



**Clann Project Submission to the
Committee on Children, Disability, Equality and Integration
on the General Scheme of the
Birth Information and Tracing Bill 2021**

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About the Clann Project

The Clann Project is a collaboration between [Adoption Rights Alliance](#) (ARA), [Justice for Magdalenes Research](#) (JFMR) and Hogan Lovells International LLP). Since 2015 the project has been gathering [witness statements](#) of those affected by unlawful and forced family separation in Ireland. The Clann Project spoke to 164 people and assisted 82 witnesses to provide statements to the Mother and Baby Homes Commission of Investigation (MBHCOI) and published a [public group report](#) and recommendations in October 2018.

About Adoption Rights Alliance

ARA was established in 2009. The organisation advocates for equal human and civil rights for those affected by the Irish adoption system. ARA provides information, advocacy and practical advice to adopted people and natural parents, including an online peer support group which currently has over 2,500 members.

About Justice for Magdalenes Research

Justice for Magdalenes (now JFMR) was established in 2003. The organisation provides information and support to the women who spent time in the Magdalene Laundries and their families. JFMR educates the general public by researching the Magdalene Laundries and similar institutions.

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INTRODUCTION

The Clann Project welcomes the opportunity to make this submission to the Joint Committee on Children, Disability, Equality and Integration on the General Scheme of the Birth Information and Tracing Bill 2021 (hereafter **the Scheme**). We welcome Minister Roderic O’Gorman’s objective to ‘unlock access to crucial information on [adopted people’s] origins; information which has been beyond their reach for too many years’. We also welcome the Minister’s aim to take a new approach to legislating in this area. **However, we have identified a number of major issues in the Bill that must be addressed.**

We are committed to working with Minister O’Gorman to improve the legislation, and in this submission we offer alternatives to the particular type of Information Session that this Scheme proposes along with other amendments to the Scheme. Our analysis is offered in the spirit of ensuring that this legislation represents a true measure of justice for people affected by family separation abuses in Ireland.

This submission is an initial analysis of the Scheme; it is focused primarily on highlighting the main issues in order to inform the Committee in its deliberations on the Bill. We also attach our joint submission of 26th March 2021 on the General Data Protection Regulation (GDPR) to the Justice Committee (see Appendix 1). The first part of this submission sets out our principal concerns, while the second part outlines the amendments that need to be reflected in the Bill when it is published.

What the Legislation Should Contain and the Principles Guiding this Critique

1. Unconditional access to birth certificates and ‘birth information’ for everyone, regardless of natural parents’ contact preferences. **Nobody can be left behind.**
2. A clear statutory right of access to one’s own ‘care’ or adoption file (including as a mother) and to records concerning a family member who died in ‘care’ or adoption.
3. **The file, the whole file and nothing but the file:** No discrimination when accessing personal data, and a strong presumption towards openness, in light of

the fact that the personal data in question relates to injustices to which mothers, adopted people, others placed in 'care' and families were subjected.

4. A 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 mothers, survivors, adopted people and others placed in 'care'.
5. A clear commitment in the legislation to the safeguarding and centralisation of all relevant records in the National Memorial and Records Centre.
6. An enhanced tracing service, run by independent genealogists, to include a robust complaints mechanism and training for social workers and others involved in the service.
7. The new statutory based Contact Preference Register should include all registrations from the National Adoption Contact Preference Register (NACPR), and the contact preference options from the NACPR should be reinstated.
8. The right to know you are adopted.
9. Repeal of 'gagging orders'.
10. Information rights for adopted children and their natural parents.

PART ONE: A CRITICAL READING OF THE BILL

1. BIRTH CERTIFICATES AND BIRTH INFORMATION

Part 2 of the Scheme provides for access to birth certificates, while Head 7 of Part 3 sets out the process to apply for 'birth information'. We welcome the fact that adopted people aged sixteen and upwards can apply for access their birth certificates, however, we strongly object to the Information Session as currently proposed (see Section 2). In Section 2.7 (and our amendments in Part 2), we have set out two alternative approaches: a) an Information Session, whether in-person or electronically,

for everyone receiving their birth certificates and records, or b) an Information Booklet containing the same information as set out in our alternative Information Session, and the choice to opt for an Information Session if they so wish. Both the Information Session and the Information Booklet should be framed as a service to assist adopted people with understanding their records, to inform them of their natural parents' contact preferences and to provide information about other services.

1.1 Birth Certificates

This Scheme **does not** provide unrestricted access to birth certificates and 'birth information' for *all* adopted people and other affected individuals. The Department's [FAQs](#) claim that 'access to birth certificates and birth information...*is not restricted*, and individuals will...have an *unqualified right* to the information in question' (page 9). The Minister's [press release](#) also states that this 'groundbreaking legislation will provide a *full and clear right* of access...to birth certificates, birth and early life information'. However, this is patently not the case.

Section 8 of Head 3 states that when the General Register Office or a relevant body receives an application for a birth certificate, the GRO or the relevant body will ask the Adoption Authority of Ireland (AAI) for information regarding any contact preference registered by a natural parent named on the birth certificate. It is proposed under Section 9 that the AAI will then inform the GRO of any preferences, and where a 'no contact' preference has been lodged, the applicant will have to attend an Information Session, the details of which are set out under Section 13 of the Scheme (see our Section 2 below). Section 12 stipulates that the 'General Register Office...*shall not provide the birth certificate to the applicant until the notification [concerning the completion of an Information Session] has been received*'. As the Department's [FAQs](#) explain: 'Where a no contact preference is lodged, the applicant for the information *must* attend an Information Session...after which the information will be provided to them' (page 11). The Information Session is clearly compulsory for birth certificate applicants whose natural parents have registered a 'no contact' preference. It is proposed that at this session, a social worker will explain to the adopted person their natural parents' privacy rights and the importance of respecting the 'no contact' preference. As we explain in Section 2, this is highly derogatory and wholly

unnecessary. **Moreover, this does not constitute ‘unrestricted’ access to birth certificates.**

1.2 Birth information

Head 7 concerns ‘birth information’, which the Scheme defines as ‘the categories of information contained in the register of births maintained under section 13 (1)(a) of the *Civil Registration Act 2004* but excluding the Personal Public Service Number of a birth parent’. Section 13 (1)(a) of the *Civil Registration Act 2004* refers to the *Register of Births*, and therefore, ‘birth information’ concerns information contained on the publicly available *Register of Births*. The explanatory notes under Head 7 state that: ‘The release of birth information contained on files held by a statutory body is fundamentally important in the case of people for whom no adoption certificate may exist, such as those who may have been the subject of an illegal birth registration or those who may have been boarded out and lived under the boarded out family name without knowledge of their original birth name.’

We welcome the fact that the Minister has included people who were illegally adopted or boarded out in this legislation. However, the Scheme discriminates against individuals in this situation in the same way as other adopted people because Head 7 also provides for a mandatory Information Session for people whose natural parents have registered a ‘no contact’ preference. As explained above, it is proposed that at this session, a social worker will explain to the adopted person their natural parents’ privacy rights and the importance of respecting the ‘no contact’ preference. **This is offensive and unnecessary, and it does not constitute ‘unrestricted’ access to ‘birth information’.**

1.3 Birth certificates and ‘birth information’ are public records

Birth registrations have been public records in Ireland since 1864. Since that time, it has always been possible for any member of the public to view the *Register of Births* and obtain copies of birth certificates from the information contained therein, which reveals the identity of any woman who has given birth, including those women whose children were adopted. It is also crucial to understand that an adopted person’s birth certificate contains considerably less information than that of a non-adopted person. For example, an adopted person’s birth certificate generally does not have the name

of the father, the father's occupation or the parents' address. The examples provided below illustrate the contrast between the two.

Superintendent Registrar's District		Registrar's District								
Leak		No 3								
BIRTHS Registered in the District of <u>No 3</u> in the Union of <u>Leak</u> in the County of <u>City of Cork</u>										
No. (1.)	Date and Place of Birth. (2.)	Name (if any). (3.)	Sex. (4.)	Name and Surname and Dwelling-place of Father. (5.)	Name and Surname and Maiden Surname of Mother. (6.)	Rank or Profession of Father. (7.)	Signature, Qualification, and Residence of Informant. (8.)	When Registered. (9.)	Signature of Registrar. (10.)	Original Name if other Registrar of Birth and Date. (11.)
37	18 96 April Drogheda	Mary	F	James Drogheda	Mary Drogheda	Labourer	James Drogheda Father	April Drogheda	[Signature]	
	18 96 April Drogheda			James Drogheda	Mary Drogheda	Labourer	James Drogheda Father	April Drogheda	[Signature]	
	18 96 April Drogheda			James Drogheda	Mary Drogheda	Labourer	James Drogheda Father	April Drogheda	[Signature]	

Sample of a non-adopted person's birth certificate

Breitheanna Cláróid i gCeantar Births Registered in the District of				i gCeantar an Chláraitheora Maoirseachta do In the Superintendent Registrar's District of						
Rathfriland				Drogheda						
Uimh. No.	Data agus Ionad Breithe Date and place of Birth	Ainm Name (if any)	Geis Sex	Ainm, Sloinne agus Ionad Chónaithe an Athar Name and Surname and Dwelling-place of father	Ainm agus sloinne na Máthar agus a Máirne rannpháirtí Name and Surname and Maiden Surname of mother	Céim nó Gairm Ibcatha an Athar Rank or Profession of father	Síniú, Cállocht agus Ionad Chónaithe an Fhaisnéisora Signature, Qualifications and Residence of Informant	An Data a Cláróadh When Registered	Síniú an Chláraitheora Signature of Registrar	Ainm Baiste má tugadh é tar éis Clárú na Breithe agus an Data Baisteach Baptismal Name, if added after Registrar's of Birth and Date
409	19 73 [Redacted] Hospital	[Redacted]	Female	[Redacted]	[Redacted]	[Redacted]	Margaret [Redacted] Hospital	Feart 19 73	[Signature]	

Sample of an adopted person's birth certificate

1.4 Many adopted people can already access their birth certificates

Since the early-1990s adopted people have been navigating the civil registration system to obtain their birth certificates themselves, and no harm has been caused to natural family members. ARA provides [information and resources](#) to assist adopted people and others affected by adoption in locating their birth certificates and obtaining adoption records.¹ The methodology was first developed by AdoptionIreland, ARA's predecessor organisation, and ARA has since expanded our guides to incorporate data protection rights and genetic genealogy resources. Over the past thirty years, countless adopted people have made use of these methods to obtain their birth certificates. In some cases, the adopted person has contacted their natural mother

¹ See: <http://adoption.ie/records/>

and/or family members, in some cases they have not. We are not aware of any case where harm has come to a natural parent or a natural family member because of an adopted person getting their birth certificate.

1.5 Birth certificates and birth information: Equality for all

Adopted people are unanimous that nobody should be left behind. In November 2019, stakeholders firmly rejected Minister Zappone's 'Option Two', which contained 'a presumption in favour' of the release of information to adopted people.² In our discussions regarding Minister Zappone's proposals, the then 2,200 members of ARA's peer support group made clear they were unwilling to leave any of their fellow adopted people behind.³ Current discussions in our peer support group (which now has 2,500 members) reflect similar views. **Adopted people have been waiting decades for this legislation, but they are not willing to accept any conditions being placed on their ability to access a document that is theirs and which is already publicly available.**

2. INFORMATION SESSION

Heads 3 and 7 impose a mandatory Information Session on adopted people (and adopted people only) who have applied for their birth certificate or 'birth information' but whose natural parents have registered a 'no contact' preference. The Information Session, in the format currently proposed, is clearly discriminatory and in breach of the equal rights and freedoms of adopted people.

2.1 What is the purpose of the Information Session?

According to the Scheme, the proposed Information Session will be 'held between the relevant person and a social worker' employed by TUSLA or the AAI and its purpose is to 'inform the applicant of:

- (a) the birth parent's contact preference,
- (b) the birth parent's privacy rights, and
- (c) the importance of respecting their contact preferences.'

² See Appendix 1: A Brief History of Adoption Information Legislation in Ireland

³ Membership is vetted to ensure only those with a genuine connection to adoption in or from Ireland are admitted. See: <https://www.facebook.com/groups/adoptionrightsalliance>

The Government has not shown that it is necessary to communicate a natural parent's 'no contact' preference to an adopted person via an Information Session with a social worker which focuses on the three above-mentioned topics.

The Minister's [follow up documentation](#) provided after a consultation with stakeholders specified that the session would be conducted by a social worker, 'in acknowledgement of the sensitive and personal nature of the circumstances, and of some of the information being communicated' (see also Section 2.5 below). The news of a 'no contact' preference is undoubtedly difficult to hear, however, an in-person meeting is not required as a default (see also the discussion at Section 4.2). **Crucially, the National Adoption Contact Preference Register (NACPR) has been in operation since 2005 and there is no requirement for NACPR registrants to attend a meeting with the AAI unless they specifically request it.**⁴

Moreover, the Scheme does not impose a mandatory Information Session on a natural parent whose daughter or son registers a 'no contact' preference (despite far more adopted people having registered a 'no contact' preference on the NACPR than natural parents). In addition, while Head 4 of the Scheme provides that natural parents who register a 'no contact' preference will be offered counselling, no such counselling is provided for adopted people registering a preference for 'no contact'. Furthermore, Section 3 of Head 16 states that any 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. Thus, on one hand, *any person* can register a 'no contact' preference against an adopted person; yet on the other, adopted people subject to such preferences must endure a humiliating Information Session simply to access a public document that proves they were born.

These inconsistencies and inequities throw the true purpose of the Information Session into sharp relief: The Government wants to ensure that adopted people understand the concept of privacy.

⁴ Information provided by the Adoption Authority, 4th June 2021.

According to the Scheme, during the Information Session a social worker will ‘inform’ the applicant of the ‘birth parent’s privacy rights’ and ‘the importance of respecting their contact preferences’. If the Government sees a need to put in place a statutory-based compulsory mechanism designed to ‘inform’ adopted people of natural parents’ privacy rights and of the importance of respecting a contact preference, **this suggests that the Government is of the view that adopted people do not understand these concepts in the first place. If this is not the Government’s view, then why is the Information Session necessary at all?**

2.2 The Information Session is unnecessary, demeaning and offensive

Adopted people do not have difficulty understanding the concept of privacy; the opposite is true. In the first instance, not all adopted people want contact with natural families (see Section 2.4). Adopted people who do want contact with their family of origin act responsibly and sensitively.

