Bill takes a three-pronged approach to safeguarding privacy, namely the 16+ age limit, the information session and the counselling. When asked about what alternatives the Department had considered he pointed to previous Bills proposed through the years, which he described as draconian and adversarial. These are not *current* viable alternatives though, and in today's international landscape of open access, would be viewed as unlawful and outdated.

What the Committee, and those who came before it are seeking, is other options in terms of other safeguards, as opposed to the mandatory session. As an alternative safeguard, the information that would have been imparted in the information session could be provided in correspondence sent by registered post. The Committee is of the view that this is the most appropriate alternative mechanism to include in the Bill.

The Committee recommends that:

16. The mandatory information session should be removed from the legislation. An alternative appropriate safeguard should instead be provided for, such as the sending of correspondence by registered post.

3. Information Campaign

The Committee heard mixed views on how long the information campaign should run for, with most stakeholders calling for a longer timeframe so that it has broad reach and impact in terms of informing people of their rights and the changes afoot. The AAI, Barnardos, the Council of Irish Adoption Agencies, Tusla, IHREC, and others called for an increase in the scope of the campaign.

Many underlined the importance of allowing time for international reach, ideally through Ireland's network of embassies, including the AAI, who observed that "*many*

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[33] IHREC, 13th July meeting.

birth/natural parents have moved around the world, maybe for reasons of trauma from being in Ireland, as have adult adopted people"[34].

Some expert witnesses told the Committee that they have been hearing from birth/natural mothers engaging with support services that three months is not enough time to consider their options, as individuals may wish to seek professional advice before engaging in the process[35]. Notably, in the UK the equivalent information campaign ran for two years[36].

Other witnesses pointed out that the campaign could be harnessed as a key safeguard within the Bill and could perhaps substitute for the mandatory information session if designed appropriately[37]. Many drew on the potential for the campaign to be designed with humanity and signalling a fresh approach, with CLANN for example stating:

> "*The proposed publicity campaign presents a unique opportunity to let mothers know that they no longer need to bear the burden of secrecy and shame, to let adopted people know that they are equal in the eyes of the law, and to let relatives of the deceased know that they can finally learn what became of their family members*[38]".

Barnardos, who have provided birth/natural mothers support groups to over 1,200 women proposed that:

> "I*t is going to be all about communicating gently, carefully and accessibly, and for a much longer period than three months, to reach out to women around the country, not just through national media, but through local media, through radio, making friendly voices available for them to speak about their concerns, and not forcing them to engage with computerised systems to express their preferences. It is that kind of duty of careful care to encourage those frightened women to come forward in an empathetic way that is the way forward with this, and over a much longer period than three months. We are suggesting six months minimum"*[39].

Effective communication will be paramount. Designers of an information campaign must assess the unique information needs of those with an intellectual disability or those of an older age group or unfamiliar with modern forms of communication, as mainstream information often does not meet either of their requirements. A common theme that emerged around the campaign is accessibility and the need to not force ICT-based systems on those affected. A large cohort involved may not be comfortable with computer technology[40]. It is critical that a range of media sources are used for the campaign, and that simple, non-digital routes to access the Bill's provisions are

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[34] AAI, 15th June meeting.

[35] Barnardos, 29th June meeting.

[36] Barnardos, 29th June meeting.

[37] For example, CLANN and IHREC.

[38] CLANN, 29th June meeting.

[39] Barnardos, 29th June meeting.

[40] This was highlighted by many stakeholders including the Council of Irish Adoption Agencies Barnardos and IHREC.

available. Consideration should be given to the operation of a helpline which can contain recorded information and guidance to further steps when seeking information.

In general, the Committee heard widespread criticism of the information that is currently being provided to relevant persons when they begin to seek information and when they receive files, through subject access requests and so on. *Adoption Loss/Natural Parents Network of Ireland* stated during pre-legislative scrutiny that:

> "*a comprehensive information leaflet should be provided to all regarding the laws on adoption and what papers may be contained within the file. The present Tusla leaflet is a lesson in obfuscation"*[41].

Many birth/natural mothers reported confusion around the processes involved and cited unclear information and support being provided by relevant agencies. This criticism should be reflected on in the design of all communications around the workings of this Bill, including the information campaign. A nationwide leaflet campaign is proposed here, but this should be carefully designed in partnership with people who have first-hand experience of trying to access and understand this type of information.

The Committee heard that the Department undertook an international consultation on redress, engaging with advocacy groups representing survivors outside of Ireland, embassies and Irish diaspora groups, as well as conducting a widespread media campaign[42]. All those channels should be used for the information campaign for this Bill. The Committee would urge that it begins proactively prior to the Bill being enacted, in order to get the practical information to relevant people but also to do the important work of emotionally preparing individuals such as birth/natural mothers, for example, which the Committee heard from the likes of Barnardos is so important.

The Committee sees the information campaign as a significant opportunity to reframe the agencies and make people aware of the changes they have undergone and the new rights and services available to them under the Bill.

The Bill currently reads "*Following closure of the three-month window, a relevant person will be able to apply under the proposed legislation for their birth certificate"*[43]. The Committee understands that a period is necessary to give notice before information is released. Crucially though, while the Committee are calling for a longer information campaign, the point at which information will be released should remain at three months.

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[41] Adoption Loss/Natural Parents Network of Ireland, 19th October meeting.

[42] Minister O'Gorman, 29th September meeting.

[43] Composite Heads of *Birth Information and Tracing Bill 2021*, pg 13.

The Committee recommends that:

17. The obligation for individuals or organisations to transfer records to the agencies should also be a key part of the information campaign. The campaign should explicitly encourage the transfer of any records from religious organisations, medical practitioners, local authorities and so on, and should make clear the available channels for doing so.

18. Preparatory work on all of the provisions of the Bill, including the information campaign, should begin at the earliest point possible to avoid delays.

19. The information campaign should be designed with empathy and sensitivity and in itself be considered a safeguard in protecting privacy rights.

20. The stakeholder advisory or consultation group, if established, should consult on its design.

21. The information campaign should be heavily advertised to those abroad before enactment, particularly through advocacy groups who may need to start preparing natural/birth mothers or adopted people both practically and emotionally to engage with the Bill.

22. The duration of the information campaign should be increased to at least six months but the point at which information can be released to applicants should remain at three months post-commencement.

23. There should be collaboration with the relevant agencies and the Department on the design and implementation of the information campaign. Resources and information should be shared where possible and messaging should be consistent.

24. The information campaign should be accessible and use plain English and a range of media sources. Simple, non-digital routes to access the Bill's provisions need to be advertised and made available.

4. The need to provide unrestricted access to Information to all relevant parties

Reciprocal right to information: Birth/Natural parents' access to info

Many stakeholders argued that the Bill should include provisions for birth/natural parents to access information about their adopted children. The Committee heard compelling arguments for this from a human rights perspective, from organisations representing both adopted people and birth/natural parents, from those working in adoption services, including Barnardos. Members of the Committee agreed that the Bill should provide access to such information. *Adoption Loss/Natural Parents Network of Ireland* told the Committee that in its current form the Bill:

> "*is of very little relevance to the many thousands of mothers, fathers and other relatives who have phoned our helpline throughout the past decades*

> *or attended our support meetings seeking our advice and assistance in contacting their adult children."*[44].

They called for provisions to be inserted that entitle birth/natural parents to information about their children as well as adoption and birth certificates[45].

The Committee was informed by Minister O' Gorman that the reason the Bill does not provide a reciprocal right to information is because birth/natural parents can already access some records via Freedom of Information legislation, subject access requests and GDPR, and can rectify some incorrect information via the right to rectification, which is enshrined in the GDPR[46]*.* While clarity around those existing rights is important and appreciated, what the Committee heard during pre-legislative scrutiny is that it is not enough. Such routes are arduous and impersonal, especially given the age profile and potential trauma endured by birth/natural mothers. Recourse to those established routes of access misses the unique pain that birth/natural mothers frequently endured not knowing about their children and the established pattern of inaccuracies within their files.

At a meeting with birth/natural mothers the Committee heard of such inaccuracies being present in almost every witness's case. The Committee also received a number of written submissions detailing similar experiences. There is an understandable nervousness that inaccurate records could be accessed by their children, and which would misrepresent them and the story of how their child came to be adopted. Having been uniquely victimized and misrepresented they should be offered a unique solution to putting right the inaccuracies about their experiences, especially now that more information can be shared with their children. Many Members of the Committee were extremely moved by the testimony they heard during the engagement and are of the view that the Bill misses a step in not providing birth/natural mothers access to and input into their files. If this Bill is to be of more value to affected persons than the existing channels, it needs to provide better pathways to accessing information than those currently available. Considering what many birth/natural mothers have endured and the age profile of most, it is only fair to hope for this Bill to create a bespoke solution for them to access their full file and append a statement or similar. The Committee urges the Minister to hear and heed these needs, as set out during the meeting of 19th October.

Furthermore, many birth/natural mothers have an intense and reasonable need for information on what happened to their children while not in their care. As one birth/natural mother explained:

> "*I would love to know what happened to my son inside and outside the institution, for example, the strangers who frequented the nursery and the pharmaceutical companies' cluster groups. I wish to know legally what they did to my baby boy when they had him in the same institution as me and*

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[44] *Adoption Loss/Natural Parents Network of Ireland,* 19th October meeting.

[45] *Adoption Loss/Natural Parents Network of Ireland,* 19th October meeting.

[46] Minister O'Gorman, 28th September meeting.

> *when they took him from one institution to another before he went out to the people they chose to be his parents"*[47].

