



**PLEASE CHECK AGAINST DELIVERY**

Opening statement by Sinéad Gibney, Chief Commissioner of the Irish Human Rights and Equality Commission.

To be delivered to the Joint Committee on Equality, Disability, Integration and Youth on the Birth Information and Tracing Bill 2021

Tuesday, 13 July 2021

-----  
My thanks Chair for your invitation today. I'm joined by Commission Member Ray Murphy, and Maria Mullan of our Policy and Research team.

The Irish Human Rights and Equality Commission is Ireland's independent National Human Rights Institution and National Equality Body. Our Commission of 15 met in plenary earlier today, and approved our written recommendations to this Committee which will we send on.

This legislation engages significant rights issues including the right to identity, to privacy, to equality and non-discrimination, the right to health, to bodily, physical and mental integrity, to freedom of expression, the right to know, and the right to dignity.

While the Commission welcomes that the proposed legislation grants the right to access information in respect of birth and early life information, we raise recommendations on a number of issues, namely:

- The right of access to birth certificates and early life information
- 'No Contact' preference and counselling
- The child's access rights and,
- Access for relatives of deceased relevant persons

-----  
From the outset let me say, in my listening sessions with Mother and Baby Home survivors it was clearly stated that the right to truth is key. "Free and unfettered" access to their own personal information and records is essential for survivors.

To deny this could in itself be re-traumatising, particularly for older survivors, and so the burden on you as legislators to shape this pivotal law effectively is a heavy one.

It's also important for the State approach to recognise that while this legislation must vindicate rights to truth denied to so many for so long, there is a corollary that there are birth mothers who have been living under a cloud, as inquiries, debates and now legislation happens, fearful that undisclosed information would be revealed, and so it is important to be mindful of all.

The IO'T Supreme Court case has been repeatedly cited as the reason why adoptees could not be provided with unfettered access to their birth and early life information. While the Supreme Court set out that the birth parent enjoys a right to privacy and confidentiality, it followed that such a right was not absolute. The courts have sought legislation from these houses to support the balancing of rights on access to information.

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

People seeking access to the records at the centre of this bill have already suffered delays, often of many years, and so this legislation should mark a sea-change in approach. The Commission therefore recommends that statutory timeframes for compliance with information requests should be set out, and also recommends that this legislation establishes a system for the management of records across agencies and locations that ensures that significant delays are avoided.

The requirement for an information session where there is no contact preference appears to cater to the privacy rights of natural parents. However, it's questionable the extent to which this requirement achieves this aim, as the information will ultimately be provided and the theoretical contact will be possible once the information session is held.

We believe that this requirement would present a further obstacle to affected persons in accessing long-sought information, and where the relevant person does not want to undergo an information session it represents a complete barrier.

We recommend that this requirement is removed from the legislation. Or if retained, it should be transformed into no-obligation counselling, support and information services, tailored to the needs and wishes of the individual, and co-designed with them.

-----  
Children have material questions about their birth and background. However Head 3(1) provides that only a relevant person aged 16 and over will have the right of access to their birth certificate. Heads 5, 6 and 7 similarly restrict access to birth information; early life information; care information; birth and medical information to those over 16.

We believe this approach to be inconsistent with the right to identity under the Children's Rights Convention, as well as a child's right to their identity under the European Convention on Human Rights and case law of the European Court of Human Rights. You may be interested to know that other EU States including Germany, Denmark, Belgium, Italy and Sweden do make provision for children albeit with different conditions as we set out in our paper.

-----  
Finally, we also recommend that a proposed restriction of access to materials to 'relevant persons' should be reconsidered, considering that this 'relevant person' could be deceased but their birth relatives could be seeking access, including for medical reasons.

Thank you again, and we're now happy to take your questions.

**ENDS**