As discussed in Section 1.4, in the absence of explicit statutory rights, adopted people have had to be innovative and for decades they have been obtaining their (usually heavily redacted) personal information. In the case of adopted people who want contact, many have established loving relationships with their natural mothers and family members. In other situations, where a natural mother or family member does not want a relationship, the adopted person will respectfully walk away. In fact, adopted people tend to put the feelings of others ahead of their own, sometimes suppressing unimaginable grief in order to spare the feelings of natural relatives who are unaware of their existence. For example, Clann Witness 73 says that when her mother died:

To avoid any distress to my mother's family, I attended the funeral incognito. It was exceptionally difficult to see the rest of her family giving each other support and sympathy while I, as my mother's daughter, had to remain anonymous. In an astonishing act of insensitivity, the catholic priest, who presided at her funeral (who barely knew my mother as she was not a practising catholic) described my mother to the congregation as a ‘single woman, without a husband or children’ and that ‘we should feel a particular sadness for her as a

result'. Even in death, our family unit (that my mother and I were) was denied recognition.⁵

2.3 Information rights or a protective service?

In considering the Information Session, it is instructive to examine the discussions surrounding the UK *Children Act 1975*, which granted adopted people in England and Wales the right to access their birth certificates. Under that legislation, people adopted prior to 1975 must attend a counselling session before obtaining their birth certificates. Erica Haines and Noel Timms, who conducted a three-year study on the compulsory counselling requirement under the legislation, argue that on one hand the *1975 Act* was 'a law for the provision of information', yet on the other it was also conceived of as legislation protecting natural parents.⁶ According to John Triseliotis, in the months prior to the enactment of the *1975 Act*, strong opposition developed to birth certificate access, with some Members of Parliament portraying adopted people as potential 'blackmailers'.⁷ Supporters of this position argued that Section 26 raised the likelihood of adopted people destroying the lives of others, and maintained that requiring compulsory counselling prior to the release of birth certificates would provide 'a check or restraint against possible hasty actions by adoptees'.⁸ Indeed, as Triseliotis notes, when the law came into force, some elements of the media:

...tended to convey a view of adoptees as potentially vindictive 'second-class' citizens. When the Clause providing for access [to birth certificates] was passed, all kinds of hazards, dangers, and harassments were anticipated by the Press. As examples we can look at headlines in the *News of the World* (10.10.76) 'Mums in fear of knock at the door', the *Daily Mirror* (27.10.76) 'Haunted by the past', and the *Daily Telegraph* (11.10.76) 'Fears of emotional upsets over "reveal all" Adoption Law'.⁹

⁵ [Clann Report](#), paragraph 3.21

⁶ Erica Haines and Noel Timms, *Adoption, Identity and Social Policy: The Search for Distant Relatives* (Aldershot: Gower, 1985), 19-21, 27.

⁷ John Triseliotis, "Obtaining Birth Certificates," in *Adoption: Essays in Social Policy, Law, and Sociology*, ed. Philip Bean (London and New York: Tavistock, 1984), 46.

⁸ Ibid.

⁹ Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock, p. 46.

However, in his analysis of the research carried out on the impact of the *1975 Act*, Triseliotis reports that ‘the calamities anticipated by sections of the media, politicians, and some organizations have not materialized’.¹⁰

Four decades after the media coverage of the UK *Children Act 1975*, in the wake of the Tuam revelations, the Irish Government came under intense pressure to introduce adoption information legislation. With information rights for adopted people on the horizon, strikingly similar headlines to those in the 1970s began to appear in the Irish media. For example:

The Irish Independent, 12th June 2014, ‘Mothers of adopted babies face a new trauma if the cloak of invisibility is suddenly torn away’

Imagine the distress that possibility [of the right to identity for adopted people] must be causing to women treated shabbily by the State already. Consider their dread, now, at the prospect of their anonymity being rescinded. Some may be elderly, and in poor health. The threat that an adult child could turn up, unannounced, on their doorstep is likely to be an added burden.¹¹

When in June 2019, Minister Zappone announced a revised approach to the Adoption (Information and Tracing) Bill 2016, further commentary ensued:

The Irish Times, 4th July 2019, ‘Women who gave up their children for adoption should not be made to suffer twice’

But many mothers may not be ready to consent to release their names to their children...One could argue that the birth mother has already paid a heavy price for the secrecy deal that was a central component of adoption legislation.¹²

The Irish Independent, 18th November 2019, ‘We must learn the lessons of adoptions as fertility treatments bring new identity crisis’

¹⁰ Ibid., 51.

¹¹ <https://bit.ly/3uMOeeK>

¹² <https://www.irishtimes.com/opinion/women-who-gave-up-their-children-for-adoption-should-not-be-made-to-suffer-twice-1.3945606> See a rebuttal of this piece by Claire McGettrick here: <https://www.irishexaminer.com/opinion/commentanalysis/arid-30936372.html>

Beyond legal considerations, there is also a moral and ethical issue. Which approach will cause the greater or lesser harm? Will an adoptee be more harmed by not knowing details of their biological parents than a parent whose details are provided to those children seeking them? Will an adoptee, given this information and making unwanted contact, be more harmed if their approach is rejected than by not knowing who their birth mother is? Will a birth mother be damaged? In this instance, I come down on the side of the birth parent. She probably had an understanding that her identity would be concealed. Should the State retrospectively infringe that position it would be guilty of massive over-reach into the personal domain.

She might have to face a stranger at the door attempting to establish contact. The violation of her privacy regarding her past would be very grave. It might also impact on her family relationships.¹³

When the Clann Project called on the Government to unseal the archive of the Commission of Investigation into Mother and Baby Homes, this prompted further analysis in the opinion pages:

The *Irish Independent*, 31st October, 2020, ‘Government had good cause to seal records of Mother and Baby Homes commission’

...there is one group of people we haven't heard from because by their nature they cannot be a part of the conversation: the mothers...Everything you have read or heard about Mother and Baby Homes is from the now adult children who want information about their birth...But the fact that many years ago you had a child is for some women a secret they want to keep. Whether they are entitled to do so is a very divisive issue.¹⁴

And, when Minister O’Gorman announced the current Scheme, some in the media immediately framed the Bill in divisive terms, with the presumption that mothers and adopted people are on opposing sides:

¹³ <https://www.independent.ie/opinion/comment/patricia-casey-we-must-learn-the-lessons-of-adoptions-as-fertility-treatments-bring-new-identity-crisis-38700910.html>

¹⁴ <https://www.independent.ie/opinion/comment/government-had-good-cause-to-seal-records-of-mother-and-baby-homes-commission-39688678.html>

The Irish Times, 11th May 2021: ‘Adopted people will be able to access their birth certificates irrespective of the wishes of their birth mothers under a law to be introduced by the Government’

Adopted people will be able to access their birth certificates irrespective of the wishes of their birth mothers under a law to be introduced by the Government...There will be no sanctions for anyone who contacts their birth mother against her stated wishes...¹⁵

The Irish Times, 1st June 2021, Can Sudocrem take Ireland’s baby shame with it to Bulgaria?

Now, with legislation pending that will give adoptees access to birth certificates and other information whether the birth mother agrees or not, I think about the birth mothers who live in fear of being hauled out of the shadows by an adult child, seeking reconnection with the body that gave them life.

Roderick [sic] O’Gorman, Minister for Children, has placed the rights of adoptees at centre stage, but what of the birth mother whose pregnancy was the result of an assault, by someone she knew, someone who is still part of her extended family?

Media reports such as the examples set out above perpetuate the myth that adopted people and natural mothers are on opposing sides. Moreover, they are deeply insulting to adopted people, who, in the case of those who want contact, are highly unlikely to jeopardise the success of any relationship by door-stepping their mothers. As Triseliotis found in his empirical analysis of the impact of releasing birth certificates to adopted people under the UK *Children Act 1975*:

The calamities anticipated by sections of the media, politicians, and some organizations have not materialized. The various studies carried out so far suggest that the vast majority of adoptees act thoughtfully and with great consideration for the feelings of both their birth and adoptive parents.¹⁶

¹⁵ <https://www.irishtimes.com/news/social-affairs/adopted-people-to-get-access-to-birth-certs-irrespective-of-birth-mother-s-wishes-1.4562183>

¹⁶ Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock, p. 51.

2.4 Information and contact

When considering the purpose of the Information Session it is also important to understand that although there is a tendency to view 'information and tracing' as one and the same thing, for adopted people, the right to information about themselves and the prospect of relationships with natural family members are completely separate issues. Not all adopted people want contact with natural family members, and no adopted person is demanding the right to a relationship. Some adopted people do not want contact with their natural mothers at all, while others will wait for a period of time after obtaining their birth certificates before attempting to contact their natural mothers and/or family members.

Haines and Timms contend that the focus on conflating the right to identity with the presumption that the adopted person will insist on a relationship with their natural parents 'unduly emphasizes' a psychopathological image of the adopted person. They argue that:

...instead of a picture of adoptees as 'psychological vagrants' rushing around looking for a new set of family relationships, a more rational picture is available: that is, of adoptees seeking to place themselves socially...Adoptees are seeking to place themselves in a narrative, and they do this in order to correct that part of their lives which gives them a marginal identity, that is, their ignorance about certain key people and events in their lives.¹⁷

New data released by the AAI to the Clann Project indicates that just 128 natural mothers have indicated that they wish to have no contact with their daughter or son.¹⁸ This figure represents 5% of the 2,458 mothers on the register, and 0.13% of the approximately 100,000 natural mothers in Ireland.¹⁹ A total of 1,059 adopted people have registered a 'no contact' preference, representing 11% of the 9,731 adopted people on the NACPR. Crucially, 35% of mothers who registered a 'no contact' preference are willing to share some form of information, while 79% of adopted people registering a 'no contact' preference are willing to share information.

¹⁷ Haines, E. and Timms, N. (1985) *Adoption, Identity and Social Policy (The Search for Distant Relatives)*. Gower: Aldershot, p. 50.

¹⁸ Information provided by the Adoption Authority to the Clann Project on 26th May and 1st June 2021.

¹⁹ See: <http://adoption.ie/how-many-adopted-people-are-there/>

2.5 A social work intervention is inappropriate

The Scheme states that the Information Session will be conducted by a social worker. In response to questions during a consultation with stakeholders, the Minister stated that the Information Session would be conducted by a social worker, 'in acknowledgement of the sensitive and personal nature of the circumstances, and of some of the information being communicated'. There are several problems with this approach.

Firstly, it is important to recognise that social work interventions are generally associated with situations where individuals or families are in crisis. As the website of the Irish Association of Social Workers states:

[Social workers'] work is mainly concerned with problem solving, with supporting service users, and working with service users and allied professionals to find solutions and to effect change. The problems and challenges span the life cycle. The issue might be a crisis or emergency or it could be providing support, information and advice to a person to cope with ongoing difficulties or loss.

Social workers play a crucial role in our society, however, adopted people are not in crisis by default and they do not generally require social work interventions, compulsory or otherwise. The news that a natural parent has registered a 'no contact' preference is of course difficult to hear, and the situation should be handled sensitively, with supports (including peer support) made available. However, such supports should be optional, and the adopted person should be given the choice to find out about their natural parents' contact preferences (regardless of what the preference is) in a setting of their choosing (see Section 2.7 below).

Secondly, the Minister has assured stakeholders that the Information Session 'will be conducted sensitively and respectfully by a social worker, acknowledging the rights and wishes of all parties'. However, a fundamental fact remains: **the Information Session is compulsory**, and most adopted people will have no desire to attend an Information Session in its current format. As explained above, the Information Session as it is currently envisaged is discriminatory and demeaning; its purpose is to ensure

that adopted people (and adopted people alone) understand privacy rights. This is neither 'sensitive' nor 'respectful'. Moreover, it is in conflict with the CORU [Code of Ethics](#) and the International Federation of Social Workers' (IFSW) [Global Social Work Statement of Ethical Principles](#), in particular, the principles of respect for dignity, the promotion of social justice and the challenging of discrimination and unjust policies and practices and, as set out in the IFSW principles, the promotion of human rights.

Thirdly, for adopted people, trust in social work is extremely low. Many have had negative experiences with social work practice, both past and present, in the case of the latter, through TUSLA's discriminatory, offensive and opaque policies and practice.²⁰ From an adopted person's perspective, in the past social workers were responsible for their separation from their natural family, and in the present, they are the gatekeepers of their narratives and their family histories. Much work needs to be done to repair relationships and build trust.²¹

Fourth, the insufficiency of social work resources for the purposes of providing proper care to children in need of State intervention is a regular problem—as evidenced, for example, by [TUSLA's revelation](#) in late 2019 that over 5,000 children living in the community were waiting to be allocated a social worker and another 565 children already living in State care were on a waiting list for a social worker. Under the present adoption information and tracing arrangements adopted people have faced delays of up to years for a TUSLA social worker to be assigned to manage their information access request. It is disproportionate and nonsensical to require social workers to perform the Information Session function envisaged by the Scheme given the severe demands on their resources.

Thus, for the reasons set out above, social workers should not conduct Information Sessions. The availability of supports, including adult social work, counselling and

²⁰ For example, TUSLA carries out a risk assessment of all adopted people who ask for their records, assessing the 'likelihood of harm' that may be caused to natural mothers and family members (whether living or deceased) if personal data is released to an adopted person See: Conall Ó Fátharta, [Tusla considers damage release of personal information can cause](#), *Irish Examiner*, 16th July, 2019.

²¹ On 26th May 2021, Claire McGettrick was elected to the Board of Directors of the Irish Association of Social Workers (IASW). Claire will advise the IASW on adoption and assist the organisation in its response to the issues arising from the publication of the Mother and Baby Homes Commission Report.

peer support generally should, of course, be made known to adopted people, natural parents and relatives when receiving their information. By way of example, in Appendix 3 we have provided an Information Booklet with suggestions on the kinds of resources that should be made available.

