

Opening Statement
Mr. Bernard Gloster
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June 15th, 2021.

Chair and members of the committee. Thank you for the invitation to appear before you today. I am pleased to join with other stakeholders in this session, Ms. Orlaith Traynor, Chairperson of the Adoption Authority of Ireland (AAI) and Mr. Conor O' Mahony, Special Rapporteur. I am joined by my colleagues Ms. Siobhan Mughan and Mr. Cormac Quinlan who are the two most senior staff involved in the management of the Adoption services provided by the Child & Family Agency.

The pre-legislative scrutiny by this committee of the General Scheme of the Birth Information and Tracing Bill, 2021 ('The General Scheme') is an important stage of the intended provision in law for an adequate response to rights and needs of many. The Child & Family Agency (Tusla) as the statutory provider of adoption assessment, placement and tracing services welcomes the opportunity to place on record our observations on the General Scheme. I want to place be clear at the earliest opportunity that Tusla welcomes the proposed legislation which will finally address the right to identity.

Tusla has through its predecessor structures (HSE and Health Boards) and also significant changes in the landscape of former adoption societies, become a key custodian of substantial amounts of information, the access to which has been the subject of extensive debate for several years. I am acutely aware of the expressed hurt and distress of many in that debate, most notably adopted people, those with a false, illegal or incorrect birth registration and many who were nursed out, boarded out or placed in pre adoptive foster care. They along with others who were born in or resided in certain institutions (listed), have in many cases sought access to their identity and birth/early life information in what can be best described as a weak legal framework. Tusla in recent years was in the main the State agency which had to represent that complex legal position, resulting in many people not having access to their identity and all that flows from that. Notwithstanding the findings of the Mother and Baby Home Commission on this particular aspect, namely that any State agency would have been in the same position, I recognise that many people were left with hurt and a sense of being let down by the State in their search for answers to the most basic questions. To whatever extent any person attributes that hurt to their dealings with Tusla, I offer a sincere apology. Whether limited by law or any other circumstance it would never be our wish that any person would be left with such disappointment in their dealings with the Agency.

Given the limited legislative framework within which Tusla has had to function to date, we are pleased that the Minister has brought clarity in the form of this proposed new legislation.

I want to set out the response of Tusla to the General Scheme. I do so in nine observations recognising that as the legislation advances, we will have ongoing engagements with the Department of Children, Disability, Equality, Integration & Youth on detailed operational aspects of the various provisions.

1. The scheme is welcome in many aspects but specifically for dealing with the core issue of access to birth identity and significant personal information.
2. The Contact Preference Register makes good provision for the appropriate separation of the issues of information and contact, with good additional provisions for counselling supports to be provided. It would be a useful consideration to extend the provision of counselling to all people searching for their identity or early life information and who may identify such need for themselves. Such a need might arise for example on receiving that information or details regarding any expressed wish on the Contact Preference Register which is passed onto them. While supports are generally provided under Head 36 this would be more beneficial if included in the statutory duty.
3. The applicability of the provisions to people under 18 may suggest a particular need to focus on supports and duty of care to those young people as they access some information.
4. The statutory authority proposed to be conferred on Tusla for Tracing including if deemed necessary by the Minister in the public interest demonstrates the core value of the tracing service which has been evidenced many times over the years by Tusla but not always understood in the public domain. Tusla envisages that strong working protocols, will be required with AAI as both are authorised to provide a tracing service. The complexities attaching to both the AAI and Tusla holding information together with both providing a tracing service must not be underestimated.
5. The enabling of Tusla or the AAI to request information from other persons/bodies as in Head 13 is clear, however again strong and robust sharing protocols are viewed to be necessary in light of the challenges of recent years for all agencies on the complex subject matter of sharing information. This legislation will provide for GDPR compliant protocols and remove doubt.
6. The clarification of further use of the Database of the Mother & Baby Home Commission as set out in Head 35 is welcome and will remove several of the current limitations and uncertainties.
7. The clarifications of restrictions of rights and obligations under the provisions of GDPR and as set out in Head 40 of the General Scheme are helpful given the notable perceived conflict to date.
8. It is important that all people to whom these provisions relate understand the very variable nature of the records that are currently held. The quantity, quality and accuracy of some records is a concern and the Agency is mindful of the potential disappointment or error that may arise in some cases because of this.
9. Tusla recommends that a Department led process including the Agency and AAI is now undertaken to scope out the various types and complexities of demand that may arise on enactment. This scoping will need to result in a careful consideration of the resource dependencies and working arrangements necessary to ensure timely access to rights for all as set out. We are as an Agency conscious of the demand in information and tracing to date and the challenges still faced despite increased resource provision. While ultimately the provisions proposed will likely lead to some levelling off in demand or associated input required, the expertise in information management and counselling/social work will still need some consideration.

Tusla holds some 70,000 records prior to the receipt of the Mother & Baby Home Commission database. These records include adoption, boarded out, placed at nurse and other arrangements that were made for infants by many entities over the decades. Adoptions in Ireland since 1953 are some 44,862 (to 2019). It was in the early period of the 1960s that recorded adoptions were in the hundreds. From the mid-1960s to the mid-1980s the annual number of adoptions was consistently above 1,000. The numbers have steadily decreased to 79 in 2019.

The context of that 79 is vastly different to earlier decades with 51 being adoption by a stepparent, 21 being a conversion from long term foster care, one associated with extended family and six infants placed for adoption. For the majority of that 79, access to identity will not be an issue but this Bill is significant for the small number for whom it might be in the future. It is however likely that this Bill will be active and utilised for many years to come as the many among that 44,862 adoptions and others exercise their right to their identity. This is a very positive step in legislative reform.

It is the function of Tusla to support the people who will have an interest in this legislation at whatever time in the future that might arise. In conclusion I am happy to commit on behalf of the Agency to playing our part by ensuring that the intentions of Government in this Bill and the Oireachtas if passed into Law are fully honoured.

I am happy to offer any further assistance to the Committee as may be required.

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