The Bill should include provisions for birth/natural parents to access care information about their child and provide input into their files in the form of corrections or an appended statement. This should take account of the circumstances within the relevant institutions at the time whereby mothers were routinely deprived of opportunities to provide care themselves.

Administrative Files

Campaigners and advocacy groups have long fought for those involved in adoption to have access to the administrative files pertaining to them. An individual's file may not provide the full picture of records relating to them. Crucial information could be found in minutes of meetings, logbooks, maintenance payments records, incident reports, visitor books and so on. The scheme does not provide a mechanism for affected people to access the administrative files of institutions, agencies and individuals and a full range of the records held by State bodies and private entities. The Committee heard evidence that this should be done, from both a human rights and legal perspective[48]. In Australia a mechanism to access such files was provided, as it was found that such files or peripheral records can be crucial evidence, sometimes providing the only recorded proof that a person was in 'care' at a given date, especially when other records may have been destroyed or lost[49].

While the Committee acknowledges that there are challenges in searching for and collating this information, it is important to do so. The centralised Records and Memorial Centre will be critical for overcoming this. Expertise in records will be required as will the funding to go behind it. However, given the age profile of many involved, access to such files must be urgently provided now. In their submission to the Committee CLANN advised that:

> "*It is a violation of the right to an effective investigation under European and international human rights law that so many of the State's previous inquiries into so-called 'historical' abuse have happened in secret, refusing survivors and adopted people access to the administrative records gathered and refusing them the opportunity to comment on these records. The Government must (1) create an immediate right of access to these administrative files for those affected by the historical institutional, adoption and 'care'-related system, wherever they may currently be"*[50].

Multiple stakeholders who took part in the pre-legislative scrutiny process stressed the importance of this Bill embodying a transitional justice approach. This was committed to, by the Department in 2017. One of the four key pillars within that framework is truth-telling. Access to all relevant files and records is crucial here. In January 2021 we heard that Minister O'Gorman had written to religious congregations and charities

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[47] Terri Harrison, 19th October meeting.

[48] CLANN Submission. IHREC, 13th July meeting.

[49] https://www.findandconnect.gov.au/resources/radgrants/records-significant-to-care-leavers/

[50] CLANN Submission.

about the provision of institutional records which would be beneficial to survivors[51]. This engagement needs to bear fruit for those seeking the truth.

Under GDPR and existing national legislation, adopted people and any "data subject" has access to birth certs as they are public documents and there is no legal prohibition on access. Any person can access their birth cert from the GRO. However, for adopted people, the barriers to access are administrative and practical challenges rather than legal. In many cases, adopted people do not have enough information about themselves to identify their own birth cert.

The Committee recommends that:

25. Procedures and protocols should be established for the passing on of information as it is discovered and eventually centralised.

26. Notwithstanding the provisions of GDPR, the Bill should be amended to provide for a reciprocal right for mothers to receive their full records, including information about their child and to have input into them in the form of an appended statement or similar.

27. Notwithstanding the provisions of GDPR, the Bill should be amended to provide statutory right of access to the administrative records, wherever they are held, of all adoption agencies, institutions, State bodies and others involved with forced family separation for natural/birth mothers, survivors, adopted people and others placed in 'care'.

28. Ample resources need to be provided for professionals such as archivists or genealogists to assess and compile all of these files and this work should start as soon as possible.

29. Religious organisations involved must provide relevant files as a matter of urgency.

Birth Fathers

The Committee heard suggestions that birth/natural mothers could provide information on the adult adopted people' birth/natural father and that a section could be added to the new registration form to facilitate this, even in the event that birth mothers are registering a 'no-contact' preference[52]. *Adoption Loss/Natural Parents Network of Ireland* argued for provisions to be made for the entry of the birth/natural father's name onto the Register of Births so that fully informative Birth Certificates can be issued to adopted people[53].

Other witnesses raised concerns that at present Head 16 states that a person "who is, or *who believes himself or herself* to be a birth parent" may apply to have an entry made in the Contact Preference Register, and where they register 'no contact' the

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[51] https://www.gov.ie/en/speech/3ee97-statement-of-roderic-ogorman-td-report-of-commission-of-investigation-into-mother-and-baby-homes-and-certain-related-matters-seanad-eireann-19-january/

[52] AAI 15th June meeting

[53] NPN 19th October meeting

adopted person must attend an information session. This is troubling, as that means anyone who claims to be a birth father can effectively cause a delay on someone obtaining their information, despite their fatherhood being potentially unsubstantiated. This possibility should be removed and some verification process should be in place.

Various stakeholders also brought the issue of fathers' names and other details, such as ethnicity, being falsely recorded in institutional files and on birth certs, often making it difficult and sometimes impossible for individuals to find their families and ethnic identities[54]. They argued that where fathers have subsequently been found, and paternity proven, the State should provide a bespoke system for the rectification of records, including having the accurate names of fathers registered on birth certificates. In these cases, the costs of doing so should be covered by the State.

The Committee heard overwhelming support for the provision of information to relatives of deceased relevant persons and for more information to be made available about siblings. IHREC and ICCL cautioned that if relatives are completely prohibited from accessing such information the Bill may breach international human rights laws and the European Convention on Human Rights and asked that this would be reconsidered[55]. The European Court of Human Rights (ECtHR) has found that the relationship between a person and their deceased relative can fall under the right to respect for family and private life (Article 8)[56]. The UN Convention on the Rights of the Child also provides extensive rights in this regard.

Multiple other stakeholders such as the AAI, CLANN, the Adoption Rights Alliance, Barnardos, ICCL and the Special Rapporteur for Child Protection, for example, expressed their support for such information to be made available[57]. The Committee heard from the DPC and other expert witnesses that when an individual is deceased GDPR explicitly does not apply[58]. The Committee also heard that information on whom a person is related to is that person's information as well as being the information of his or her siblings[59].

Adopted people and birth/natural parents who engaged with the Committee were also critical of this gap in the Bill, with the Adoption Rights Alliance telling the Committee that given the circumstances behind Ireland's forced and closed adoption system, they are shocked there is no provision for accessing a deceased relative's information, nor any information to be made available about siblings, beyond their gender and age.

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[54] See for example Mixed Race Irish submission.

[55] IHREC and ICCL submissions.

[56] ECHR, Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence, 2020.

[57] See transcript 15 June meeting.

[58] DPC 13TH July meeting. Fred Logue and Simon McGarr 2nd November meeting.

[59] See discussion during meeting of 29th June, for example.

The Committee recommends that:

30. The Bill should grant birth/natural parents and immediate relatives of the deceased with the same rights of access to information as adopted people, including access to their file and administrative files pertaining to them.

31. The Bill must provide all affected people, including siblings and relatives of the deceased, with access to the processes set out in the Bill's provisions.

Illegal Adoptions

The Committee heard from *In it together - Who Am I* on gaps within the Bill in dealing with those affected by illegal adoption or incorrect birth registrations as it is also referred. It was highlighted that the Bill neglects to provide for corrections on the adoption register[60]. *In it together - Who Am I* appealed for DNA testing to be included, funded by the state and to allow for the amendment of records following results, describing the use of DNA as "*critical in both verifying the information held in files and vital in proving identity*" and stating that "*without DNA, the Act is of no use to us*"[61]. They called for qualified genealogists to be made available to help resolve identities. Furthermore, they called for second generation and post-1970 corrections to be provided for. If the Bill does not include provisions for second generation corrections, then there will be a continuation of false certification as the false information is carried forward by each new generation. The group warned that careful protocols and monitoring around the correction of records at the General Register Office and the issuing of new certificates of identity will be required. *In it together - Who Am I* estimate that if marriage and death records are included, close to 500,000 false records are held at the General Register Office and cautioned that:

> "*There is nothing in the current Bill to allow the members of this group to access their family data, even when their ancestors are deceased, nor to rectify those false entries. This is leading to a continuation of false certification as the false information is carried forward by each new generation'*[62].

One submission the Committee received stated:

> "*Where an adult, wishes to correct an illegal birth certificate this process needs to be facilitated. The current cumbersome and expensive manner through the circuit court is wholly inadequate. It seems somewhat obscene that correcting an illegal error has such a high financial cost – solicitors/ barrister, Circuit court and so on. It could be viewed from entirely another point of view: has not the state the responsibility to ensure that legal documents issued by the state are indeed that, legal*?"[63].

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[60] Joan McDermott, 19th October meeting.
[61] Chris Wallace 19th October meeting.
[62] Chris Wallace 19th October meeting.
[63] Rosa Meehan submission.

Multiple stakeholders representing adopted people, birth/natural mothers, academics and advocates cautioned that very many more people than those with St. Patrick's Guild-style false birth certs do fall somewhere in the realm of illegal adoptions in the sense that records around their birth or adoption records were forged or falsified, it was put to the Committee that mothers were misled and coerced or denied the chance to give informed consent. On this basis the Committee heard calls for a public inquiry into illegal adoptions.

A number of stakeholders pointed out that while the Bill deals with cases where the identity of the parent is incorrect in the birth registration, it does not deal with situations where the date of birth is incorrect[64]. The Special Rapporteur for Child protection told the Committee that there is evidence that is one of the things that was done in some cases to impede efforts at tracing[65].

The Committee recommends that:

32. DNA testing should be offered in certain limited or exceptional circumstances. The cost of this should be borne or subsidised by the State.

33. The scope of the Bill and the key definitions contained in it, including 'relevant person' be widened to allow for the children of those affected to access the services and information under the Bill.