2.6 A psychological approach is inappropriate

In his [follow up documentation](#) in the aftermath of a stakeholder consultation on the Scheme, the Minister stated: 'I note that the question was asked about why the session is conducted by a social worker and that it would be better that a psychologist held the session'. **Unless an adopted person specifically requests such assistance, psychologists should have absolutely no role in the Information Session. We urge the Minister to ensure that a psychological approach is not applied to birth certificate access.** Here it is worth revisiting Haimés and Timms, who argue that:

Adoption...presents problems for practitioners and for society as a whole. Consequently, adoptees also present a problem: we cannot place it or them easily. The uneasiness that is felt about the process is attributed to the individuals and extends to questioning their stability. In viewing adoptees potentially at least as damaged and in need of help, the psycho-pathological model attributes the uncertainty about adoption to the adopted people themselves.²²

Haimés and Timms also argue adopted people who are interested in seeking out their origins are portrayed as 'suffering in some way from a flawed, if not failed adoption', and that tracing acts as a 'self-therapy, correcting a psychopathological condition'.²³ There is no empirical evidence to back up the claim that adopted people are suffering from a pathological condition; indeed, Haimés and Timms argue the contrary: participants in their study were 'normal, well-adjusted adults' who did not conform to such assumptions.²⁴ (See also our discussion at Section 4.2: Upset and distress.)

2.7 An alternative approach to the Information Session

The Information Session should be an optional service that is made available to *all* people applying for their birth certificates or 'birth information', regardless of their

²² Haimés and Timms, *Adoption, Identity and Social Policy*, 80-81.

²³ Haimés and Timms, *Adoption, Identity and Social Policy*, 76.

²⁴ *Ibid.*

natural parents' contact preferences, and *all* natural parents and relatives applying for their information. (As explained below in Section 3 and in our amendments at Part 2, we propose amending the Scheme to guarantee a right of access to information for natural parents and relatives of those who died in 'care' or adoption. It should be framed as a service to *assist* affected people with understanding their personal records, and to inform them of the other services that are available, *rather than a measure to ensure they understand the concept of privacy*.

In our amendments we have set out two alternative approaches, both of which should be framed as a service *for* affected people.

In the first, we suggest that the Government provide **an Information Session for everyone** who receives their birth certificate and records. The Information Session **must be carried out by an archivist or records manager, not a social worker or a psychologist**. It should be possible to conduct the Information Session **electronically for the sake of efficiency**.

In our second alternative, the Government provides all applicants with an Information Booklet and the choice to opt for an Information Session. Under this option, applicants would be provided with the same information as our alternative Information Session in the form of an Information Booklet. Some applicants might prefer to attend an Information Session for ease of understanding. We have provided a sample booklet at Appendix 3.

Currently, the purpose of the Information Session is to explain natural parents' privacy rights to adopted people, to the exclusion of any discussion of adopted people's equal privacy and data protection rights. **It is more than sufficient to simply *inform* the adopted person of their natural parents' contact preferences. Adopted people in receipt of a 'no contact' preference are entirely capable of respecting that preference without further explanation.** Moreover, we understand privacy to mean:

- the equal right of the adopted person and their natural family members to respect for their private and family life;

- the right to access one's personal data and to exercise other data subject rights;
- the right to freedom from arbitrary, unnecessary or disproportionate state interference in one's family life and relationships;
- the right to identity, including the unenumerated Constitutional right to have one's identity correctly recognised by the State; and
- the right to the truth regarding human rights violations that have occurred.

3. ACCESS TO RECORDS AND INFORMATION

3.1 The Scheme ignores the information rights of natural parents and relatives

This Scheme ignores the rights of natural mothers to their personal information. This Bill must provide mothers, adopted people and all those placed in care arrangements with a clear pathway to access their own care and adoption files.

Relatives must also be provided with a clear right of access to information about the fate and whereabouts of their family member(s) who died while in an institutional or other 'care' setting. This right is not included in the Government's current General Scheme of Bill on exhumations, and it is also excluded from this Scheme.

Until the dedicated repository of all adoption and related 'care' records is in operation, a statutory right of access to one's own file, information about family members, and to records of a relative who died in 'care' must operate in respect of *all* the many diverse data controllers currently in possession of records so that no person's access is delayed in the time that it takes to create the independent repository. Time is not on the side of those affected, whose rights to their own information and to knowledge of their loved ones' fate have been denied for far too long already.

Please note: Currently, the State and other data controllers are routinely misinterpreting GDPR rules to deny adopted people, mothers and others who were placed in State care access to their personal data. We urge the Committee and the Government to read our joint submission to the Oireachtas Justice Committee on the GDPR at Appendix 2. **The joint submission demonstrates that it is entirely**

possible to ground this Bill in terms of people's rights under GDPR without further discriminating against them.

3.2 No access to administrative files

The Scheme provides no mechanism for adopted people and natural mothers to access the administrative files of institutions, agencies and individuals involved in forced family separation. Administrative records include, for example, financial records, inspection files, contracts, governance records and correspondences. They might also include photographs of buildings and people, minutes of meetings, reports, diaries, annual reports, internal and external publications, staff records, medical records, maintenance payment records, death and burial records and registers, logbooks, incident reports, visitor books, baptismal registers, returns (weekly, monthly, quarterly or annual), records describing life in the institutions, other ephemera from the institutions such as fundraising materials, signs, books.²⁵

Many of these records lie in the archives of previous inquiries into institutional abuse, where they remain effectively 'sealed' (e.g., the archives of the Commission to Inquire into Child Abuse, the Inter-departmental Committee to inquire into State involvement with the Magdalen Laundries and the Mother and Baby Homes Commission of Investigation). Many additional administrative records remain in the custody of a wide array of State and non-State bodies.

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; and (2) ensure that administrative records are gathered into and made available in the central dedicated repository that will also provide individuals with access to their

²⁵ See also: <https://www.findandconnect.gov.au/resources/radgrants/records-significant-to-care-leavers/>

personal data and to information about the fate of their loved ones who died in 'care' settings.

3.3 Definitions of information in the Scheme

We are very concerned that the Scheme defines information under multiple categories. This is not only likely to cause significant confusion amongst applicants (because the definitions are narrow and open to interpretation), there is also a significant risk of other types of data falling through the net. Worryingly, while most of the categories of information fall under the definition of personal data, the Bill does not define personal data at all.

3.3.1 Definition of 'care information'

We have several concerns about how the scheme defines 'care information':

(a) Schedule 1

Subsection (d) of the definition states that 'care information' includes 'the name of a person in charge and the name of any person who cared for a relevant person while he or she was resident as a child in an institution listed in schedule 1'. Schedule 1 is a list of 44 institutions, that is, the 14 Mother and Baby Homes listed on the Terms of Reference for the Mother and Baby Homes Commission of Investigation plus the 30 County Homes. The Clann Project has the names of 182 institutions, agencies and individuals that were involved with forced family separation in Ireland and Schedule 1 therefore represents a fraction of that number. Moreover, the definition of 'care information' contradicts the Minister's [statement](#) which asserts that:

...a comprehensive approach ensures access for *all* people who were adopted, boarded out, the subject of an illegal birth registration and others with questions in relation to their identity'

and

The legislation takes a comprehensive approach, *encompassing all people* who may have a question in relation to their origins and supporting access to the broad range of birth, early life, care and medical information that may be contained in institutional or other records.

At a meeting with ARA and the Clann Project on 13th May 2021, the Minister and his officials indicated that the intended purpose of Schedule 1 was to ensure that the Bill is as inclusive as possible. We submit that Schedule 1 would have the opposite effect and ask that the Bill is revised in line with what we have set out in our amendments.

(b) Exclusion of adoptive and natural relatives from the definition of ‘care information’

The definition of ‘care information’ explicitly excludes care provided by natural parents, guardians, other relatives and adoptive parents. Because adopted people were so young when they were confined in Mother and Baby Homes and similar institutions, few have recollections of their time there. Adopted people are denied even the most basic details about their early years and therefore any information (whether positive or negative) about their own early experiences about general conditions in these institutions is extremely important to have. Many adopted people were cared for by their natural mothers while still confined in Mother and Baby Homes. Other adopted people would have been visited by their natural mothers and/or fathers in institutions such as Temple Hill or Stamullen. In other cases still, adopted people may have lived with their natural mothers prior to adoption and there may be references in their adoption file(s) to reflect this. All such information is part of an adopted person’s history and heritage and must be included in the records provided to them.

Additionally, an increasing number of adopted people are coming forward to report that they experienced abuse in their adoptive families. Often, crucial answers concerning the circumstances of this abuse are contained in the person’s adoption file. For example, one Clann Project witness provided evidence that important details concerning the ‘care’ provided by her adoptive parents was contained in her adoption files but withheld from her when she applied to TUSLA and the AAI for her personal data under the GDPR.²⁶ It is absolutely essential therefore to ensure that adopted people also have access to records concerning the nature of care they received from their adoptive parents.

²⁶ Clann Report, Witness 67, paras 2.62-2.67. Available at: http://clannproject.org/wp-content/uploads/Clann-Submissions_Redacted-Public-Version-October-2018.pdf

(c) Exclusion of mothers and other relatives

We are extremely concerned that the definition of ‘care information’ excludes natural mothers and other relatives wishing to obtain information about the nature of care and the names of individuals involved in the care of their deceased family members who died while in a Mother and Baby Home or other institution.

(d) Exclusion of siblings

The rights of siblings to information about each other are also ignored in the Scheme. In our experience, 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 minimum, include name, community of origin and date of birth where these are available.²⁷

3.3.2 Definition of ‘early life information’

The definition of ‘early life information’ is problematic on several fronts. Firstly, using ‘early life’ as a qualifier means that crucial information will be omitted from the records. The Scheme states that ‘early life information’ ‘means in relation to a person, information that relates to him or her *in the period following his or her birth*’. In many instances, natural mothers wrote letters to the adoption agency months and years after the adopted person’s birth. In some cases, there may be correspondence with adoptive parents dating many years after the person’s birth, and this is of particular importance in cases where there was abuse occurred in the adoptive family. Below we provide a screenshot from the schedule of the file of an adopted person who was

²⁷

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

born in 1973. As evidenced in the schedule, one of the records (which was withheld from the person²⁸) is described as ‘birth mother correspondence’ and is dated five years after the adopted person’s birth. Another entry (also withheld) is described as ‘adoptive parent(s) correspondence and is dated seventeen years after the adopted person’s birth. This adopted person was abused by their adoptive mother throughout their childhood and teenage years, so this correspondence is of crucial importance to them.



Freedom of Information
 Child and Family Agency
 Dublin North East
 Units 4/5 Nexus Building
 Blanchardstown Corporate Park
 Ballycoolin
 Dublin 15

SCHEDULE OF FILE

Page	Details	R/W/RWD	Exemption Code	Remarks	Further Information
1	Records	RWD	4(4)	Third Party information	Birth Mother correspondence – 26.10.1973 & 11.12.1978
3-5	Records	W	4(4)	Third Party information	Adoptee’s original birth cert long version & short version
16	Records	W	4(4)	Third Party information	Birth Mother correspondence – No Date on page
18	Records	RWD	4(4)	Third Party information	Birth Mother correspondence – No Date on page
20	Records	W	4(4)	Third Party information	Adoptive Parent(s) correspondence – 28.08.1990

Secondly, the definition of early life information is too narrow. 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 (again, see Appendix 2). We provide such a definition in our amendments and it is worth repeating here:

‘Personal data’ has the meaning ascribed to it by the *Data Protection Act 2018* and the General Data Protection Regulation, which defines personal data in terms of a person’s ‘physical, physiological, genetic, mental, economic, cultural or social identity’. Under this Act, all records 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 is shared with another person. Personal data in relation to a relevant person, includes but is not limited to:

- (a) Personal data in terms of the person’s physical, mental, and physiological identity, including but not limited to:
 - (i) The person’s place of birth;
 - (ii) Details, if applicable, of whether the person was carried to full term, and if not, what precipitated early delivery and at what stage in the pregnancy;

²⁸ RWD means ‘released with deletions’, however, this is a typographical error as the correspondence in question was completely withheld.

- (iii) The person's health status at birth;
 - (iv) Details regarding the circumstances of the person's birth, e.g. was it a normal birth or if there were complications;
 - (v) The person's birth weight;
 - (vi) The person's physical condition and circumstances during their early months and years;
 - (vii) Records concerning the person's early-life care;
 - (viii) Records concerning the person's health from birth until the time of placement;
 - (ix) The person's medical records from birth until the time of placement, including x-rays, tests, vaccines;
 - (x) The person's natural family's medical history as described under 'natural family medical history'.
 - (xi) Where applicable, records of any vaccine trials in which the person was a research subject.
- (b) Personal data in terms of the person's genetic identity, including but not limited to:
- (i) The person's name at birth;
 - (ii) The person's natural mother's forename and surname, as held in the public Register of Births or equivalent if the person's natural mother was born outside of Ireland;
 - (iii) The person's natural father's forename and surname, as held in the public Register of Births or equivalent if the person's natural father was born outside of Ireland;
 - (iv) The person's natural relatives' names, as held in the public Register of Births or equivalent if the person's natural relative was born outside of Ireland.
- (c) Personal data in terms of the person's economic, cultural and social identity, both before and after their adoption or placement in informal care, relating to their economic, cultural and social identity both around the time of their birth and after their adoption or placement in informal care, and which relate to how the relevant person acquired their adoptive identity, including but not limited to:
- (i) The person's name at birth, as held in the public Register of Births;
 - (ii) The person's date of birth;
 - (iii) The person's place of birth;
 - (iv) The person's natural mother's forename and surname, as held in the public Register of Births or equivalent if the person's natural mother was born outside of Ireland;
 - (v) The person's natural father's forename and surname, as held in the public Register of Births or equivalent if the person's natural father was born outside of Ireland;

- (vi) The person's natural relatives' names, as held in the public Register of Births or equivalent if the person's natural relative was born outside of Ireland;
- (vii) The person's county/country of origin at the time of their birth;
- (viii) The occupation of the person's natural parents and family members at the time of the person's birth;
- (ix) The person's natural parents' ages at the time of the person's birth;
- (x) The person's grandparents' occupations at the time of the person's birth;
- (xi) The number of siblings in the immediate family of the person's natural mother;
- (xii) The circumstances surrounding the person's adoption or informal care arrangement;
- (xiii) Correspondence about the person, including correspondence associated with the administrative process surrounding the person's adoption or informal care arrangement, and correspondence from the person's natural mother enquiring about the person;
- (xiv) The assessment process associated with the relevant person's adoption or informal care arrangement;
- (xv) The administrative process surrounding the person's adoption or informal placement, including records about the decision-making process around the placement, correspondence with the adoptive parents and others, and how the relevant person acquired their adoptive/new identity;
- (xvi) The names of the people responsible for the person's care during the relevant person's early weeks, months and years';
- (xvii) The place at which the person resided and the individual who was in charge of that place;
- (xviii) Where applicable, the date and place of the person's baptism or any other ceremony of a religious or spiritual nature performed in the period in respect of the person;
- (xix) Where applicable, any person, agency or organisation who made arrangements for the person's adoption, whether or not an adoption was effected in respect of the person;
- (xx) Where applicable, the date on which the person was made the subject of a fostercare arrangement or placed with prospective adopters;
- (xxi) Where applicable, the date on which the person was made the subject of an informal care arrangement;
- (xxii) Information regarding whether the person's natural mother was resident in any other institution offering social care/support either prior to or subsequent to the adopted person's birth,

- (xxiii) Information regarding whether the natural mother stayed at the institution with the adopted person prior to their placement with the adoptive parents;
- (xxiv) Any anecdotal information regarding the adopted person's stay in the institution
- (xxv) If applicable, whether the person's natural mother was transferred from the Mother and Baby Home to a Magdalene Laundry or other institution, and if so, details of the circumstances;
- (xxvi) If applicable, whether the person's natural mother was transferred from a Magdalene Laundry or another institution, to the Mother and Baby Home prior to giving birth and if so, details of the circumstances;
- (xxvii) Whether the person's natural mother gave informed consent to the adoption;
- (xxviii) Whether the person's natural mother was made aware of or offered any other choices apart from adoption;
- (xxix) Whether the person's natural mother received support after their adoption;
- (xxx) Any letters, cards or other materials placed on the adoption file(s) by the person's natural mother;
- (xxxi) Any letters, cards or other materials placed on the adoption file(s) by the person's natural father or other natural relatives;
- (xxxii) Any letters, cards or other materials placed on the adoption file(s) by the person's adoptive parents.

3.3.3 Definition of 'relevant record'

The definition of a 'relevant record' is too narrow and needs to be expanded to include the administrative records of the AAI, TUSLA, adoption agencies, institutions and any other information source. The definition should also include a full schedule of all records held on the file(s) relating to the adopted person.

3.3.4 Definition of 'secondary information source'

The definition of a 'secondary information source' is too narrow and needs to be expanded to include all individuals, agencies and institutions involved in forced family separation.

3.4 Safeguarding of records and a dedicated archive

We welcome that the Scheme has set out procedures whereby records can be gathered and safeguarded by the AAI until the National Memorial and Records Centre

is established. It is crucial that access is provided immediately and in this regard, the Department's [FAQs](#) emphasise that the Scheme 'opens up access to records where they reside. It provides that records are safeguarded where they are currently held, with a facility for them to be transferred to the Adoption Authority under the direction of the Authority. The difference in approach [to the 2016 Bill] reflects the Government commitment to a National Memorial and Records Centre'. We urge the Minister to ensure the legislation is sufficiently robust in this regard.

In October 2020, we [warmly welcomed](#) the Government's [promise](#) to establish a national archive of records related to institutional trauma during the 20th century. This is a hugely important opportunity for Ireland to establish a human rights-based, world-leading inclusive approach to acknowledging and documenting our history of institutional and gender-related abuse. However, the State must depart from previous habits of excluding and compartmentalising people. **Nobody can be left behind.**

In preparation for this national archive, which will take years to build, there is an **immediate need to create dedicated repository** of adoption and other 'care'-related records with professional archivists providing the various forms of information that we describe in this submission.

3.5 Head 40: Restriction of rights and obligations under the GDPR

It is clear from the inclusion of Head 40 that there is an intention to restrict some or all of the data subject rights and data controller obligations in Articles 12 to 22 and Article 34, and in Article 5 (in so far as any of its provisions correspond to the rights and obligations in Article 12 to 22) of the GDPR. However, which rights and obligations are envisaged to be restricted and to what extent is not specified or described, the necessity and proportionality of any restrictions envisaged is not described and the link between the envisaged restrictions and the objective pursued is not made clear.

3.5.1 The Scheme falls far short of meeting the requirements of Article 23 GDPR

Head 40 of the Scheme concerns the restriction of rights and obligations under the GDPR. This Head in its current state does little more than paraphrase Article 23 of the GDPR, select one of the conditions in Article 23(1) and provide a broad description of the objective being pursued which requires restrictions which are not specified. It

provides that ‘rights and obligations ... are restricted pursuant to Article 23(1)(i) ... to the extent necessary to enable persons to access birth and related information in accordance with the provisions of this Act and to enable the Agency and the Authority to provide a tracing service in accordance with the provisions of this Act.’

The European Data Protection Board Guidelines on restrictions under Article 23 ([‘Guidelines 10/2020 on restrictions under Article 23 GDPR, Version 1.0’](#)), the Data Protection Commission's guidance document ([‘Limiting Data Subject Rights and the Application of Article 23 of the GDPR’](#)) and the recent judgment of the Court of Appeal of England and Wales in [‘The Open Rights Group & Anor, R \(On the Application Of\) v The Secretary of State for the Home Department & Anor \[2021\] EWCA Civ 800’](#) are all very clear that **significantly more detail than is currently presented in this Head must be provided in any legislative measure which seeks to restrict the rights of individuals.**

3.5.2 Head 40 does not set out which data subject rights are to be restricted, nor does it set out the scope of these restrictions

Stating that ‘rights .. are restricted ... to the extent necessary’ is not specific enough to be relied upon. Article 23 can be used to provide for restrictions of all the rights ‘in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22’. Which rights are being restricted and to what extent must be made explicit in the legislative measure.

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Stating that ‘obligations .. are restricted ... to the extent necessary’ is not specific enough to be relied upon. Article 23 can be used to restrict all the obligations ‘in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22’. Which obligations are being restricted and to what extent must be made explicit in the legislative measure.

3.5.4 Head 40 does not contain any specific provisions as required by Article 23(2)

In the recent judgment in *The Open Rights Group & Anor, R (On the Application Of) v The Secretary of State for the Home Department & Anor* [2021] EWCA Civ 800 (26 May 2021) Lord Justice Warby discussed the interpretation of Article 23(2):

... Article 23(2) sets out details of what a 'legislative measure' must do, if it is to comply with the more broadly stated requirements of Article 23(1). The legislative measure has to 'contain specific provisions' about the eight listed matters 'at least, where relevant'. As a matter of grammar, and on a natural reading, this would seem to mean that the legislative measure must at least include specific provision about each of the eight listed matters, where or to the extent that the listed matter in question is relevant; it may need to include specific provision about other matters as well. ([2021] EWCA Civ 800, paragraph 32)

The Data Protection Commission's [guidance document](#) reiterates this requirement for specific and explicit provisions relating to the matters in Article 23(2):

Article 23 provides that any restriction must:

- Be set out in Union or Member State Law via a legislative measure (Recital 41 provides interpretation as to the meaning of a legislative measure, however this should also be read in light of Section 60 and the other relevant provisions of the Data Protection Act 2018);
- Respect the essence of the fundamental rights and freedoms (note corresponding section of the Data Protection Act 2018 -Section 60(12)(1));
- Be necessary and proportionate in a democratic society (note corresponding section of the Data Protection Act -Section 60(12)(b));
- Safeguard one of the interests set out in Article 23(1); (note corresponding section of the Data Protection Act 2018 -Section 60(3) and Section 60(7); also note recital 73 GDPR); and
- **Contain specific provisions set out in the GDPR as per Article 23(2) (note corresponding section of the Data Protection Act 2018 -Section 60(6))**

Any proposed legislative measure which intends to restrict the rights of a data subject **requires all of the above conditions to be met in order for a measure to be lawfully relied upon.** The relevant **legislative provisions should be specific and explicit**, laying down clear and precise rules regarding the exemption(s) being relied upon. The reliance and use of **broad legislative**

measures may not be capable of meeting all the conditions set out above. (DPC, 'Limiting Data Subject Rights and the Application of Article 23 of the GDPR', page 2) [Emphasis ours]

3.5.5 Head 40 does not contain or make reference to any assessment of necessity and proportionality

The [European Data Protection Board's guidance](#) states that a necessity and proportionality assessment must be conducted to prevent overly broad restrictions being introduced:

When the EU or national legislator lays down restrictions based on Art. 23 GDPR, it shall ensure that it meets the requirements set out in Art. 52(1) of Charter, and in particular conduct a proportionality assessment so that restrictions are limited to what is strictly necessary. (EDPB, 'Guidelines 10/2020 on restrictions under Article 23 GDPR, Version 1.0', paragraph 6)

The Data Protection Commission states in its [Article 23 guidance](#) that: 'Consideration should be given to completing a Necessity Test via a DPIA, in circumstances where the proposed restriction could represent a high risk to the fundamental rights of individuals. (DPC, 'Limiting Data Subject Rights and the Application of Article 23 of the GDPR', page 4)

There is no reference in the General Scheme or the accompanying FAQ document to a Data Protection Impact Assessment being conducted. This should be done before the next draft of the Bill is completed and the outcomes used to inform that draft.

3.5.6 Head 40 does not clearly state the link between the restrictions and the objective pursued

Since Head 40 does not identify which rights and obligations are to be restricted it therefore does not clearly link the restriction of rights and obligations to the objective pursued, as required. As the [European Data Protection Board's guidance](#) states:

The link between the foreseen restrictions and the objective pursued should be clearly stated in the legislative measure (EDPB, 'Guidelines 10/2020 on restrictions under Article 23 GDPR, Version 1.0', paragraph 21)

Until the Draft Bill clearly lists the rights and obligations which are envisaged to be restricted it will not be possible to clearly state and describe this link.

3.5.7 As it is currently presented, Head 40 is far too imprecise and broad

As the recent judgment of the Court of Appeal of England and Wales [The Open Rights Group & Anor, R \(On the Application Of\) v The Secretary of State for the Home Department & Anor \[2021\] EWCA Civ 800](#) states:

I do not believe Article 23 should be construed as merely requiring the state to provide a general legal framework that contains guarantees of necessity and proportionality, and other safeguards." ([2021] EWCA Civ 800, paragraph 48)

The essence of the reasoning, as I see it, is that broad legal provisions, such as those that require a measure to be necessary and proportionate in pursuit of a legitimate aim, are insufficient to protect the individual against the risk of unlawful abrogation of fundamental rights. The legal framework will not provide the citizen with sufficient guarantees that any derogation will be strictly necessary and proportionate to the aim in view, unless the legislature has taken the time to direct its attention to the specific impacts which the derogation would have, to consider whether any tailored provisions are required and, if so, to lay them down with precision. This approach will tend to make the scope and operation of a derogation more transparent, improve the quality of decision-making, and facilitate review of its proportionality. To my mind the evidence to date as to the relevant decision-making tends to emphasise the importance of characteristics such as these. ([2021] EWCA Civ 800, paragraph 50)

Head 40 presently does no more than present a vague guarantee of necessity and proportionality. As noted above, the required detailed approach by the legislature will result in improved transparency, foreseeability and future review of proportionality.

In its [guidance](#) the Data Protection Commission suggests that it 'may be useful to test specific scenarios which involve the obligations provided for under Articles 12 –22 and Article 34 when considering the measures required.' (DPC, 'Limiting Data Subject Rights and the Application of Article 23 of the GDPR', page 5).

This approach combined with a Data Protection Impact Assessment would be useful in teasing out which rights and obligations must be restricted, describing these in the required amount of detail in the Draft Bill and describing the necessity and proportionality of the restrictions.

4. SHAME AND SECRECY: HOW THE LEGISLATION IS FRAMED

As currently written, this Bill runs the risk of perpetuating the culture of shame and secrecy that pervades the Irish adoption system. The tone of the Minister's announcement makes clear that this is not his intention, however, if the Bill is not framed correctly, this is precisely what will happen. For too long, the Irish State has held an erroneous presumption that adopted people and natural mothers are on opposing sides. According to this paradigm, it is only adopted people who want their personal information and contact with natural family, while mothers wish to live in secrecy and are fearful of their adult children violating their privacy. The Scheme is no different; it frames the Bill as a piece of legislation designed solely to provide adopted people with their rights, regardless of mothers' views. However, the Bill can be improved significantly with amendments, so that it represents a measure of justice and a major milestone in our nation's efforts to address so-called 'historical' injustices.

4.1 Publicity campaign

Section 2 of Head 3 provides for a three-month period during which natural parents can register their contact preferences, while Section 4 states that the Adoption Authority will carry out a publicity campaign during the same time period. According to the Scheme, the purpose of the publicity campaign is to give notice '*to the public of the process for registering contact preferences and the process for accessing birth certificates*'. However, the Department's [FAQs](#) repeatedly state that the purpose of the campaign is '*to alert birth parents to the provisions of the new legislation and to the fact that birth information will be released...and [of] the facility to lodge their preferences in relation to contact*'.²⁹ This is deeply offensive to adopted people. As explained in the [Cambridge Dictionary](#), to 'alert' means 'to warn someone of

²⁹ See pages 11, 14 and 2 of the Department's FAQs: <https://assets.gov.ie/134703/6f8aba87-6579-41ce-96d4-e453f9fc9615.pdf>

a possibly dangerous situation'. We have repeatedly pointed out³⁰ that adopted people are wrongly characterised as a threat to their natural mothers, and it is disappointing that the Department continues to use this type of language in this context.

As well as being insulting to adopted people, language such as 'alerting' natural mothers also serves to compound the myths as well as the secrecy and shame surrounding adoption. Few natural mothers speak out about their experiences, and in the ensuing vacuum, various commentators presume to know what they are feeling: that is, allegedly terrified of their adult children (see Section 2.3 above). However, natural mothers' silence must be viewed in context; when their babies were adopted they were told to walk away and forget they gave birth.³¹ The discourses surrounding adoption in Ireland are still dominated by a culture of shame and secrecy—the Scheme provides ample evidence of this. This hinders many women from moving past the rule of silence that they were forced to adhere to after they gave birth.

The Government must play its part in cultivating a new discourse of truth, accountability, understanding and respect. We submit that the proposed publicity campaign presents a unique opportunity in this regard. Rather than designing the campaign as an 'alert' to warn mothers of what is about to happen, this legislation should instead frame it in far more positive terms: 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, to let relatives of the deceased know that they can finally learn what became of their family member. The impact of public empathy cannot be underestimated. For example, when natural mother Philomena Lee spoke out in 2013, it caused what has been termed the 'Philomena effect', where many natural mothers who were previously living in secrecy found the courage to come forward.³²

³⁰ See e.g.: http://clannproject.org/briefing-note_adoption-information/

³¹ Vivienne Darling, 'Social Work in Adoption: Vignette,' in *Social Work in Ireland: Historical Perspectives*, ed. Noreen Kearney and Caroline Skehill (Dublin: Institute of Public Administration, 2005), p. 187.