34. A bespoke system for the rectification of all records, including names and dates of births and corrections should be provided for within the Bill at no cost to the individual.

35. It should be clarified in any ministerial regulation under Head 32 that the child of an affected person who is deceased should be able to have records rectified.

Age limit

The Committee heard very strong calls for more access to information to be provided to young people, with IHREC, Aitheantas, ICCL and others recommending that the Bill be amended in this regard. Other EU states, including Germany, Denmark, Belgium, Italy, and Sweden already make provisions for children[66]. The Special Rapporteur for Child Protection cautioned that:

> "*The issue of a minimum age for access to records will be applicable to future adoptions. The minimum age before someone can seek to access records is proposed to be 16. International human rights law is very clear in providing that the right to identity is not a right which crystalises upon*

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[64] See for example ICCL's submission.

[65] Mr. Conor O'Mahony, Special Rapporteur For Child Protection, 15th June meeting.

[66] IHREC, 13th July meeting. For more on the international picture see the following by Aitheantas Adoptee Voices - EPRS on Adoptee Rights .

> *entry to adulthood. The right to identity is a right of children as children. For that reason, setting a minimum age of 16 is inconsistent"*[67].

Mr. O'Mahony recommended that records should be available to parents on behalf of children up to the age of 12 and directly to the child from the age of 12 on. IHREC suggested a maturity test could be employed. The AAI underlined the need for information to be made available and provided in a child-centred and informal manner and told the Committee they intend to work with the Ombudsman for Children's office to develop appropriate child-focused approaches for this cohort[68]. Such forward thinking and collaboration is welcome. Barnardos told the Committee about the benefits of more open adoption which has been established as best-practice nowadays[69]. Research from Aitheantas situates Ireland as an outlier internationally in terms of providing identity information to children[70]. It is recognised that children are data subjects for the purpose of the GDPR also. Recent work published by the DPC focused on children as data subjects, at any age. The DPC considers that a child may exercise these rights at any time, if they have the capacity to do so and it is in their best interests[71]. Considering all of this, the Bill needs to be amended to reflect children's rights to information and best practices in this regard.

The Committee recommends that:

36. In line with the Special Rapporteur on Child Protection's recommendation, the Bill should ensure that birth and early life information is available to an adopted child's parents on behalf of the child at any point after birth, and directly to the child from the age of 12.

37. Consideration should be given to additional supports for children receiving information, up to the age of 16.

From abroad

Both the Council of Irish Adoption Agencies and the AAI made the case that children in Ireland who were adopted from abroad should be included in some of the Bill's provisions, with the AAI stating that:

> "*many of the children who were adopted from abroad are now at the age where they want to know about their origins. I think the Department is amenable. While we do not have any records in relation to them, we feel that they should be offered similar counselling and that the Adoption Authority of Ireland, as the central authority, could issue a letter of*

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[67] Mr. Conor O'Mahony, special rapporteur for child protection 15th June meeting.

[68] AAI, 15th June meeting.

[69] Barnardos, 29th June meeting.

[70] Aitheantas: Adoptee Voices - EPRS on Adoptee Rights

[71] See IHREC on this in meeting of 13th July and Fundamentals for a Child-Oriented Approach to Data Processing.

> *introduction to the central authority where they wish to find their information. I do not think that they should be excluded from this legislation"*[72].

The Committee recommends that:

38. Consideration should be given to including children in Ireland adopted from abroad in the Bill, especially in terms of access to counselling.

Post 1970 – Head 29

Many stakeholders who engaged with the Committee wondered why those whose entry in the Register of Births was made after the 31st of December 1970 are excluded and called for this temporal limitation to be deleted from the definition of a relevant person[73]. Barnardos, who have provided support to adults whose births were incorrectly registered past the date of 31 December 1970, were also in favor of extending out that date of eligibility[74]. *In it Together – Who am I?* warned that a cut-off date for births of 31 December 1970 creates the potential for even more family trauma with potential multiple identities in use.

The Committee recommends that:

39. The definition of "affected persons" should be expanded on to coincide with either (a) the closure of the last home or (b) the date that all files were handed over to the AAI and Tusla or other relevant body.

List of institutions too limited

As discussed previously in relation to the problematic definition of care information, the limited list of institutions contained in Schedule 1 is concerning. This was raised by many stakeholders. The basis for it is unclear. It was brought to the Committee's attention that this will adversely affect particularly vulnerable groups including those born in private hospitals such as St. Patrick's Infant Hospital in Blackrock[75] and some of the rural institutions that mixed race infants typically experienced[76]. Five institutions currently excluded were brought to the Committee's attention by The Association of Mixed Race Irish, including:

- St Brigid's Industrial School for Girls, Loughrea, Co. Galway
- Benada Abbey Industrial School for Girls, Ballymote, Co. Sligo
- St Joseph's Industrial School for Girls (High Park), Whitehall, Drumcondra, Dublin 9

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[72] AAI, 15th June meeting.
[73] CLANN and Aitheantas, for example.
[74] Barnardos, 29th June meeting.
[75] Adoption Rights Alliance, 29th June meeting.
[76] The Association of Mixed Race Irish submission.

- St Francis Xavier's Industrial School for Girls and Junior, Ballaghadereen Co Roscommon
- St Joseph's Industrial School for Girls and Junior Boys, Clifden, Co Galway

As long as this limited list of eligible institutions contained in Schedule 1 is maintained the Bill does not provide unconditional or unfettered access to information and birth certificates as it claims to do. As recommended in the section on care information, it must be removed or greatly expanded.

5. GDPR: Barriers and Interpretation

As mentioned in the introduction, State institutions and agencies have recently been accused of interpreting GDPR in a conservative manner, deeming mixed information as third party data, rather than mixed data[77]. This tendency has been challenged and criticised during pre-legislative scrutiny of this Bill but also generally regarding its application to survivors of Mother and Baby Homes. There have been significant legal developments, at both national and EU level, that favour an interpretation of GDPR which facilitates individuals seeking information about themselves[78]. The Data Protection Commission (DPC) underlined the need for "*absolute clarity regarding the rules and thresholds*" during pre-legislative scrutiny[79].

In the FAQ Document published with the Bill, the Department credits GDPR with enabling the Bill's provisions, stating: "*the policy and legal issues which presented themselves in the previous attempt to legislate in this very difficult area have been re-analysed in the light of the recent full implementation and development of GDPR. GDPR has evolved since its recent inception and has provided a policy and legal pathway to recalibrate the conflicting legal rights at play and to resolve them in a constitutionally satisfactory manner*[80]." For reference, that FAQ document, the Data protection's article 23 Guidance and a brief guide to the main Articles of GDPR discussed here are available as links in Appendix 7.

Many witnesses and submissions cautioned that the Bill creates exemptions to the operation of GDPR, that are neither necessary nor proportionate, such as in Heads 2, 3, 5, 6, 7-11,13, 38, 39 and 40. During the Committee's public meetings on the Bill, there have been significant deliberations as to what the parts of the Bill that deal with GDPR actually mean. It can be argued that the Bill is restricting GDPR to justify the non-release of information *or* that the Bill is restricting GDPR to facilitate the release of information. That confusion has been unhelpful and has risked generating mistrust around the purported intentions of those drafting the Bill. However, there is consensus around the need to clarify the precise meaning of these crucial Heads. When concerns about Head 40 were raised with Minister O'Gorman during pre-legislative scrutiny he

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[77] This tendency was discussed at many meetings, such as that on 29th June, 13th July and 2nd November.

[78] *Nowak v Data Protection Commissioner of Ireland* is a good example. This case, and others are detailed in the submissions from IHREC and CLANN.

[79] Data Protection Commission, 13th July meeting.

[80] FAQ document available here: https://www.gov.ie/ga/preasraitis/14c5c-minister-ogorman-publishes-proposed-birth-information-and-tracing-legislation/

offered assurances that any restrictions to GDPR will be set out very clearly in the redrafted version and will have the aim of ensuring that adopted people will be able to get full access to all information in every case.

It is critical that these sections are expanded on and made much clearer for the following reasons:

- for the benefit of those making applications for information under the Bill.
- for the benefit of those working in agencies under its remit.
- to make the Bill GDPR compliant.
- to bring it into line with recent CJEU rulings.
- in order to adhere to the European Data Protection Board's Guidelines.
- in order to adhere to Ireland's Data Protection Commission's Guidance.

The Committee heard two differing views from the experts engaged to advise specifically on GDPR issues in the Bill. On the one hand, the DPC advised that they are cautiously optimistic that the finalised Bill will be GDPR compliant, although they cannot say for sure until it is published. The DPC views the legislation as necessary to remedy the uncertainty and lack of clarity that currently exists around GDPR. The DPC told the Committee that the Bill could align with EU GDPR law, so long as any Article 23 exemptions are carefully explained, and that the Department are currently working to remedy concerns the DPC had raised in relation the controversial Head 40, which they expect will be a very different Head when the final Bill is published. On guidance for the agencies currently involved in processing information requests, the DPC said that Ministers can use SI's or codes of conduct, but it is preferable that these instructions are included in primary legislation so that processing is standardised. On the mandatory information session and other safeguards aimed at balance within the Bill, the DPC said they see the need for balance as stemming from Article 15.4, GDPR, and these measures as attempts to account for Article 15.4, but that it is not their place to comment on whether the choice of instruments is correct.