³² See: <http://www.bbc.com/news/world-europe-26236475>

The publicity campaign has the potential to be a hugely positive event, marking an end to the secrecy around adoption in Ireland. With this in mind, it is crucial that adopted people and natural parents are consulted on the design of the campaign.

4.2 Upset and distress

In the discourses around adoption in Ireland there is a tendency to characterise adopted people, natural mothers and others affected by forced family separation as highly emotional, fragile individuals. For example, the Scheme over-emphasises the potential for ‘upset’ and ‘distress’, particularly in the case of natural mothers who have registered a ‘no contact’ preference. Instead of putting in place supports that are available to all who need them, the Scheme devotes an entire head (Head 4) to the provision of ‘counselling support for birth parents’, but this hinges on the parent having expressed a preference for ‘no contact’. Furthermore, Head 19 states that people making an application to be registered on the Contact Preference Register will be advised ‘*where relevant and appropriate*’ that they may also apply for information and tracing services. The explanatory notes state that the reference to being informed where appropriate is because ‘Where someone states a no contact preference, it would not be appropriate to inform them of their right to apply for a trace and *could be upsetting*’. Relatedly, Head 36 provides for TUSLA and the Adoption Authority to provide support to people applying for information and tracing services, including ‘support where information could be *potentially distressing* to the applicant’.

And yet—there appears to be no concern for the distress caused by the imposition of a mandatory Information Session on some adopted people or the exclusion of natural parents and relatives from the right to information.

In fact, adopted people and natural mothers are strong, capable and resourceful individuals. However, their resilience does not justify what happened to them, nor do we suggest that forced family separation does not have an emotional impact. Nevertheless, the State must recognise that measures to ensure truth and accountability (including access to records) are of equal importance to, and indeed have a direct bearing on, the mental health of adopted people and natural mothers. In our experience over the past two decades, it is the lack of access to information that causes the most ‘upset’ and ‘distress’.

When faced with revelations about so-called ‘historic’ injustices, a central component of the State’s default response is the provision of counselling to people affected. While such supports are welcome, they also act as a means of managing stakeholders. In the absence of truth and accountability mechanisms, the burden is put firmly back on adopted people and natural mothers to deal with the fallout of the injustices they suffered. As Heidi Marie Rimke argues, ‘Practices of self-help are...connected to the management and government of populations’.³³ Rimke maintains that self-help literature ‘exalts the individual over the social’ and ‘ensures that norms of obligation, accountability and responsibility continually turn the subject back on itself.’³⁴ Rimke’s argument resonates here in Ireland; for example, on one hand the Government delayed almost two years before publishing the [Reynolds Report](#) on illegal adoptions, but on the other, the public was repeatedly assured that the people who are affected have been offered counselling.³⁵ Moreover, the Government continues to withhold publication of the full report of the Collaborative Forum on Mother and Baby Homes. Instead in April 2019, Minister Zappone announced a suite of ‘well-being supports’.³⁶ As we have stated, such supports are welcome measures, however, they are provided in the absence of transparency and accountability, including the lack of access to State reports, as well as personal and administrative records for adopted people and natural family members. This renders invisible and impenetrable the very system that is under investigation in the first place.

5. ‘NO CONTACT’ PREFERENCE REGISTRATIONS

Under the current iteration of the Scheme, where a ‘no contact’ preference is registered by a natural parent, an adopted person applying for their birth certificate will have to attend an Information Session. Given the power that the mechanism of a ‘no contact’ preference has in terms of its potential to infringe upon the rights of adopted people, it requires close scrutiny.

³³ Heidi Marie Rimke, ‘Governing Citizens Through Self-Help Literature,’ *Cultural Studies* 14:1 (2000): 72.

³⁴ Rimke, ‘Governing Citizens Through Self-Help Literature,’ 62; 72.

³⁵ Jennifer Bray and Mark Hilliard, ‘Identifying People Adopted Illegally is ‘Slow Work’, says Tusla,’ *Irish Times*, 25 April 2019; Conall Ó Fátharta, ‘No Date for Report on Scoping Exercise,’ *Irish Examiner*, 16 Sept. 2019.

³⁶ Joe Little, ‘Package of Supports for Mother and Baby Home Survivors Announced,’ *RTÉ News*, 16 April 2019; Conall Ó Fátharta, ‘Forum Members Dismayed by Refusal to Publish Mother and Baby Homes Report in Full,’ *Irish Examiner*, 16 April 2019.

5.1 What happens when the three-month period has lapsed?

The Scheme itself does not make clear what happens when a natural parent registers a 'no contact' preference after the three-month period has lapsed, however the Department's [FAQs](#) explain that:

Once this three month window closes, people will be able to apply for their information. Contact preferences will still be accepted after this window closes but, in such cases, it cannot be guaranteed that the person, to whom the contact preference applies, will not have already applied for and received their information'.³⁷

In other words, because there is no closing date for registering a 'no contact' preference, the Government intends to impose restrictions on adopted people's right of access to their birth certificates (which are public documents) on an indefinite basis.

5.2 Natural fathers

According to the Scheme, the compulsory Information Session is invoked where either a natural mother or natural father lodges a 'no contact' preference. However, in the vast majority of cases, natural fathers were not named on adopted people's birth certificates (see the sample below). The Information Session should not be associated with a 'no contact' preference in the first instance, however, it is doubly inappropriate that a 'no contact' preference from a person not even named on a birth certificate should necessitate adopted people being subjected to a compulsory lecture on privacy.

Uimh. No.	Dáta agus Ionad Breithe	Ainm	Geólas	Ainm, Sloinne agus Ionad Chónaithe an Athar	Ainm agus Sloinne na Máthar agus a ióirene rounn pháistidh di	Céim nó Cairm Ibeatha an Athar	Siúid, Cálleáit agus Ionad Chónaithe an Fhaisnéisora	As Dáta a Clórafadh	Siúid an Cláráthóra	Ainm Baiste má tugadh é iar-dia Cláráir na Breithe agus an Dáta Bapstúil Ainm, if added (see Registrar of Birth and Love)
1	2	3	4	5	6	7	8	9	10	11
409	10 73 county (Dún) Mental Hospital Hospital	[Redacted]	Female	[Redacted]	[Redacted]	/	Margaret Moylan Mental Hospital Hospital	Féast May 10 73	Mary Bollett (Registrar)	Cláráthóir Registrar

37 FAQs page 11.

Moreover, we are extremely concerned about the possibility of abuse of ‘no contact’ preferences as the AAI will not be able to easily identify individuals claiming to be the natural father of an adopted person. Section 3 of 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.

Therefore, *any person* can register a ‘no contact’ preference against an adopted person, yet adopted people subject to such preferences must endure a humiliating process simply to access a public document.

5.3 ‘No contact’ preference option on the new Contact Preference Register

We are very concerned that the Scheme has altered the format of contact preferences in the new Contact Preference Register. A great deal of thought went into how the NACPR would operate and how all categories of registrants could best be served. In advance of the establishment of the NACPR in 2005, then Minister for Children Brian Lenihan appointed an advisory group to the Adoption Board (now the AAI) to consult on the design of the register. The advisory group was comprised of adopted people (including ARA’s co-founder Susan Lohan), natural parents, professionals and officials. As a result of the work of the advisory group, the NACPR provides three options for people wishing to register a ‘no contact’ preference: i) No contact but willing to share medical information; ii) No contact but willing to share information; iii) No contact at the moment. Crucially, registrants also have the option of being discreetly notified when another party enters their details on the register. In contrast, the new Contact Preference Register set out under Section 9 of Head 16, has just one preference regarding ‘no contact’: ‘not willing to be contacted by the specified person’. It is absolutely essential that the options set out under the original NACPR are restored.

6. TRACING SERVICE

We welcome the introduction of a statutory based tracing service; however, we have grave concerns about TUSLA’s involvement in the service. TUSLA operates legally troubling and discriminatory practices, including defining adopted people’s birth name as third party data and undertaking ‘risk assessments’ of all adopted people who

request their records. Indeed, the [Collaborative Forum of Former Residents of Mother and Baby Homes](#), which was established to advise the Government, has repeatedly stated that TUSLA should have no further role in adoption information and tracing. Furthermore, we have repeatedly raised the issue that TUSLA is not currently considered to be an ‘accredited body’ as prescribed under the *Adoption Act 2010*, and it is therefore unregulated in its role as an adoption service provider. We maintain that the tracing service should be provided by independent genealogists. At a bare minimum, the tracing service should comprise the following elements:

- The tracing service is operated according to **international best-practice models, including a robust complaints mechanism**;
- The tracing service is adequately resourced;
- All research relating to adoption traces is carried out by **trained genealogists** and not social workers;
- If two or more service users state that they wish to be put in direct contact with each other with no further intervention or assistance from TUSLA or any other State agency, they are not obstructed from availing of this option;
- The tracing service is regularly advertised internationally and on social media in order to facilitate people who were exported from Ireland for adoption as children
- Section 126 of the *Adoption Act 2010* must be amended to ensure that TUSLA is registered as an accredited body.

7. DEFINITIONS

In addition to the issues we have raised above in relation to how information is defined, there are other definitions in the bill that are equally problematic.

7.1 Definition of ‘birth relative’

Definition of ‘birth relative’ in the Scheme:

‘birth relative’ means, in relation to a person—

- (a) a relative of his or her birth mother or birth father, or
- (b) a person who would, but for the adoption of any person, be a relative of his or her birth mother or birth father;

The Scheme's definition of 'birth relative' is confusing, inaccurate and offensive. An adoption order severs legal ties but it does not extinguish the biological reality that adopted people are related to their natural families. Moreover, an adoption order does not negate the familial ties that many adopted people and natural families have forged together in reunion.

It is worth pointing out that the Scheme defines 'relative' as follows (at page 7):

'relative' means, in relation to a person, a parent, guardian, spouse, civil partner, grandparent, son, daughter, grandchild, brother, sister, cousin, uncle or aunt of the person—

- (a) whether the relationship is of the whole blood or half blood, or by marriage,
- (b) whether or not the relationship depends on the adoption of a person, and
- (c) whether the relationship is traced through the adoptive mother or the adoptive father or, as the case may be, the birth mother or the birth father;

Therefore, we submit that the Bill should define 'birth relative' as follows:

'birth relative' means, in relation to a person, a parent, guardian, spouse, civil partner, grandparent, son, daughter, grandchild, brother, sister, cousin, uncle or aunt of the person, where the relationship is of the whole blood or half blood.

7.2 Definition of 'incorrect birth registration'

Definition in the Scheme:

'incorrect birth registration' in relation to a person, means an entry in the Register of Births in which-

- (a) the particulars of the person's birth are falsely and incorrectly recorded in the said entry, and
- (b) the persons named as mother, and if applicable father, in the said entry assumed the role of parents in relation to the person and treated that person as their lawful child;

So-called 'incorrect birth registrations' were in fact illegal adoptions, and such practices should be named for what they were. As the Joint Committee on Health and Children stated in its 2015 Report on the Pre-Legislative Scrutiny of the General Scheme and Heads of the Adoption (Information and Tracing) Bill:

...the Committee maintains that references to 'wrongful registrations' or 'incorrect registrations' suggest an administrative oversight, and do not adequately reflect the covert nature of many adoptions carried out in the past. The Committee further notes that there are no references to or acknowledgements of illegal adoptions in the Bill.

Therefore, the definition should be amended so it reads as follows:

'illegal adoption' means an illegal adoption, where any of the following situations occurred:

- (a) where a non-marital child was registered as the natural child of the adoptive parents without the natural mother's knowledge or consent and no adoption order was made;
- (b) where a non-marital child was registered as the natural child of the adoptive parents and an adoption order was made;
- (c) where a marital child was registered as the natural child of the adoptive parents and no adoption order was made;
- (d) where a marital child was registered as the natural child of the adoptive parents and an adoption order was made;
- (e) where the adoptive parents were not resident in the state at the time of the adoption;
- (f) where a relinquished child over a year old was sent overseas for adoption without the consent and knowledge of the natural mother;
- (g) where informed consent was not given, as in the case of birthmothers who were minors who signed consents without a guardian or legal advisor present, without understanding the import of severing parental rights;
- (h) any adoption arranged by a private person or private body, not regarded as a 'registered Adoption Agency';
- (i) any adoption arranged by a registered adoption agency or other body for the purpose of financial gain.

7.3 Definition of 'affected person'

Definition of 'affected person' in the Scheme:

'affected person' means a person -

- (a) the particulars of whose birth are falsely and incorrectly recorded in an entry in the Register of Births, and
- (b) where the persons named as mother, and if applicable father, in the said entry assumed the role of parents in relation to the person and treated that person as their lawful child, and

(c) where the entry in the Register of Births was made before the 31 day of December 1970,

and includes a person in respect of whom the entry in the Register of Births was already amended or cancelled pursuant to sections 63, 64, or 65 of the Act of 2004 prior to the enactment of this Act.

We are extremely concerned that the definition of 'affected person' excludes people who were illegally adopted after 31st December 1970. This definition should be amended to delete subsection (c) in its entirety.

8. MISCELLANEOUS

8.1 Adoption Advisory Group

After the Adoption Legislation Consultation in 2003, then Minister for Children, Brian Lenihan set up Advisory Groups which had the task of advising the Adoption Authority on an information and tracing service, on the NACPR and on the retrieval and maintenance of adoption records. The input of those with direct experience of adoption is essential if the services set out under the Bill are to be effective. Therefore, we urge Minister to establish a permanent Advisory Group as a mechanism to advise the Minister for Children and all other agencies involved in the provision of adoption services.

8.2 Amendment of Section 89 of the *Adoption Act 2010*

When the Adoption Bill 2009 (which became the *Adoption Act 2010*) was making its way through the Oireachtas, ARA argued strongly against Section 89. The Extract from the Adopted Children's Register, which is used by adopted people in lieu of a birth certificate should not purport to be a birth certificate and it should clearly state that it reflects details of the person's adoption. For adopted people who are not told they are adopted, the Extract from the Adopted Children's Register is often the only way they have to discover that they were adopted.