On the other hand, Fred Logue and Simon McGarr offered a very different view of the Bill's GDPR issues. They put it to the Committee that elements of the Bill contravene GDPR, that individuals already have rights of access to the information the Bill deals with and that the State has been denying those rights unlawfully to date, including by misinterpreting mixed data[81]. They said that the Bill provides greater restrictions on the release of information than would be permitted under GDPR, and that there is no additional benefit in providing for additional statutory restrictions on the existing GDPR right to information. This position aligned extensively with other submissions and testimony the Committee received from both survivor groups and academic or legal experts[82]. Mr. McGarr and Mr. Logue reminded the Committee that one of the foundational principles of EU law is that it takes primacy over national law, including constitutional law. All public authorities have a duty to adopt EU law, the IOT ruling does not change that, and even supreme court rulings are superseded by EU law on

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[81] See meeting of 2nd November.

[82] For example, see those from CLANN and IHREC.

these issues. Mr. McGarr and Mr. Logue cited extensive recent legal rulings at EU level to support this position.

Mr. McGarr suggested that what is required is good administrative guidance through a Ministerial direction note or similar to instruct relevant authorities on how to meet the existing rights individuals already have under GDPR. Mr. Logue believed that the Bill is needed because GDPR is being misinterpreted and guidance is needed to prevent defaulting to the conservative approach of 'give as little as possible'. Both were of the view that the Bill starts from the wrong place, in that it may suggest that it provides people with new rights that in fact they already have under GDPR. Like the DPC, Mr. Logue favoured the positioning of guidelines within the Bill itself.

Some of the issues flagged by witnesses in relation to GDPR include:

- deceased persons no longer enjoy GDPR rights, therefore that data can be given to relevant living people.
- GDPR itself already defines personal data as "any information relating to an identified or identifiable natural person ('data subject')[83], the definitions in the Bill should align with that.
- anything inscribing into national law a restriction on the Article 15 GDPR right of access to personal data, without demonstrating in law the necessity or proportionality of that restriction is not legal under GDPR and this applies to the mandatory information session.
- currently under GDPR information must be released within one month.
- the fee in Head 3 contravenes the principles of GDPR.
- the phrase mixed data does not exist in the GDPR itself and where data relates to two people it is personal data to both of them and should be released. This was clarified by the ECJ and is different to documents containing information belonging to two different people that is not of relevance to both of them.
- the attempt to restrict rights to compensation in Head 38 and 39 may be unlawful.
- it is not permissible to limit the definition of personal data more narrowly than it is defined in the GDPR, which the Bill currently does.
- there is legally no restriction on who can ask who for data under GDPR.
- the shortcomings in the operations of the Data Protection Commission, which relate to this legislation, must be addressed.

Key agencies within this area, such as Tusla, Barnardos, the Irish Council of adoption authorities and AAI expressed hope that the Bill reframes GDPR issues in a way that will provide them with strong procedural and legal footing to disclose more information than was historically possible. Whether this Bill is viewed as a reframing of rights already in existence, or a provision for a more robust legal basis not previously in being, a clear statutory provision for a more rights-based approach to the release of information will be key to rebuilding trust in the relevant Departments and agencies.

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[83] For the GDPR see: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN#d1e1384-1-1

The difficulty the Committee faces making recommendations in the face of these diverging positions is further compounded by two things. The Committee has not had sight of nor a synopsis of either the Attorney General's advice about balance, the IOT case and safeguards within the Bill, nor the Data Protection Impact Assessment of the Department, which many experts believe should be published. The Committee were none-the-less very heartened to receive the following assurances from Minister O'Gorman:

> *"The reason we propose to restrict certain parts of GDPR under this legislation is to guarantee full and unrestricted right of access to the adopted person. If we do not provide some restriction of GDPR, a parent could object to the release of his or her information. This, in turn, could create a situation whereby an official in the AAI, Tusla, or my Department is required to undertake a balancing approach, which may result in the information being released. However, the policy behind this legislation is to provide for the release of information in every circumstance to the adopted person, and a requirement of that will be that certain GDPR rights of parents, such as the right to object and the right to the restriction of processing, will be limited"*[84].

At this point the Committee must take it in good faith that this legislation is required for the full realisation of identity rights and that it interacts with GDPR to restrict the right of restriction, in order for everybody to get the information they desire.

The Committee recommends that:

40. The provisions of the Bill must be proofed to ensure that adopted persons are provided with a clear means of accessing their rights to information in compliance with GDPR requirements.

41. The Committee further recommends that in order to ensure an effective right of access to GDPR rights, and in line with previous recommendations, the mandatory information session should be removed from the legislation as it may pose an obstacle to the exercise of information rights; and it should be replaced with an alternative appropriate safeguard such as sending of registered post.

42. Head 40 should be significantly revised as in its current form it likely contravenes the European Data Protection Board Guidelines on restrictions under Article 23, the Data Protection Commission's article 23 Guidance and recent legal rulings in this area.

43. The DPIA be published as soon as possible, in line with best practice.

44. A significant publicity and information campaign on what rights everybody will have should be commissioned and assumptions should not be made regarding people's knowledge on GDPR or their rights.

45. Agencies and Departments working to deliver the provisions of the Bill must be given clear instruction through legislation about what information can be released.

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[84] Minister O'Gorman, 28th September meeting.

46. The concerns about the operation of the DPC which relate to this legislation, as expressed to the Committee in observations by witnesses, need to be addressed; and the Committee refers in this regard to the Report of the Justice Committee on this topic.

6. Careful Resourcing and Protocols Needed

Resources

The fact that both the AAI and Tusla have struggled to meet demand and minimise wait times for service users is well known. During pre-legislative scrutiny, both agencies stressed the importance of resources being provided prior to enactment, as both organisations are already significantly stretched. A major justification for progressing this Bill and providing access to records in situ, as opposed to immediately creating a new centralized agency, is to save time for people accessing their records[85]. If this benefit is to be realised the warnings of both agencies as regards resources must be heard and heeded:

> "*The authority notes that it will require significant additional resources in the area of records and information management, archivist resources, administration and social work in order to provide an excellent and timely service from day one of enactment of the legislation. The authority is aware that very large numbers of persons will wish to apply for their birth certificates, early life and medical information in addition to those who may wish to register and be supported in a no-contact' preference. There will be a grave impact on the provision of timely services if resources are not put in place in advance of enactment. Due to limited resources and challenges in recruiting social workers, the authority currently has a two-year-plus waiting list for services'*[86]. (AAI)

> "*The Department will need to lead a process, with the Adoption Authority and Tusla, to scope out not just the resources required to give effect to what is intended in the legislation, but the resources to do so in a timely way that does not result in lengthy waiting periods. At the end of the first quarter of this year, we had approximately 800 people waiting for an information and tracing service. In terms of response times, they will wait somewhere between 13 and 23 or 24 months. Separately, we have had approximately 432 information requests this year under FOI or subject access requests, all of which have to be responded to within a statutory timeframe'*[87]. (Tusla)

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[85] Minister O'Gorman told the Committee during a meeting on 28th September: "On the question of resources and a new agency, my focus has been on the delivery and accessibility of all of this information as quickly as possible. My fear about creating a brand new agency is that we know how long it took to establish the HSE and Tusla. It would act as a delay to people accessing their information now."

[86] AAI, 15th June meeting.

[87] Tusla, 15th June meeting.

The Minister stated during the meeting of 28th September that resources including personnel from multi-disciplinary backgrounds will be provided. The Committee are aware that there has been ongoing communications and strategic planning among the Department and relevant agencies. This is extremely welcome and should be intensified as appropriate as the legislation progresses.

The Committee recommends that:

47. Communications and strategic planning involving the Department and the relevant agencies should be ongoing and intensified as appropriate.

48. Reviews of the legislation should include an option to draw down more resources, including funding, depending on uptake and costs in delivering on the provisions of the Bill.

49. Adequate resources in terms of budgets and inter-disciplinary personnel must be provided to the relevant agencies and Departments in advance of the Bill being commenced.

50. All religious orders or other bodies involved in running the institutions should contribute significantly to the costs of investigating and compensating for all issues relating to the Mother and Baby Homes or County Homes Institutions, including but not limited to issues contained in the Mother and Baby Homes Commission of Investigation Report, including actions taken under this Bill. The Minister should make urgent efforts to see this occur.

Procedures and Protocols for AAI & Tusla

Careful procedures and protocols will be required for the relevant agencies to work effectively together. Who is doing what will need to be carefully worked out, with sensitive, timely and accurate provision of records being of the utmost importance. As the Committee heard from both agencies:

> "*Clarity will be required on who exactly is responsible for the release of adopted person birth certificates. In most cases, the adoption files held by the authority contain copies of original birth certificates. The proposed legislation also suggests that Tusla could fulfil this role. Given that the authority usually provides Tusla with a copy of the certificate, it would seem counter-intuitive to expect Tusla to provide this service as it would have to approach the authority on behalf of the adopted person, thereby prolonging the process'*[88]. (AAI)
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> "*Tusla envisages that strong working protocols will be required with the Adoption Authority of Ireland, AAI, as both are authorised to provide a tracing service. The complexities attaching to both the AAI and Tusla*

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[88] AAI at meting of 15th June 2021.

> *holding information together, with both providing a tracing service, must not be underestimated'*[89]. (Tusla)

The Committee recommends that:

51. Carefully defined roles for relevant agencies are established to avoid duplication and unnecessary delays. Staff should be consulted with in terms of how these will work best on the ground.

52. Training of the relevant staff should begin as soon as possible.

53. Guidelines on how the various services will operate under the Bill should be carefully designed with international best practice standards and review periods built in. Where applicable expert guidance should be employed, for example from medical professionals for the guidelines on the release of medical information.

54. While the independence of agencies is respected, clear Statutory Instruments/Regulations or Departmental memo/circulars/guidelines should be created to ensure the administration of data controller responsibilities in accordance with the objectives of this Bill. This is consistent with the DPC recommendation for a code of conduct or guidelines.

55. Statutory timeframes for compliance with information requests should be set out.

New Agency

Many stakeholders highlighted mistrust of, and negative interactions with, Tusla and the AAI among adopted people and parents. There was much discussion on the potential for establishing one new agency during meetings on the Bill. The Committee heard no significant opposition to this idea in principle. The mistrust and overwhelmingly negative body of experience[90] in dealing with the current agencies is a powerful barrier to participation for many people seeking to access information under the Bill. Both adopted people and birth/natural mothers made this clear during pre-legislative scrutiny, explaining the need for, and potential benefits of, a new agency with a fresh start[91].

Beyond general mistrust, the Committee also heard concerns about bias and the constitutional rights of fair procedure, with Aitheantas commenting:

> "*There is an issue with regard to the constitutional rights of fair procedure, especially where a case has been judged previously, in the context of getting a fair hearing. The idea of bias in a case is an aspect of constitutional justice. If somebody has already sat on a decision to give a*

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[89] Tusla at meting of 15th June 2021.

[90] See Aitheantas report *Adoptee Voices* for survey data.

[91] See meeting of 29th June and *Adoption Loss/Natural Parents Network of Ireland* submission, which states "we have no confidence in most of the Adoption Agencies and cannot see any role for them in the services under discussion."

> *person information or decided to withhold information that person's identity, there is a constitutional issue as regards allowing them to revisit the matter. Allowing agencies to revisit issues in respect of which they have already sat, gives rise to issues of either actual bias or perception of bias. The latter can open up major issues going forward. Apart from the trust issue and the legalities of judicial review, everything will end up being judicially reviewed all over the place. It is, therefore, a very unsatisfactory purpose. There is a really strong case for a new agency on the basis of the legal and constitutional issues involved'*[92].

The Committee also heard concerns that the tracing service may be hampered and slowed by the location of records across several places and agencies. Furthermore, there are logical arguments for having centralised records, which would ideally be digitised to maximise searchability[93]. This would save time and resources. None-the less, there was acknowledgement that this process would require time that many involved do not have. The Bill will create immediate access to records where they are currently, which overall, is to be welcomed. The Minister informed the Committee that whilst that is how this Bill will operate initially, work is ongoing on the centralised agency in the form of a records and memorial centre:

> "*It would be a venue where we could bring together institutional archives of industrial schools, mother and baby institutions and Magdalen laundries so they can be accessed by researchers and individuals looking for access to their own files and used to explain this very dark part of our country's history*[94]."

This will go some way towards centralising critical information. As Tusla's Bernard Gloster told the Committee, the right of access is being realised now and the best practice in terms of storing records is being addressed after[95].

The Committee also heard reassurances from Minister O'Gorman that he is confident that with "*additional resources, a legal structure that facilitates the organisation to release information and a changed culture*" Tusla will now be able to build trust and positive engagement[96]. Given all of the evidence the Committee heard, it is of the view that a new agency should be established, but that in the meantime, the current agencies can deliver the services under the Bill and should begin that work immediately once the legislation is commenced. The agencies should be accessible in all of their work under the Bill's provisions. Many of those involved will not be IT literate and this needs to be properly managed. Designated advocates or support persons should be available, with options to meet people face-to-face to get help

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[92] Aitheantas, 5th October meeting.

[93] This practical consideration was highlighted by Mr. Conor O'Mahony, Special Rapporteur for Child Protection during the meeting of 15th June.

[94] Minister O'Gorman 28th Sepember 2021 meeting.

[95] Tusla at meting of 15th June 2021.

[96] Minister O'Gorman 28th Sepember 2021 meeting.

accessing services under the Bill. This should be available at a location of their choosing to allay privacy concerns.

The Committee recommends that:

56. In recognition of the dissatisfaction expressed by witnesses in their experience of Tusla and the AAI to date the Minister should ensure that improvements in resourcing, culture and legal structure are realised within the relevant agencies and review progress in these areas in the medium term, with special emphasis on how the services under this Bill are being provided.

57. The Minister should establish a new agency to carry out the functions assigned under the Bill to Tusla and the AAI. This new agency should be established as soon as possible and no later than two years from the coming into effect of the Act, and the process of its establishment should not delay the coming into effect of the Act itself. In the interim, while the statutory functions remain with Tusla and the AAI, an independent oversight mechanism such as an Ombudsperson process, should be put in place to ensure additional support and reassurance for adopted persons and others accessing services.

58. The creation of the records and memorial centre should be urgently progressed, and its services urgently made available to individuals looking for access to their own files and those seeking information under this Bill. There needs to be a clear commitment in the legislation to the safeguarding and centralisation of all relevant records in the National Memorial and Records Centre.

Tracing

The Committee heard several suggestions for how the tracing service could best operate and recommendations on how the current proposed system can be strengthened. Many groups who came before the Committee advocated for the use of independent genealogists, with some favoring the option for grants to procure their services privately. DNA testing has proved extremely effective for identifying relatives via the private market. Data suggests that it is one of the most common routes currently used by adopted people in Ireland to find out more about their identity[97]. As survivors of institutions seek answers about their past and grow older and second and third generations seek information, demand for these services will increase even further. The Minister informed the Committee he may involve genealogists to assist with the tracing issue[98]. The Committee are of the view that the involvement of DNA testing and genealogists is imperative. If the Bill does not account for this very popular and efficient body of expertise, it risks being out-of-date from the start.

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[97] See Aitheantas report *Adoptee Voices* for survey data.

[98] Minister O'Gorman 28th September 2021 meeting

As with other parts of the Bill, the Committee heard concerns about the use of *may* instead of *shall* in relation to tracing[99]. This should be rectified in these sections, as the use of *may* provides too much discretion or optionality for the agencies involved in decisions around tracing. For example, here are some extracts from the Bill where this needs to be rectified:

Head 12 (2):

"This service may be provided where an application is received…"

Head 14 (1) & (2):

"1. The Minister may issue guidelines for the purpose of providing practical guidance to the Agency or the Authority in respect of the performance by either body of its functions under this Part.

2. Guidelines under this section may include the procedures to be followed for the purpose of locating a person *under Head 12 [Agency and Authority to provide a tracing service]."*

Another issue that came up frequently during discussions around tracing is that not providing birth/natural parents or relatives of the deceased with the same rights of access to information as adopted people, and only referring them to tracing solutions, creates a difficulty where the information is incorrect. Whereas, if birth/natural parents or relatives of the deceased were provided with more access to information, including their file, misinformation and inaccuracies within the service could be significantly reduced. This would minimise tracing based on inaccurate data.

The Committee recommends that:

59. DNA testing should be offered in certain limited or exceptional circumstances.

60. International best-practice should be investigated and implemented, with reviews built in to consider how tracing systems can be continually improved.

61. The tracing service must be adequately resourced and timeframes for delivery minimised as much as possible.

62. The tracing service should be advertised internationally.

63. The tracing services should be provided at no cost to the applicant or relevant person.

Contact Preference Register

Aitheantas posed a question as regards Head 18 which warrants consideration, namely, what happens where information is lodged but the relevant person it applies to is not registered in the Contact Preference Register, shall the Authority inform such

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[99] Aitheantas, for example, flagged this in their submission to the Committee.

person of the lodgement of information?[100] This especially warrants consideration in relation to medical information, due to its bearing on quality of life, treatment options and emergency situations. One woman adopted to America told the Committee in her submission about the implications of not being able to uncover her birth history, ancestry and medical information:

> "*It has been a fruitless endeavor and a painful loss of my heritage and health information. I have had two different types of cancer. When the physician's ask about my genetic history, I can only say, 'I don't know'*"[101].

The Council of Irish Adoption Agencies made two very thoughtful observations on the new register. First, they underlined that it should be borne in mind that many people who wish to register may not be technologically competent and will not be able to rely on the support of other family members or friends to assist them. This observation is true of the whole suite of services to be offered under the Bill. It must therefore provide non-digital routes to accessing its services, such as by telephone, face-to-face appointments where assistance is available, through the post or a solicitor and so on, with the best channels to be worked out by the Department and agencies. These channels will need to be clearly sign-posted during the information campaign. Second, they pointed out that further clarification will be needed regarding the circumstances and requirements for registering a 'no contact' preference and its lifespan, suggesting that a review should be built into the register to offer support and check if the person has had a change of mind and if there are other relatives who want contact, they need to be considered and included. The information campaign should make clear that the new contact preference register works both ways.

The Committee recommends that:

64. Information on supports available should be provided to the relevant persons potentially connecting through the register or trace service.

Release of Medical Information

In general, the testimony and submissions the Committee received were strongly in favor of providing medical information to relevant persons. The Committee received written submissions from surviving birth/natural mothers, below is a quote from one:

> "*Every person should have access to their birth records even if they are adopted. It is a serious infringement of a persons' human rights to deny them the knowledge of their medical records from birth that would give their*

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[100] Aitheantas submission.

[101] Submission from Margaret Mary Digan (Verriker), adopted to America in 1953.