8.3 Amendment of Section 98 (3) of the *Adoption Act 2010*

Since the Adoption Board was established in 1952, adoptive parents were (until the *Adoption Act 2010*) always represented, however, adopted people and natural parents

have never been afforded such a position. It is absolutely imperative that the voices of those who are affected by adoption are represented on the AAI Board, not only to help ensure that present day adoptions are held up to the highest ethical scrutiny (including an understanding of power relations), but also to offer expertise in ensuring that records are secured, maintained and interpreted correctly.³⁸

8.4 Amendment of the *Status of Children Act 1987*

The *Status of Children Act 1987* was designed to abolish the shame associated with illegitimacy. Yet, the legislation explicitly discriminates against adopted people, by excluding them from the right to obtain a declaration of parentage. In [follow up documentation](#) provided after a consultation with stakeholders, the Minister stated in relation to illegal adoptions:

Declaration of Parentage is provided for by Section 35 of The Status of Children Act, 1987 and in The Child and Family Relationships Act, 2015. The Act allows for person to apply to the Circuit Court for a declaration stating that they are the father/mother or parents of a child OR for a person to apply to the Circuit Court for a declaration stating that the named person is their father/mother or parents of the applicant. An application can be made through a solicitor or directly to the courts.

Yet, the Minister seems unaware that the *Status of Children Act* excludes adopted people. Rectifying this inequity requires a simple amendment which we have set out in the second part of this submission.

8.5 Immunity

We strongly object to Head 38 which provides immunity from damages claims to the AAI, TUSLA and their current and former Board members and employees in respect of the performance of their functions under the legislation, unless there was an act or omission committed in bad faith. It is important to bear in mind that (a) the functions carried out under this legislation will impact upon important basic rights of individuals, and (b) the State should be seeking to clearly distance itself from the wrongful,

³⁸ In June 2019 Dr Geoffrey Shannon appointed Claire McGettrick to the Research Sub-Committee of the Adoption Authority of Ireland (AAI). The Sub-Committee's role is to assist the AAI in achieving its goal to inform and influence adoption policy by undertaking and promoting adoption research in Ireland.

unaccountable conduct of adoptions in the past and their pernicious effects which presently continue. The State should now be seen to act with respect for the rule of law, rather than attempting to avoid accountability for its actions under the legislation.

8.6 Repeal of 'gagging orders'

8.6.1 Section 28(6) of the Residential Institutions Redress Act 2002

The colloquially named 'gagging order' in section 28(6) of the Residential Institutions Redress Act 2002 has caused untold harm to survivors of industrial schools, despite the provision never being used to prosecute a survivor for speaking in public of the matters which they revealed to the Redress Board. For more on the impact of the gagging order, please see the [2017 report](#) of the voluntary organisation *Reclaiming Self* to the UN Committee Against Torture (in particular p17, 23-24), and Mick Peelo's two-part documentary for RTE in March 2020, [Redress](#).

Section 28(6) states as follows:

A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.

Under section 28(9), contravention of section 28(6) is a criminal offence with a maximum penalty under section 34 of a €25,000 fine and/or 2 years' imprisonment. In our view and the view of many lawyers whom we have consulted, this section on its face contravenes the guarantee of freedom of expression in Article 40.6.1 of the Constitution and Article 10 ECHR. It is unnecessary and disproportionate given the other legal protections available to alleged wrongdoers (e.g. defamation law and the protection from civil suit that the RIRA 2002 provides once a survivor has accepted a settlement).

Section 28(6) of the RIRA 2002 must be amended to clarify that 'a person' refers to those working for the RIRB and Review Committee and not survivors.

8.6.2 Section 11(3) of the *Commissions of Investigation Act 2004*

The current section 11(3) of the 2004 Act criminalises the disclosure by any person of evidence or documents given to the Commission in private, on pain of a maximum penalty of a €300,000 fine and/or 5 years' imprisonment.

We believe that this provision, on its face, is in clear violation of the right to freedom of expression of those who experienced abuse, who should be enabled if they wish to contribute testimony or documents to the national historical record or otherwise to publish their accounts. Furthermore, as recommended above, this provision should be amended so that all personal data given to the Commission in private is readily available to the individuals who own it as required by the GDPR, and State and other *administrative* records are publicly available (anonymised as necessary).

8.7 Information rights for adopted children and their parents

In line with our child-centred ethos, we have submitted two amendments designed to provide information rights for adopted children and their natural parents. It is imperative that history does not repeat itself: no child should be forced to grow up under a closed secret system and no natural mother or father should be denied information as to the whereabouts and wellbeing of their child.

PART TWO: CLANN PROJECT AMENDMENTS

A Note Regarding Language

We use the terms natural mother/father/parent instead of birth or biological mother/father/parent. There are several reasons for our support for this definition. Many natural mothers are offended by the term 'birth/biological' mother. Moreover, many natural mothers cared for their children for up to two or three years (or sometimes longer) before adoption. We also contend that the term 'birth father' is biologically impossible. Ultimately, we respect the right of each adopted person to use the terminology they feel most comfortable with. For ease of reference, we have retained the terminology from the Scheme in our amendments below.

HEAD 2 - INTERPRETATION

Definition of 'birth relative' (page 4)

Definition in the Scheme:

- 'birth relative' means, in relation to a person—
- (c) a relative of his or her birth mother or birth father, or
 - (d) a person who would, but for the adoption of any person, be a relative of his or her birth mother or birth father;

We submit that the Bill should define 'birth relative' as follows:

'birth relative' means, in relation to a person, a parent, guardian, spouse, civil partner, grandparent, son, daughter, grandchild, brother, sister, cousin, uncle or aunt of the person, where the relationship is of the whole blood or half blood.

In addition to the above definition, the Clann Project recommends that the following should also be included in the Bill:

'birth father' means, in relation to a relevant person, the person who, at the time of the person's birth, was his or her father.

'birth mother' means, in relation to a relevant person, the person who gave birth to her or him.

'birth parent' means, in relation to a relevant person, his or her natural mother or natural father.

'birth sibling' in relation to a relevant person, a person who shares the same natural mother or natural father, or both, as her or him.

Definition of 'birth relative information' (page 4)

Definition in the Scheme:

- 'birth relative information' means, in relation to a person, the following information-
- (a) whether the person has a birth relative, whether living or deceased;
 - (b) where the person has a birth sibling—
 - i. the sex of the birth sibling, and
 - ii. whether the birth sibling is older or younger than the person;

This definition needs to be amended so that it reads as follows:

‘birth relative information’ means, in relation to a person, the following information-

- (a) information in relation to a parent, guardian, spouse, civil partner, grandparent, son, daughter, grandchild, brother, sister, cousin, uncle or aunt of a relevant person;
- (b) information on whether the person has a birth sibling—
 - i. the number of siblings,
 - ii. the sex of the birth sibling(s),
 - iii. the name(s) of the birth sibling(s),
 - iv. whether the birth sibling(s) is/are older or younger than the person,
 - v. whether the sibling(s) was/were adopted;

Definition of ‘care information’ (pages 4-5)

Definition in the Scheme:

‘care information’ means, in relation to a relevant person-

- (a) the name of any person who cared for a relevant person as part of a nursed out arrangement,
- (b) the name of any person who cared for a relevant person as part of a boarded out arrangement,
- (c) the name of any person who cared for a relevant person as part of a foster care arrangement,
- (d) the name of a person in charge and the name of any person who cared for a relevant person while he or she was resident as a child in an institution listed in schedule 1,
- (e) the location at which any care arrangement referred to in (a) - (d) took place,
- (f) the duration and dates of any care arrangement referred to in (a) - (d),
- (g) the name of any person who made arrangements for the adoption of a relevant person, whether or not an adoption was effected in respect of him or her,
- (h) the name of any person who made arrangements for a foster care arrangement or who placed the relevant person with prospective adopters,
- (i) the name of any person who made arrangements for the relevant person to be nursed out or boarded out,

and 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 definition should be revised so that it reads as follows:

‘care information’ means, in relation to a relevant person-

- (a) the name of any person who cared for a relevant person as part of a nursed out arrangement,
- (b) the name of any person who cared for a relevant person as part of a boarded out arrangement,
- (c) the name of any person who cared for a relevant person as part of a foster care arrangement,
- (d) the name of a person in charge and the name of any person who cared for a relevant person while he or she was resident as a child in an institution listed in schedule 1,
- (e) The minister shall amend schedule 1 to add all known institutions, agencies and individuals involved in forced family separation,
- (f) the name of a person in charge and the name of any person who cared for a relevant person while he or she was resident as a child in an institution not yet listed in schedule 1,
- (g) the location at which any care arrangement referred to in (a) - (e) took place,
- (h) the nature of care provided by the persons and institutions referred to in (a) - (e),
- (i) the duration and dates of any care arrangement referred to in (a) - (e),
- (j) the name of any person who made arrangements for the adoption of a relevant person, whether or not an adoption was effected in respect of him or her,
- (k) the name of any person who made arrangements for a foster care arrangement or who placed the relevant person with prospective adopters,
- (l) the name of any person who made arrangements for the relevant person to be nursed out or boarded out,
- (m) the name of a birth parent or guardian of the child who provided care,
- (n) a relative of the child who is providing care other than as part of a nursed out, boarded out or foster care arrangement, or
- (o) a person who is, or becomes, the adoptive parent of the child,
- (p) the personal data of a relevant person.

Definition of ‘early life information’ (pages 5-6)

Definition in the Scheme:

‘early life information’ means in relation to a person, information that relates to him or her in the period following his or her birth and includes—

- (a) the location at which he or she resided and the dates during which he or she resided at that place,

- (b) where applicable, the date and place of his or her baptism or any other ceremony of a religious or spiritual nature performed in the period in respect of him or her,
- (c) the person's birth weight,
- (d) information on the person's health, physical or emotional development,
- (e) information on any medical treatments, procedures or vaccinations provided to the person,
- (f) the duration for which the person's birth mother remained with him or her in the same place of residence and the start and end dates of that duration,
- (g) information on whether the person left with his or her birth mother or separately to his or her birth mother,
- (h) information on whether a birth parent or birth relative visited or inquired in relation to the person, including the degree of relationship to the relevant person but excluding the name of the birth parent or birth relative, and
- (i) birth relative information;

The definition should be amended to add the following:

- (j) the relevant person's personal data.

Definition of 'incorrect birth registration' (page 6)

Definition in the Scheme:

'incorrect birth registration' in relation to a person, means an entry in the Register of Births in which-

- (c) the particulars of the person's birth are falsely and incorrectly recorded in the said entry, and
- (d) the persons named as mother, and if applicable father, in the said entry assumed the role of parents in relation to the person and treated that person as their lawful child;

The definition should be amended so it reads as follows:

'illegal adoption' means an illegal adoption, where any of the following situations occurred:

- (j) where a non-marital child was registered as the natural child of the adoptive parents without the natural mother's knowledge or consent and no adoption order was made;
- (k) where a non-marital child was registered as the natural child of the adoptive parents and an adoption order was made;
- (l) where a marital child was registered as the natural child of the adoptive parents and no adoption order was made;
- (m) where a marital child was registered as the natural child of the adoptive parents and an adoption order was made;

- (n) where the adoptive parents were not resident in the state at the time of the adoption;
- (o) where a relinquished child over a year old was sent overseas for adoption without the consent and knowledge of the natural mother;
- (p) where informed consent was not given, as in the case of birthmothers who were minors who signed consents without a guardian or legal advisor present, without understanding the import of severing parental rights;
- (q) any adoption arranged by a private person or private body, not regarded as a 'registered Adoption Agency';
- (r) any adoption arranged by a registered adoption agency or other body for the purpose of financial gain.

Clann Project insertion: definition of 'personal data'

'personal data' has the meaning ascribed to it by the *Data Protection Act 2018* and the General Data Protection Regulation, which defines personal data in terms of a person's 'physical, physiological, genetic, mental, economic, cultural or social identity'. Under this Act, all records 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 is shared with another person. Personal data in relation to a relevant person, includes but is not limited to:

- (c) Personal data in terms of the person's physical, mental, and physiological identity, including but not limited to:
 - (i) The person's place of birth;
 - (ii) Details, if applicable, of whether the person was carried to full term, and if not, what precipitated early delivery and at what stage in the pregnancy;
 - (iii) The person's health status at birth;
 - (iv) Details regarding the circumstances of the person's birth, e.g. was it a normal birth or if there were complications;
 - (v) The person's birth weight;
 - (vi) The person's physical condition and circumstances during their early months and years;
 - (vii) Records concerning the person's early-life care;
 - (viii) Records concerning the person's health from birth until the time of placement;
 - (ix) The person's medical records from birth until the time of placement, including x-rays, tests, vaccines;
 - (x) The person's natural family's medical history as described under 'natural family medical history'.