> *medical advisors an insight into medical information or any past family medical history”*[102]*.*

The nervousness among some around the release of medical information seems to stem mainly from the shame imposed by some in the past, the upsetting circumstances of some pregnancies and mistrust about the accuracy of medical records on files. Many mothers who engaged with the Committee had fears about the prejudices those who made medical notes about them harbored and the fact that records were often purposefully inaccurate. Two mothers made a submission together that captured these difficulties:

> “*We as mothers, are deeply concerned about any release of medical information contained in our files relating to time spent in the institutions and birth information. Some mothers especially have very sensitive information relating to causes of pregnancy such as rape and incest. If this information was in their files was released without their consent to an adopted person or their relatives, the distress and harm that would be done is immeasurable. Also, comments were often made in files by religious "nurses" attending births which may be inappropriate in today’s modern norms. These notes do not reflect actual facts”*[103].

This understandable unease was again evident when the Committee held a public session specifically with birth/natural mothers on October 19th. As recommended in other sections, if birth/natural mothers were to be given access to their file and administrative files relating to them this would reduce fears around inaccuracies. This points to a serious need for clear communications about what medical information may or may not be released. Information that has no clear medical relevance will not be released and reassurances need to be provided around that. Those that heard the Data Protection Commission’s assurances on November 2nd that the legislation will provide only medically or genetically relevant information to relevant persons, with all other medical information being subject to the full protections of GDPR[104], will hopefully feel relieved of such worries. These fears also point to a dire need to allow birth/natural mothers to have access to and input into their file, in the form of an appended note or similar, which can go some way towards correcting any mistruths therein. That need is explored further in Key Issue four.

The point of relevance will need to be carefully considered and clearly defined. This was underlined in testimony and submissions from key agencies working in the area, including the AAI and the Council of Irish Adoption Agencies, who see the release of medical information for adopted persons and relatives as very positive but emphasise that protocols will be needed on how exactly this will operate.

The Committee heard concerns about the process for release of medical information to applicants as outlined in Head 10 in particular concerns that the requirement that

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[102] Extract from submission by Ms. Sheila O’Byrne.

[103] Extract from submission by Ms. Alice McEvoy and Ms. Joan McDermott.

[104] See transcript Nov 2nd

this information be provided through a medical practitioner in certain circumstances, rather than directly to the applicant, appears paternalistic and would constitute a restriction on the right of access to personal data under GDPR and in line with other legal rights. The Committee is particularly concerned about the phrase 'substantial public interest' as this could be interpreted very widely to constitute a real restriction on rights of access to information.

Within the Bill, “Medical information” is defined to include the person’s own medical history and the medical information of a birth parent or relative insofar as it is relevant to a person and is necessary for reasons of substantial public interest. The Committee is concerned to ensure that this definition is compatible with GDPR and covers as wide a category of relevant health or medical information as possible. Furthermore, a relevant body will not provide the name or specific blood relationship of the relative the information pertains to. Combined, these limits should go a long way towards alleviating some of the concerns the Committee heard. Messaging on this needs to be clear. Somehow, birth/natural mothers need to be reassured that sensitive information relating to causes of pregnancy such as rape and incest will not be released.

The Committee heard concerns from various stakeholders about Head 10, parts four and five, which read:

> “(4) The Authority may issue guidelines in respect of the type of medical information that relates to a birth parent or birth relative and that is, or is likely to be, of relevance to the maintenance or management of the health of a relevant person, the release of which is necessary for reasons of substantial public interest.
>
> (5) In preparing guidelines the Authority may consult with such persons, including persons with expertise in the area of hereditary medical conditions, as it considers appropriate.”

There are three areas of concern here. First, the word ‘may’. There must be guidelines. Second, there must be deep and thoughtful consultation with medical professionals, especially those with expertise in hereditary medical conditions. When the AAI came before the Committee, they were unequivocal about their need for expert medical advice[105] yet the Bill says they will be the ones who may issue the guidelines. Third, it is concerning that at present, it seems many of the operational aspects of the Bill may be left to the formulation of guidelines. It is important that these issues are well-defined so that there is absolute clarity regarding the rules and thresholds[106].

Another concern the Committee has in relation to medical information is the lack of clarity around vaccine trials. Substantial trials, often lacking consent, are documented in the Mother and Baby Homes Commission of Investigation Report[107]. Vaccinations are mentioned in the draft Bill, under the definition of ‘early life information’ which includes “*information on any medical treatments, procedures or vaccinations provided*

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[105] AAI 15th June.

[106] See for example Aitheantas on this in 29th June meeting and the DPC in the 13th July.

[107] Chapter 34: Vaccine Trials

to the person[108]". It is not clear from this definition whether information about vaccination trials will definitely be provided. The Committee recommends that information about vaccine trials be provided to individuals in every instance where that occurred and that there is greater clarity in the Bill that that will be the case.

The Committee recommends that:

65. Sensitivity must be shown in relation to birth/natural mothers fears about intimate medical information, or inaccurate information being released. There needs to be careful and clear communication, possibly through the information campaign or support services, which explains the limits of what can be released, which will go some way towards providing reassurance.

66. The Committee recommends that greater clarity be provided in Head 10 around the right of access to medical information for an applicant. First, it should be clear that the applicant must be provided with the information. Second, it should only be provided to the applicant's medical practitioner with their consent and as well as being provided directly to the applicant. Thirdly, the phrase 'substantial public interest' should be deleted, or a clear explanation given for its inclusion as it may pose a real restriction on the right of access to personal information.

67. The point of relevance will need to be carefully considered and clearly defined through extensive engagement with medical professionals, especially those with expertise in hereditary medical conditions.

68. Clear guidelines will need to be made available to the bodies involved in sharing and releasing medical information. These should be designed with medical professionals, especially those with expertise in hereditary medical conditions.

69. Consideration should be given to providing an enhanced medical screening programme for adopted people and their children.

70. In every case where an individual was involved in a vaccine trial they should receive that information. This should be made clear in the Bill.

Accuracy of Records

As explored in the sections on reciprocal information and wider access to files, fears about inaccuracies in files are deep seated. From what the Committee heard during pre-legislative scrutiny these fears are justified. Birth/natural mothers and other witnesses told the Committee of records labelling girls as 'difficult', mis-recordings of birth dates or ages, medical history and attempts to communicate on the part of both adoptive and birth/natural parents, inaccuracies and lies on files and forgery of signatures on documents[109]. One birth/natural mother told the Committee:

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[108] Page 6, Birth Information and Tracing Bill 2021.

[109] See 19th October meeting for discussion of experiences of these issues.

> "*We do not know how many children were told lies that their mother did this or did not want them. We do not know how many children grew up thinking their parents or mother did not want them… it is just unbelievable that anyone would actually believe that somebody like a nun could actually write what happened to a person or about what way they were in those circumstances. As I said, the big thing that gets me more than anything are half-truths. They can just put something in that is a half-truth and, therefore, it can be made somewhat believable"*[110].

As recommended in section four, providing for birth/natural mothers to receive their full records and to have input into them in the form of an appended statement or similar could help rectify inaccurate records.

Tusla and others also expressed concerns about inaccurate records, expectations among individuals and the potential for disappointment[111]. One solution to this, put forward by most stakeholders, is to broaden the definition of 'relevant record', which will allow for further items to be included and cross-checked, combined with the engagement of qualified archivists who can process the records. This is recommended in section one. Inaccurate information could have a knock-on effect on tracing, so investing in resources to compile and authenticate records is a must. There is an important role for genealogists here too, and DNA where it can be used appropriately to authenticate records.

The Committee recommends that:

71. Qualified archivists and genealogists should be engaged to compile and verify these.

72. The legislation should include the establishment of a verification and cross-referencing system so that records held by differing agencies/bodies when brought together can be compared for accuracy and variances noted with a view to rectification.

Enforcement Mechanisms, Appeals, Adjudication

The need for accountability, enforcement mechanisms, routes of appeal and detail on the adjudication of those appeals is missing from the Bill. This was discussed generally and also raised in reference to some specific Heads. Head 13, for example, which enables Tusla or the AAI to make a request to a third party for information needed to assist in the process of tracing. This is lacking an enforcement mechanism, which should be rectified[112].

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[110] Ms. Alice Coughlan, 19th October meeting.

[111] Tusla,15th June meeting.

[112] Highlighted by Conor O'Mahony, Special Rapporteur for Child Protection at 15th June meeting.

Another concern raised by witnesses is the blanket indemnification in Head 39 regarding the accuracy of information provided to applicants. There should be some provision for accountability, checks and balances and quality control as regards the provision of information. This is especially important where the agencies themselves may be responsible for the creation of inaccurate records.

Head 31(5) on the amendment or cancellation of entries in the Register of Births refers to a right of appeal but does not specify the process[113]. This should be rectified.

The Committee recommends that:

73. The Committee is concerned about the lack of provision in the Bill for an oversight process or accessible appeal mechanism and recommends that the Bill provides for recourse to an Ombudsperson or other process to ensure oversight of the application process, support for adopted persons and others in using the Bill's provisions, and an accessible and effective appeal mechanism.

74. The Committee recommends that the explanatory note at Head 38 is expanded so that it clarifies the meaning of the Head.

75. A review of the blanket indemnity should be considered to see if the objective can be achieved while still allowing for some attribution of liability.

Review Period

The Committee recommends that:

76. A review period needs to be built into the Bill which creates an explicit requirement to review the operation of the legislation after a set period of time, no greater than 18 months after commencement. Any such review should include the meaningful participation of relevant persons, groups representing survivors and families, persons with human rights and data protection expertise, and other relevant persons or groups. The review should be laid before the Houses of the Oireachtas.

7. Support and Counselling for All

The Committee heard unanimous support for extending the Bills provision for counselling to all affected parties, including birth parents and relevant persons, regardless of their contact preference. Sufficient resources should be allocated to ensure that appropriate, and timely counselling is provided when requested. There also needs to be easily accessible information on how to access these services and what to expect in the sessions provided.