- (xi) Where applicable, records of any vaccine trials in which the person was a research subject.
- (d) Personal data in terms of the person's genetic identity, including but not limited to:
- (i) The person's name at birth;
 - (ii) The person's natural mother's forename and surname, as held in the public Register of Births or equivalent if the person's natural mother was born outside of Ireland;
 - (iii) The person's natural father's forename and surname, as held in the public Register of Births or equivalent if the person's natural father was born outside of Ireland;
 - (iv) The person's natural relatives' names, as held in the public Register of Births or equivalent if the person's natural relative was born outside of Ireland.
- (c) Personal data in terms of the person's economic, cultural and social identity, both before and after their adoption or placement in informal care, relating to their economic, cultural and social identity both around the time of their birth and after their adoption or placement in informal care, and which relate to how the relevant person acquired their adoptive identity, including but not limited to:
- (i) The person's name at birth, as held in the public Register of Births;
 - (ii) The person's date of birth;
 - (iii) The person's place of birth;
 - (iv) The person's natural mother's forename and surname, as held in the public Register of Births or equivalent if the person's natural mother was born outside of Ireland;
 - (v) The person's natural father's forename and surname, as held in the public Register of Births or equivalent if the person's natural father was born outside of Ireland;
 - (vi) The person's natural relatives' names, as held in the public Register of Births or equivalent if the person's natural relative was born outside of Ireland;
 - (vii) The person's county/country of origin at the time of their birth;
 - (viii) The occupation of the person's natural parents and family members at the time of the person's birth;
 - (ix) The person's natural parents' ages at the time of the person's birth;
 - (x) The person's grandparents' occupations at the time of the person's birth;
 - (xi) The number of siblings in the immediate family of the person's natural mother;

- (xii) The circumstances surrounding the person's adoption or informal care arrangement;
- (xiii) Correspondence about the person, including correspondence associated with the administrative process surrounding the person's adoption or informal care arrangement, and correspondence from the person's natural mother enquiring about the person;
- (xiv) The assessment process associated with the relevant person's adoption or informal care arrangement;
- (xv) The administrative process surrounding the person's adoption or informal placement, including records about the decision-making process around the placement, correspondence with the adoptive parents and others, and how the relevant person acquired their adoptive/new identity;
- (xvi) The names of the people responsible for the person's care during the relevant person's early weeks, months and years';
- (xvii) The place at which the person resided and the individual who was in charge of that place;
- (xviii) Where applicable, the date and place of the person's baptism or any other ceremony of a religious or spiritual nature performed in the period in respect of the person;
- (xix) Where applicable, any person, agency or organisation who made arrangements for the person's adoption, whether or not an adoption was effected in respect of the person;
- (xx) Where applicable, the date on which the person was made the subject of a fostercare arrangement or placed with prospective adopters;
- (xxi) Where applicable, the date on which the person was made the subject of an informal care arrangement;
- (xxii) Information regarding whether the person's natural mother was resident in any other institution offering social care/support either prior to or subsequent to the adopted person's birth,
- (xxiii) Information regarding whether the natural mother stayed at the institution with the adopted person prior to their placement with the adoptive parents;
- (xxiv) Any anecdotal information regarding the adopted person's stay in the institution
- (xxv) If applicable, whether the person's natural mother was transferred from the Mother and Baby Home to a Magdalene Laundry or other institution, and if so, details of the circumstances;
- (xxvi) If applicable, whether the person's natural mother was transferred from a Magdalene Laundry or another institution, to the Mother and Baby Home prior to giving birth and if so, details of the circumstances;

- (xxvii) Whether the person's natural mother gave informed consent to the adoption;
- (xxviii) Whether the person's natural mother was made aware of or offered any other choices apart from adoption;
- (xxix) Whether the person's natural mother received support after their adoption;
- (xxx) Any letters, cards or other materials placed on the adoption file(s) by the person's natural mother;
- (xxxi) Any letters, cards or other materials placed on the adoption file(s) by the person's natural father or other natural relatives;
- (xxxii) Any letters, cards or other materials placed on the adoption file(s) by the person's adoptive parents.

Definition of 'provided items' (page 6)

Definition in the Scheme:

'provided items' means letters, photographs, mementoes or other documents or objects held by the Agency or the Authority that have been provided, whether to the Agency, Authority or any other person, by or on behalf of a birth parent or birth relative of a relevant person, or another person involved in the provision of care of a relevant person, for the purpose of their being made available to the relevant person in the event that they were to be sought by or on behalf of him or her, whether the items have been so provided before, on or after the date on which –

- (a) this section comes into operation, or
- (b) the relevant person became a relevant person;

The definition should be amended as follows:

'provided items' means letters, photographs, mementoes or other documents or objects held by the Agency or the Authority that have been provided, whether to the Agency, Authority or any other person, by or on behalf of a birth parent or birth relative of a relevant person, or another person **connected to** a relevant person, for the purpose of their being made available to the relevant person in the event that they were to be sought by or on behalf of him or her, whether the items have been so provided before, on or after the date on which –

- (a) this section comes into operation, or
- (b) the relevant person became a relevant person;

Definition of 'relevant record' (pages 7-8)

Definition in the Scheme:

'relevant record' means —

- (a) Records in relation to relevant persons that contain birth information, early life information, care information or medical information;
- (b) Communications in relation to a relevant person from a birth parent or birth relative which are held by the Agency, the Authority or a Primary or Secondary Information Source;
- (c) Communications in relation to a birth parent or birth relative from a relevant person which are held by the Agency, the Authority or an Information Source;
- (d) Records currently held by the Department of Foreign Affairs in relation to adopted children moving overseas in the period 1940 – 1979;
- (e) Any information recorded on the Contact Preference Register; and
- (f) Records provided to or created by the Authority or the Agency in the course of providing a tracing service.

This definition needs to be expanded so that it reads as follows:

'relevant record' means —

- (a) Records in relation to relevant persons that contain birth information, early life information, care information or medical information;
- (b) The relevant person's personal data;
- (c) Communications in relation to a relevant person from a birth parent or birth relative which are held by the Agency, the Authority or a Primary or Secondary Information Source;
- (d) Communications in relation to a birth parent or birth relative from a relevant person which are held by the Agency, the Authority or an Information Source;
- (e) Records currently held by the Department of Foreign Affairs in relation to adopted children moving overseas in the period 1940 – 1979;
- (f) Any information recorded on the Contact Preference Register;
- (g) Administrative records of the Authority, the Agency or a Primary or Secondary Information Source, including but not limited to:
 - Records of admission and discharge
 - Photographs
 - Minutes of meetings
 - Diaries
 - Reports
 - Annual reports
 - Internal publications
 - External publications

- Policy and procedure manuals
 - Staff records
 - Financial records
 - Maintenance payment records
 - Death and burial records
 - Log books
 - Visitors books
 - Correspondence
 - Punishment books
 - Baptismal and confirmation records
 - Weekly, monthly, quarterly and annual returns
 - Records concerning daily life
 - Ephemera, e.g., fundraising materials, signs, books.
- (h) A full schedule of all records held on the file relating to the relevant person; and
- (i) Records provided to or created by the Authority or the Agency in the course of providing a tracing service.

Definition of ‘secondary information source’ (page 8)

Definition in the Scheme:

‘secondary information source’ means-

- (a) the Department of Children, Equality, Disability, Integration and Youth,
- (b) the Department of Education,
- (c) the Department of Foreign Affairs and Trade,
- (d) the Department of Health,
- (e) the data controller of the AIRR archive,
- (f) the Health Service Executive,
- (g) a registered adoption society, and
- (h) a person prescribed under Head 22 [Minister may prescribe person to be secondary information source] to be a secondary information source;

This definition needs to be expanded so that it reads as follows:

- (a) the Department of Children, Equality, Disability, Integration and Youth,
- (b) the Department of Education,
- (c) the Department of Foreign Affairs and Trade,
- (d) the Department of Health,
- (e) the data controller of the AIRR archive,
- (f) the Health Service Executive,
- (g) a registered adoption society,
- (h) all individuals, agencies and institutions named in Schedule 1,³⁹

³⁹ Schedule 1 needs to be significantly expanded

- (i) any person or organisation involved in facilitating adoptions,
- (j) any person or organisation involved in the 'care' of a relevant person, and
- (k) a person prescribed under Head 22 [Minister may prescribe person to be secondary information source] to be a secondary information source;

HEAD 3 - RELEVANT PERSON MAY APPLY FOR COPY OF BIRTH CERTIFICATE

Head 3, section 2

Section 2 as currently written:

On the commencement of this section there shall be a period of three months during which, without prejudice to the right of a birth parent to apply to register a contact preference on the Contact Preference Register established under Head 16 [Contact Preference Register], a birth parent shall be entitled to specify in writing to the Authority his or her preference in relation to contact with a relevant person who is a child of the birth parent prior to any application under this Head being considered by the General Register Office or a relevant body.

Section 2 should be amended so that it reads as follows:

On the commencement of this section there shall be a period of three months during which, without prejudice to the right of a birth parent or a relevant person to apply to register a contact preference on the Contact Preference Register established under Head 16 [Contact Preference Register], a birth parent shall be entitled to specify in writing to the Authority his or her preference in relation to contact with a relevant person who is a child of the birth parent and a relevant person shall be entitled to specify in writing to the Authority his or her preference in relation to contact with a birth parent prior to any application under this Head being considered by the General Register Office or a relevant body.

Head 3, section 4

Section 4 as currently written:

The Authority shall carry out a public information campaign during the time period referenced in subsection (2) for the purposes of giving notice to the public of the process for registering contact preferences and the process for accessing birth certificates set out in this Part.

The following should be added to Section 4 so that it reads as follows:

Following a consultation process with groups representing adopted people and birth parents, the Authority shall carry out a public information campaign during

the time period referenced in subsection (2) for the purposes of giving notice to the public of the process for registering contact preferences and the process for accessing birth certificates set out in this Part.

Head 3, section 10

Section 9 as currently written:

On receipt of a request under subsection (8), the Authority shall inform the General Register Office or relevant body, as the case may be, as to whether the birth parent –

- (a) has not entered a preference on the Register;
- (b) is seeking to have contact with the specified person,
- (c) is willing to be contacted by the specified person,
- (d) is not willing to be contacted by the specified person and an Information Session has already taken place, or
- (e) is not willing to be contact by the specified person and no Information Session has taken place.

Section 9 should be amended so that it reads as follows:

On receipt of a request under subsection (8), the Authority shall inform the General Register Office or relevant body, as the case may be, as to whether the birth parent –

- (a) has not entered a preference on the Register;
- (b) is seeking to have contact with the specified person,
- (c) is willing to be contacted by the specified person at the moment,
- (d) is not willing to be contacted by the specified person,
- (e) is not willing to be contacted by the specified person but is willing to share information,
- (f) is not willing to be contact by the specified person but is willing to share medical information.

Head 3, section 10

Section 10 as currently written:

Information provided to the General Register Office or a relevant body by the Authority under subsection (9) (a), (b) or (c) shall be conveyed to an applicant by the General Register Office or the relevant body, as the case may be, when providing the birth certificate to the applicant.

Section 10 should be amended so that it reads as follows:

Information provided to the General Register Office or a relevant body by the Authority under subsection (9) shall be conveyed to an applicant by the General

Register Office or the relevant body, as the case may be, when providing the birth certificate to the applicant.

Head 3, section 11

Section 11 as currently written:

Where subsection (9)(e) applies, the General Register Office or relevant body, as the case may be, shall provide the Authority with contact details for the relevant person and shall notify the relevant person accordingly.

Section 11 should be amended so that it reads as follows:

The General Register Office or relevant body, as the case may be, shall provide the Authority with contact details for the relevant person and shall notify the relevant person accordingly.

Head 3, section 12

Section 12 as currently written:

Where subsection (9)(e) applies, the General Register Office or relevant body, as the case may be, shall not provide the birth certificate to the applicant until the notification referred to in subsection (14) has been received.

Section 12 should be deleted in its entirety.

Head 3, section 13

Section 13 as currently written:

Following receipt of contact details under subsection (11), the Authority shall arrange for contact to be made with the relevant person and for the no contact preference to be conveyed as part of an Information Session to be held between the relevant person and a social worker employed by the Agency or the Authority, the purpose of which is to inform the applicant of:

- (a) the birth parent's contact preference,
- (b) the birth parent's privacy rights, and
- (c) the importance of respecting their contact preferences.

We have two suggested alternatives to Section 13 as it is currently written:

1. An Information Session for everyone when they receive their birth certificate and records.

Under this option, Section 13 should be amended so that it reads as follows:

Following receipt of contact details under subsection (11), the Authority shall arrange for contact to be made with the relevant person to make arrangements for an Information Session, the format of which shall be prescribed in consultation with the Adoption Advisory Group, to be held between the relevant person and an archivist employed by the Agency or the Authority, the purpose of which is to:

- (a) inform the applicant of the records concerning them which are held by the Agency, the Authority and any other information source;
- (b) provide the applicant with a schedule of all records concerning them which are held by the Agency, the Authority and any other information source;
- (c) provide the applicant with their birth certificate and records;
- (d) provide the applicant with information on how to read and understand adoption records [see Appendix 3];
- (e) inform the applicant about the tracing service provided by the Agency;
- (f) inform the applicant about the National Adoption Contact Preference Register and their right to register a contact preference;
- (g) inform the applicant of the contact preference(s) of their birth parent(s) and any other relatives who may have registered.

2. Provide all applicants with an Information Booklet and the option for an Information Session

Under this option, Section 13 should be amended so that it reads as follows:

Following receipt of contact details under subsection (11), the Authority shall arrange for contact to be made with the applicant to ascertain whether they would like to receive their birth certificate and records by post or through an Information Session [as set out in (1) above]. Where an applicant opts to receive their records via post, the Authority shall make arrangements the following to be sent to the applicant without delay:

- (a) a schedule of all records concerning them which are held by the Agency, the Authority and any other information source;
- (b) the applicant's birth certificate and records;
- (c) an Information Booklet with information and guidance on

- (i) how to read and understand adoption records [see Appendix 3];
- (ii) the tracing service provided by the Agency;
- (iii) the National Adoption Contact Preference Register
- (iv) the applicant's right to register a contact preference;
- (v) the contact preference(s) of their birth parent(s) and any other relatives who may have registered.

Head 3, sections 14-15

Sections 14-15 as currently written:

- 14) The completion of the Information Session referred to in subsection (13) shall be confirmed in writing and notified to:
 - a) the General Register Office or relevant body who shall then provide the applicant with a copy of the birth certificate, and
 - b) the Authority who shall record this information on the Contact Preference Register.
- 15) Where information provided by the Authority under subsection (9) denotes that the Information Session referred to in subsection (13) has taken place, the General Register Office or relevant body shall proceed to provide a copy of the birth certificate without a requirement for a further Information Session.

Sections 14-15 should be deleted in their entirety.

HEAD 4 – COUNSELLING SUPPORT FOR BIRTH PARENTS

Head 4 as currently written:

- (1) A birth parent who has expressed a preference for no contact shall be informed by the Authority of their right to access counselling support provided by or on behalf of the Agency.
- (2) The Agency, on receipt of a request from a person referred to in section (1), shall arrange for the provision of counselling support for the person.
- (3) For the purposes of this section, the Authority may share with the Agency, relevant information on the person referred to in subsection (1), which may include the person's name and contact details.

Head 4 should be amended so that it reads as follows:

- (1) A birth parent, relevant person or relative of a deceased person who has expressed a wish to avail of counselling shall be informed by the Authority

of their right to access counselling support provided by or on behalf of the Agency.

- (2) The Agency, on receipt of a request from a person referred to in section (1), shall arrange for the provision of counselling support for the person.
- (3) For the purposes of this section, the Authority may share with the Agency, relevant information on the person referred to in subsection (1), which may include the person's name and contact details.

HEAD 5: RIGHT TO BE PROVIDED WITH INFORMATION AND ITEMS

Head 5 as currently written:

Subject to the provisions of this Part, a relevant person, who has attained the age of 16, shall have a right of access to the following:

- (a) birth information;
- (b) early life information;
- (c) care information;
- (d) medical information;
- (e) provided items.