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[113] Aitheantas submission.

Birth/natural mothers and advocacy groups pointed towards the trans-generational trauma that forms part of the legacy of adoptions in Ireland and studies that have shown that the care or lack of, that mothers receive while pregnant impacts their babies and their future families and relationships, warning that "trans-generational trauma is very real, and we are only a little island, it is going to affect our society and culture for years to come"[114].

Tusla acknowledged during its engagement with the Committee that the agency does not currently have the resources to meet these needs, but showed a real desire to get resources in place and provide appropriate counselling to everyone who needs it as early as possible, with innovative arrangements if required, stating:

> "*It is important that, as part of the public awareness campaign, we have access to counselling for birth parents. As early as possible would be ideal to allow birth parents to consider their choice and make a more informed choice following counselling"*[115].
>
> "*During the work on illegal birth registrations done by Ms. Mugan's team for the scoping report that was published some time ago, we dealt with some 150 people and the team set up a very specific support service, including counselling with Barnardos. Tusla funded the counselling but it was provided from other expertise within the State. All the feedback shows that it was a very good option. Something like that could be expanded across the country to provide it for everyone who identifies a need for it"*[116].

There is also a need for providing people with a choice of supports, from information provision to counselling to specialised interventions in cases of complex trauma. There should be an option to be seen by an accredited psychologist. This was well illustrated in the meeting with birth/natural mothers on 19th October. Barnardos have significant experience in the provision of counselling to birth/natural parents and adopted people. Their insight into the varying needs of different people affected by these issues was really valuable to the Committee. Persons should be offered a range of counselling services and not confined to accessing counselling through Tusla or any single agency.

The AAI and Tusla are both aware of the shortage of social workers across the board, but keen that this is overcome. They told the Committee that a range of supports must be made available, so that they can offer people a very broad choice in the types of support they receive and the way they receive such support, counselling and guidance[117].

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[114] Terri Harrison, 19th October meeting.

[115] Tusla, 15th June meeting.

[116] Tusla, 15th June meeting.

[117] Tusla and AAI 15th June meeting

The Committee recommends that:

77. Sufficient resources should be allocated to ensure that appropriate, and timely counselling is provided when requested.

78. There also needs to be easily accessible information on how to access these services and what to expect in the sessions provided.

79. The provision of counselling and other similar supports should be extended to all affected parties regardless of contact preferences, including all birth parents, adopted people, and the children of those affected. This recommendation acknowledges the trans-generational trauma that forms part of the legacy of adoptions in Ireland.

80. A range of supports should be offered to affected persons, to include provision of information, counselling, and interventions to help address experiences of trauma.

81. A range of experts, including accredited psychologists, should be available to provide these services, depending on the individual's needs.

82. Innovative arrangements for the delivery of these services should be considered that take account of the resources and experience of the agencies involved, with collaboration across agencies encouraged.

83. A range of counselling providers should be offered to enable individuals to choose the provider which best suits their personal needs and preferences.

RECOMMENDATIONS

1. Plain text should be employed in so far as it is possible, both in the Bill and in any accompanying documentation, particularly given the sensitive context of the legislation.

2. The feedback the Committee received in this respect should be incorporated into the Bill and into the design of the information campaign and other communications around the Bill's provisions.

3. Consideration should be given to the establishment of a stakeholder advisory or consultation group. This group could provide input into the design of communications, the information campaign and the review of the legislation.

4. The use of the word *may* instead of *shall* should be addressed throughout the Bill, in order to strengthen its provisions.

5. The aim must be to have terms that are respectful to adopted people, birth/natural parents and adoptive parents.

6. While the terms used are not without consequence for those affected, the impasse in this regard should in no way delay the progression of the Bill.

7. The drafters of the Bill should be cognisant of the impact particular terms could have relative to other legislation and should strive to future-proof the provisions of the Bill in this regard.

8. The list of institutions in Schedule 1 should be expanded to incorporate the full list of known institutions, agencies and individuals that were involved with forced family separation in Ireland, without limiting the bill solely to these bodies. There should also be a mechanism for the Minister to designate additional entities as being subject to the Bill, via statutory instrument.

9. The definition of care information should be amended to include a broader category of care, including, but not limited to, care provided by a birth parent or guardian of the child, a relative of the child who is providing care other than as part of a nursed out, boarded out, or foster care arrangement, or a person who is, or becomes, the adoptive parent of the child. There is an intersection between care and personal data. Any regulation or guidelines for use by the relevant bodies must interpret information, items and all personal data through the lens of this intersection.

10. The definition of 'incorrect birth registration' in Head 3 should be amended to say 'falsely or incorrectly recorded'.

11. The term 'illegal or unlawful adoption' should be included in the Explanatory memorandum to the Bill, so as to clarify that the procedures for rectifying the register apply to both those whose particulars were deliberately falsified and those whose particulars were incorrectly recorded.

12. The scope and extent of care information provided should be increased.

13. An immediate Ministerial direction note/ memo/instruction/circular should be issued to the agencies and Departments currently involved in releasing data, that rectifies existing misinterpretation of mixed data in line with existing GDPR rights. The Minister should ensure that all agencies/departments receive adequate training in relation the GDPR obligations.

14. All information is part of an adopted person's history and heritage and must be included in the records provided to them, including:

- information relevant to all treatment, including medical records and possible abuse
- administrative files
- the widest interpretation of Early Life Information
- rights of access to "'birth relative information' to 'care information' and 'early life information' and 'medical information'", under GDPR.

15. Head 34 should be accompanied by an explanatory note requiring that it be interpreted and applied in as inclusive a manner as possible.

16. The mandatory information session should be removed from the legislation. An alternative appropriate safeguard should instead be provided for, such as the sending of correspondence by registered post.

17. The obligation for individuals or organisations to transfer records to the agencies should also be a key part of the information campaign. The campaign should explicitly encourage the transfer of any records from religious organisations, medical practitioners, local authorities and so on, and should make clear the available channels for doing so.

18. Preparatory work on all of the provisions of the Bill, including the information campaign, should begin at the earliest point possible to avoid delays.

19. The information campaign should be designed with empathy and sensitivity and in itself be considered a safeguard in protecting privacy rights.

20. The stakeholder advisory or consultation group, if established, should consult on its design.

21. The information campaign should be heavily advertised to those abroad before enactment, particularly through advocacy groups who may need to start preparing natural/birth mothers or adopted people both practically and emotionally to engage with the Bill.

22. The duration of the information campaign should be increased to at least six months but the point at which information can be released to applicants should remain at three months post-commencement.

23. There should be collaboration with the relevant agencies and the Department on the design and implementation of the information campaign. Resources and information should be shared where possible and messaging should be consistent.

24. The information campaign should be accessible and use plain English and a range of media sources. Simple, non-digital routes to access the Bill's provisions need to be advertised and made available.

25. Procedures and protocols should be established for the passing on of information as it is discovered and eventually centralised.

26. Notwithstanding the provisions of GDPR, the Bill should be amended to provide for a reciprocal right for mothers to receive their full records, including information about their child and to have input into them in the form of an appended statement or similar.

27. Notwithstanding the provisions of GDPR, the Bill should be amended to provide statutory right of access to the administrative records, wherever they are held, of all adoption agencies, institutions, State bodies and others involved with forced family separation for natural/birth mothers, survivors, adopted people and others placed in 'care'.

28. Ample resources need to be provided for professionals such as archivists or genealogists to assess and compile all of these files and this work should start as soon as possible.

29. Religious organisations involved must provide relevant files as a matter of urgency.

30. The Bill should grant birth/natural parents and immediate relatives of the deceased with the same rights of access to information as adopted people, including access to their file and administrative files pertaining to them.

31. The Bill must provide all affected people, including siblings and relatives of the deceased, with access to the processes set out in the Bill's provisions.

32. DNA testing should be offered in certain limited or exceptional circumstances. The cost of this should be borne or subsidised by the State.

33. The scope of the Bill and the key definitions contained in it, including 'relevant person' be widened to allow for the children of those affected to access the services and information under the Bill.

34. A bespoke system for the rectification of all records, including names and dates of births and corrections should be provided for within the Bill at no cost to the individual.

35. It should be clarified in any ministerial regulation under Head 32 that the child of an affected person who is deceased should be able to have records rectified.

36. In line with the Special Rapporteur on Child Protection's recommendation, the Bill should ensure that birth and early life information is available to an adopted child's parents on behalf of the child at any point after birth, and directly to the child from the age of 12.

37. Consideration should be given to additional supports for children receiving information, up to the age of 16.

38. Consideration should be given to including children in Ireland adopted from abroad in the Bill, especially in terms of access to counselling.

39. The definition of “affected persons” should be expanded on to coincide with either (a) the closure of the last home or (b) the date that all files were handed over to the AAI and Tusla or other relevant body.

40. The provisions of the Bill must be proofed to ensure that adopted persons are provided with a clear means of accessing their rights to information in compliance with GDPR requirements.

41. The Committee further recommends that in order to ensure an effective right of access to GDPR rights, and in line with previous recommendations, the mandatory information session should be removed from the legislation as it may pose an obstacle to the exercise of information rights; and it should be replaced with an alternative appropriate safeguard such as sending of registered post.

42. Head 40 should be significantly revised as in its current form it likely contravenes the European Data Protection Board Guidelines on restrictions under Article 23, the Data Protection Commission’s article 23 Guidance and recent legal rulings in this area.

43. The DPIA be published as soon as possible, in line with best practice.

44. A significant publicity and information campaign on what rights everybody will have should be commissioned and assumptions should not be made regarding people’s knowledge on GDPR or their rights.

45. Agencies and Departments working to deliver the provisions of the Bill must be given clear instruction through legislation about what information can be released.

46. The concerns about the operation of the DPC which relate to this legislation, as expressed to the Committee in observations by witnesses, need to be addressed; and the Committee refers in this regard to the Report of the Justice Committee on this topic.

47. Communications and strategic planning involving the Department and the relevant agencies should be ongoing and intensified as appropriate.

48. Reviews of the legislation should include an option to draw down more resources, including funding, depending on uptake and costs in delivering on the provisions of the Bill.

49. Adequate resources in terms of budgets and inter-disciplinary personnel must be provided to the relevant agencies and Departments in advance of the Bill being commenced.

50. All religious orders or other bodies involved in running the institutions should contribute significantly to the costs of investigating and compensating for all issues relating to the Mother and Baby Homes or County Homes Institutions, including but not limited to issues contained in the Mother and Baby Homes Commission of

Investigation Report, including actions taken under this Bill. The Minister should make urgent efforts to see this occur.

51. Carefully defined roles for relevant agencies are established to avoid duplication and unnecessary delays. Staff should be consulted with in terms of how these will work best on the ground.

52. Training of the relevant staff should begin as soon as possible.

53. Guidelines on how the various services will operate under the Bill should be carefully designed with international best practice standards and review periods built in. Where applicable expert guidance should be employed, for example from medical professionals for the guidelines on the release of medical information.

54. While the independence of agencies is respected, clear Statutory Instruments/Regulations or Departmental memo/circulars/guidelines should be created to ensure the administration of data controller responsibilities in accordance with the objectives of this Bill. This is consistent with the DPC recommendation for a code of conduct or guidelines.

55. Statutory timeframes for compliance with information requests should be set out.

56. In recognition of the dissatisfaction expressed by witnesses in their experience of Tusla and the AAI to date the Minister should ensure that improvements in resourcing, culture and legal structure are realised within the relevant agencies and review progress in these areas in the medium term, with special emphasis on how the services under this Bill are being provided.

57. The Minister should establish a new agency to carry out the functions assigned under the Bill to Tusla and the AAI. This new agency should be established as soon as possible and no later than two years from the coming into effect of the Act, and the process of its establishment should not delay the coming into effect of the Act itself. In the interim, while the statutory functions remain with Tusla and the AAI, an independent oversight mechanism such as an Ombudsperson process, should be put in place to ensure additional support and reassurance for adopted persons and others accessing services.

58. The creation of the records and memorial centre should be urgently progressed, and its services urgently made available to individuals looking for access to their own files and those seeking information under this Bill. There needs to be a clear commitment in the legislation to the safeguarding and centralisation of all relevant records in the National Memorial and Records Centre.

59. DNA testing should be offered in certain limited or exceptional circumstances.

60. International best-practice should be investigated and implemented, with reviews built in to consider how tracing systems can be continually improved.

61. The tracing service must be adequately resourced and timeframes for delivery minimised as much as possible.

62. The tracing service should be advertised internationally.

63. The tracing services should be provided at no cost to the applicant or relevant person.

64. Information on supports available should be provided to the relevant persons potentially connecting through the register or trace service.

65. Sensitivity must be shown in relation to birth/natural mothers fears about intimate medical information, or inaccurate information being released. There needs to be careful and clear communication, possibly through the information campaign or support services, which explains the limits of what can be released, which will go some way towards providing reassurance.

66. The Committee recommends that greater clarity be provided in Head 10 around the right of access to medical information for an applicant. First, it should be clear that the applicant must be provided with the information. Second, it should only be provided to the applicant’s medical practitioner with their consent and as well as being provided directly to the applicant. Thirdly, the phrase 'substantial public interest' should be deleted, or a clear explanation given for its inclusion as it may pose a real restriction on the right of access to personal information.

67. The point of relevance will need to be carefully considered and clearly defined through extensive engagement with medical professionals, especially those with expertise in hereditary medical conditions.

68. Clear guidelines will need to be made available to the bodies involved in sharing and releasing medical information. These should be designed with medical professionals, especially those with expertise in hereditary medical conditions.

69. Consideration should be given to providing an enhanced medical screening programme for adopted people and their children.

70. In every case where an individual was involved in a vaccine trial they should receive that information. This should be made clear in the Bill.

71. Qualified archivists and genealogists should be engaged to compile and verify these.

72. The legislation should include the establishment of a verification and cross-referencing system so that records held by differing agencies/bodies when brought together can be compared for accuracy and variances noted with a view to rectification.

73. The Committee is concerned about the lack of provision in the Bill for an oversight process or accessible appeal mechanism and recommends that the Bill provides for recourse to an Ombudsperson or other process to ensure oversight of the application process, support for adopted persons and others in using the Bill's provisions, and an accessible and effective appeal mechanism.

74. The Committee recommends that the explanatory note at Head 38 is expanded so that it clarifies the meaning of the Head.

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76. A review period needs to be built into the Bill which creates an explicit requirement to review the operation of the legislation after a set period of time, no greater than 18 months after commencement. Any such review should include the meaningful participation of relevant persons, groups representing survivors and families, persons with human rights and data protection expertise, and other relevant persons or groups. The review should be laid before the Houses of the Oireachtas.

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79. The provision of counselling and other similar supports should be extended to all affected parties regardless of contact preferences, including all birth parents, adopted people, and the children of those affected. This recommendation acknowledges the trans-generational trauma that forms part of the legacy of adoptions in Ireland.

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81. A range of experts, including accredited psychologists, should be available to provide these services, depending on the individual's needs.

82. Innovative arrangements for the delivery of these services should be considered that take account of the resources and experience of the agencies involved, with collaboration across agencies encouraged.

83. A range of counselling providers should be offered to enable individuals to choose the provider which best suits their personal needs and preferences.

APPENDIX 1 - ORDERS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,
(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
(iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(2) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/Seanad;

(3) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under DSO 125(1) and SSO 108(1); and

(4) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(a) a member of the Government or a Minister of State, or

(b) the principal office-holder of a State body within the responsibility of a Government Department or

(c) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

c. Powers of Committees (as derived from Standing Orders) [DSO 96; SSO 72]

Unless the Dáil/Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil/Seanad;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Joint Committee explaining the statutory instrument, or

(ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Joint Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Joint Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Joint Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Joint Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Joint Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Joint Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil/Seanad; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under DSO 120(4)(a)/SSO 107(4)(a).

APPENDIX 2 – LINKS TO MEETING TRANSCRIPTS

Meeting of 15 June 2021

Meeting of 29 June 2021

Meeting of 13 July 2021

Meeting of 28 September 2021

Meeting of 5 October 2021

Meeting of 19 October 2021

Meeting of 2 November 2021

APPENDIX 3 – LINKS TO SUBMISSIONS & OPENING STATEMENTS

Opening Statements

Tuesday 15th June 2021

TUSLA

- Mr Bernard Gloster

Adoption Authority of Ireland

- Ms Orlaith Traynor

Special Rapporteur on Child Protection

- Mr Conor O'Mahony

Tuesday 29th June 2021

Aitheantas- Adoption Rights Alliance

- Ms Maree Ryan- O'Brien

Barnardos

- Ms Suzanne Connolly

The Clann Project

- Ms Claire McGettrick

Adoption Rights Alliance

- Ms Susan Lohan

Tuesday 13th July 2021

Session Number 1 - 15:30 - 16:30

Data Protection Commission

- Mr Dale Sunderland

Session Number 2 – 16:30 – 17:30

The Irish Human Rights and Equality Commission

- Ms Sinead Gibney

Tuesday 28th September 2021

- Roderic O’Gorman, Minister for Children, Disability, Equality, Integration and Youth.

Tuesday 5th October 2021

Aitheantas

- Ms Maree Ryan- O’Brien

Tuesday 19th October 2021

Adoption Loss/Natural Parents Network Ireland

- Ms Muriel Thornton

The Collaborative Forum

- Ms Terri Harrison

Solas for Mothers

- Ms Alice McEvoy

In it together – Who am I?

- Ms Chris Wallace

Tuesday 02nd November 2021

McGarr Solicitors
- Mr Simon McGarr

FP Logue Solicitors
- Dr Fred Logue

Data Protection Commission

- Mr Dale Sunderland

Individual Submissions

Alice Carroll

Alice McEvoy and Joan McDermott

Alyson Sutcliffe, Lowe

Margaret Mary Digan (Verriker)

Rosa Meehan

Rosemary C Asador

Sheila O'Byrne

Terri Harrison

Group/Organisation submissions

Adoption Rights Alliance

Aitheantas - Adoptee Identity Rights

Clann Project

Council of Irish Adoption Agencies

In it together – Who am I?

Irish Human Rights and Equality Commission

The Association of Mixed Race Irish

The Irish Council for Civil Liberties

The Natural Parents Network of Ireland

APPENDIX 4 – UNITED NATIONS LETTER

The letter that issued to the Irish Government from a number of United Nations Rapporteurs flagging concerns in relation to Mother and Baby Home and related issues including this legislation can be found here.

APPENDIX 5 – DEPARTMENT FAQ DOCUMENT, DATA PROTECTION COMMISSION'S ARTICLE 23 GUIDANCE, AND INFORMATION ON THE GDPR

The Department's FAQ document published with the Bill is available here.

The Data Protection Commission’s Guidance on Limiting Data Subject Rights and the Application of Article 23 of the GDPR is available here.

Information about the GDPR is available here.

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