Head 5 should be amended so that it reads as follows:

- (1) Subject to the provisions of this Part, and without prejudice to the data subject rights of relevant persons, a relevant person, who has attained the age of 16, shall have a right of access to the following:

- (a) birth information;
- (b) early life information;
- (c) care information;
- (d) medical information;
- (e) provided items.

- (2) Subject to the provisions of this Part, and without prejudice to the data subject rights of birth parents, a birth parent shall have a right of access to the following:

- (a) maternity information;
- (b) care information;
- (c) provided items.

- (3) Under this Part, the Authority and the Agency shall treat the next of kin of a deceased person who would, but for their death, have fallen within the provisions of this section as if they were the relevant person.

HEAD 6 - RELEVANT PERSON MAY APPLY FOR ITEMS AND INFORMATION

Head 6 as currently written:

A person who has attained the age of 16 years and who is, or who reasonably believes himself or herself to be, a relevant person may apply in writing to a relevant body for the provision by the relevant body to him or her of any or all of the following that is or are held by the relevant body and that relates or relate to him or her:

- (a) birth information;
- (b) early life information;
- (c) care information;
- (d) medical information;
- (e) provided items.

Head 6 should be amended so it reads as follows:

- (1) A person who has attained the age of 16 years and who is, or who reasonably believes himself or herself to be, a relevant person may apply in writing to a relevant body for the provision by the relevant body to him or her of any or all of the following that is or are held by the relevant body and that relates or relate to him or her:
 - (a) birth information;
 - (b) early life information;
 - (c) care information;
 - (d) medical information;
 - (e) provided items.
- (2) Nothing in this Part shall affect the data subject rights of relevant persons.
- (3) The relevant body shall treat the next of kin of a deceased person who would, but for their death, have fallen within the provisions of this section as if they were the relevant person.

HEAD 7: RELEVANT BODY TO PROVIDE BIRTH INFORMATION

All of the amendments set out under Head 2 (relating to the Information Session) also apply to Head 7.

HEAD 8: RELEVANT BODY TO PROVIDE EARLY LIFE INFORMATION

Head 8 as currently written:

- (1) Where an application is made in accordance with Head 6 [Relevant person may apply for items and information] a relevant body shall provide the applicant with a copy of the early life information requested.
- (2) To the extent that it is practicable to do so, the relevant body shall provide the applicant with a copy of the records containing the early life information requested.

Head 8 should be amended to add the following:

- (3) In the event that records cannot be found, the relevant body shall provide the applicant with a full explanation as to why they are not available.
- (4) The relevant body shall treat the next of kin of a deceased person who would, but for their death, have fallen within the provisions of this section as if they were the relevant person.

HEAD 9 - RELEVANT BODY TO PROVIDE CARE INFORMATION

Head 9 as currently written:

- (1) Where an application is made in accordance with Head 6 [Relevant person may apply for items and information] a relevant body shall provide the applicant with a copy of the care information requested.
- (2) To the extent that it is practicable to do so, the relevant body shall provide the applicant with a copy of the records containing the care information requested.

Head 9 should be amended to add the following:

- (3) In the event that records cannot be found, the relevant body shall provide the applicant with a full explanation as to why they are not available.
- (4) The relevant body shall treat the next of kin of a deceased person who would, but for their death, have fallen within the provisions of this section as if they were the relevant person.

HEAD 10- RELEVANT BODY TO PROVIDE MEDICAL INFORMATION

Head 10 as currently written:

- (1) Subject to subsections (2) and (3), where an application is made in accordance with Head 6 [Relevant person may apply for items and information], a relevant body shall provide the applicant with a copy of medical information.
- (2) Where, in the case of an application under Head 6 [Relevant person may apply for items and information], a relevant body believes that medical information in relation to a birth parent or a birth relative of the applicant is relevant to the medical history or health of the applicant, and that it is necessary for reasons of substantial public interest that the applicant be provided with such information, the relevant body may provide the applicant with such medical information as may be necessary for this purpose through the applicant's nominated medical practitioner.
- (3) When providing a medical practitioner with medical information in accordance with this section, the relevant body will not provide the name or (unless it is necessary to do so for medical reasons) the specific blood relationship of the birth parent or birth relative to whom the information relates.
- (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.

Head 10 should be amended so it reads as follows:

- (1) Where an application is made in accordance with Head 6 [Relevant person may apply for items and information], a relevant body shall provide the applicant with a copy of medical information.
- (2) 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.

- (3) 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.

HEAD 11: PROVIDED ITEMS

Head 11 as currently written:

Where an application is made in accordance with Head 7 [Relevant Body to provide birth information], the Agency or the Authority shall provide the applicant with provided items which have been deposited with them for the purpose of being made available to the applicant.

Head 11 should be amended so that it reads as follows:

- (1) Where an application is made in accordance with Head 7 [Relevant Body to provide birth information], Head 11a, the Agency or the Authority shall provide the applicant with provided items which have been deposited with them for the purpose of being made available to the applicant.
- (2) The relevant body shall treat the next of kin of a deceased person who would, but for their death, have fallen within the provisions of this section as if they were the relevant person.

CLANN PROJECT INSERTION

We have inserted a new head under this Part to provide information rights to natural parents. For ease of reference we have called the insertion 'Head 11a'.

HEAD 11a: RELEVANT BODY TO PROVIDE INFORMATION TO BIRTH PARENTS

- (1) Without prejudice to the data subject rights of birth parents, a birth parent may apply to a relevant body for the provision to her or him of information held by the relevant body for maternity information and other personal data;
- (2) Without prejudice to the data subject rights of relevant persons, a birth parent may apply to a relevant body for the provision to her or him of information held by the relevant body for information that relates to a relevant person;
- (3) Where a birth parent applies to the relevant body for information as set out under subsection (1), that information shall be provided in its original form without redaction;
- (4) The relevant body, on receipt of an application made in accordance with subsection (2) shall contact the Authority. The Authority shall take all

reasonable steps in accordance with any guidelines prescribed by the Adoption Advisory Group, to locate the relevant person;

- (5) The records will be provided to the birth parent at an Information Session [as set out in Head 3, Section 13].

HEADS 12-13

We have not submitted amendments to Heads 12-13 at this time, but reserve the right to do so when the Bill is published.

HEAD 14: GUIDELINES (PART 4)

Head 14 as currently written:

- (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].

Head 14 should be amended so it reads as follows:

- (1) The Minister may, in consultation with the Adoption Advisory Group, 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:
 - (a) the procedures to be followed for the purpose of locating a person under Head 12 [Agency and Authority to provide a tracing service].
 - (b) the records, whether publicly available or otherwise, that are likely to be relevant for the purpose referred to in paragraph (a).
- (3) The Minister shall make arrangements for regular training for the staff and management of the Agency, the Authority and relevant bodies, the format of which shall be determined in consultation with the Adoption Advisory Group.
- (4) The staff and management of the Agency and the Authority shall be required to attend regular training in the provision of tracing services.

HEAD 15: AGENCY OR THE AUTHORITY TO FACILITATE CONTACT BETWEEN PARTIES OR TO SHARE INFORMATION BETWEEN PARTIES

Save for the insertion below, we have not submitted substantial amendments to Sections 1-5 of this Head at this time, but reserve the right to do so when the Bill is published.

Head 15 should be amended to add the following:

- (6) Where a specified person informs the Agency or the Authority that she or he is willing to have contact with the requester, the Agency shall inform both parties of their right to choose whether they:
 - (a) wish to proceed with contact without the assistance of the Agency, or
 - (b) wish to proceed with contact with the assistance of the Agency,
- (7) Both parties shall be supplied with the contact details of peer support groups relevant to their situation.

HEAD 16: CONTACT PREFERENCE REGISTER

Head 16, Section 1

Section 1 as written:

The Authority shall establish and maintain a register to be known as the Contact Preference Register, and referred to in this Part as the 'register'.

Section 1 should be amended so it reads as follows:

The Authority shall, in consultation with the Adoption Advisory Group, establish and maintain a register to be known as the Contact Preference Register, and referred to in this Part as the 'register'.

Head 16, Section 2

Section 2 as written:

The purpose of the register shall be to—

- (a) record the name and contact details of persons to whom subsection (3) applies,
- (b) record the statements made, or deemed to have been made, under subsection (9) by persons referred to in paragraph (a),

- (c) record such further information as the Authority or the Minister considers appropriate,
- (d) provide a mechanism for individuals to lodge medical information or provided items (which may include sealed information in relation to themselves or their family) which they wish to be shared with a person to whom subsection (3) applies,
- (e) facilitate the Authority and relevant bodies in the performance by them of their functions under this Act.

Section 2 should be amended to add the following:

- (f) safeguard and maintain the existing registrations on the National Adoption Contact Preference Register.

Head 16, Section 3

Section 3 as written:

The following persons may apply, in accordance with this section, to have an entry made in the register in respect of him or her:

- (a) a person who is, or who believes himself or herself to be, a relevant person;
- (b) a person who is, or who believes himself or herself to be, a birth parent of a relevant person;
- (c) a person who was a relevant guardian in relation to an adopted person;
- (d) the adoptive parent of an adopted child;
- (e) a birth relative of a relevant person;
- (f) a person who was a carer in relation to a relevant person as construed in accordance with the definition of 'care information'.

Section 3 should be amended so it reads as follows:

The following persons may apply, in accordance with this section, to have an entry made in the register in respect of him or her:

- (a) a person who is, or who believes himself or herself to be, a relevant person;
- (b) a person who is, or who believes himself or herself to be, a birth parent of a relevant person;
- (c) a person who was a relevant guardian in relation to an adopted person;
- (d) the adoptive parent of an adopted child, subject to approval by a guardian ad litem acting on behalf of the adopted child;
- (e) a birth relative of a relevant person;

- (f) a person who was a carer in relation to a relevant person as construed in accordance with the definition of ‘care information’.

Head 16, Section 4

Section 4 should be amended to add the following:

- (h) An entry shall not be made in the Register unless the person to whom subsection (3) applies has provided sufficient identification, in a manner to be determined by the Authority.

Head 16, Section 5

Section 5 (h) as written:

whether a specified person has attended an Information Session under Head 3 [Relevant person may apply for copy of birth certificate] or Head 7 [Relevant body to provide birth information] related to the person’s preference for no contact.

Section 5 (h) should be deleted in its entirety.

Head 16, Section 9

Section 9 as written:

A person, in a statement under this subsection, may state, in relation to such person (‘specified person’) as he or she may specify in the statement, whether he or she is—

- (i) seeking to have contact with the specified person,
- (ii) willing to be contacted by the specified person, or
- (iii) not willing to be contacted by the specified person,
- (iv) seeking information in relation to the specified person and, if so, the nature of the information,
- (v) willing to provide information if requested by a specified person.

Section 9 should be amended so it reads as follows:

A person, in a statement under this subsection, may state, in relation to such person (‘specified person’) as he or she may specify in the statement, whether he or she is—

- (i) seeking to have contact with the specified person,
- (ii) willing to be contacted by the specified person, or
- (iii) not willing to be contacted by the specified person at the moment
- (iv) not willing to be contacted by the specified person, but willing to share information,

- (v) not willing to be contacted by the specified person, but willing to share medical information
- (vi) seeking information in relation to the specified person and, if so, the nature of the information,
- (vii) willing to provide information if requested by a specified person.

HEADS 17-18

We have not submitted amendments to Head 17 and 18 at this time, but reserve the right to do so when the Bill is published.

HEAD 19: APPLICANTS FOR ENTRY ON REGISTER TO BE INFORMED OF PROVISIONS OF PARTS 2, 3 AND 4

Head 19 as written:

A person who makes an application under this Part shall be advised, where relevant and appropriate, of the right to apply for birth, early life, care information, medical information and provided items in accordance with the provisions of Parts 2 and 3 and of the right to apply for a tracing service in accordance with the provisions of Part 4.

Head 19 should be amended so it reads as follows:

A person who makes an application under this Part shall be advised of the right to apply for birth, early life, care information, medical information and provided items in accordance with the provisions of Parts 2 and 3 and of the right to apply for a tracing service in accordance with the provisions of Part 4.

HEAD 20: TRANSFER OF INFORMATION AND PREFERENCES FROM NATIONAL ADOPTION CONTACT PREFERENCE REGISTER

We have not submitted amendments to Head 20 at this time, but reserve the right to do so when the Bill is published.

PART 6: SAFEGUARDING RELEVANT RECORDS

We have not submitted amendments to this Part at this time, but reserve the right to do so when the Bill is published.

HEAD 29: INTERPRETATION

Definition of 'affected person' as written:

'affected person' means a person -

- (d) the particulars of whose birth are falsely and incorrectly recorded in an entry in the Register of Births, and
- (e) where the persons named as mother, and if applicable father, in the said entry assumed the role of parents in relation to the person and treated that person as their lawful child, and
- (f) where the entry in the Register of Births was made before the 31 day of December 1970,

and includes a person in respect of whom the entry in the Register of Births was already amended or cancelled pursuant to sections 63, 64, or 65 of the Act of 2004 prior to the enactment of this Act.

This definition should be amended to delete subsection (c) in its entirety.

HEADS 30-33

We have not submitted amendments to Heads 30-33 at this time, but reserve the right to do so when the Bill is published.

HEAD 34: DESIGNATION OF RELEVANT BODIES

We have not submitted amendments to Head 34 at this time, but reserve the right to do so when the Bill is published.

HEAD 35: USE OF DATABASE AND RECORDS OF THE COMMISSION OF INVESTIGATION INTO MOTHER AND BABY HOMES AND CERTAIN RELATED MATTERS

Definition of 'related record' as written:

- (a) any evidence within the meaning of the Act of 2004 received by the Commission,
- (b) any document created by or for the Commission within the meaning of section 43 of that Act, or
- (c) a copy of any such evidence or document, from which information was obtained for the purpose of creating the database.

This definition should be expanded to add the following:

- (d) records containing the personal data of witnesses who gave evidence to the Commission,

- (e) records containing the personal data of relevant persons, birth parents and birth relatives.

This Head should also be expanded to add the following section:

- (5) Personal data derived from the database and related records may be shared with persons to whom the data relates.

HEAD 36: AGENCY AND AUTHORITY TO OFFER SUPPORT AND GUIDANCE

Head 36, Section 1

Section 1 as written:

The Agency or the Authority may provide assistance insofar as practicable to a relevant person:

- (a) who wishes to make an application pursuant to Head 3 [Relevant person may apply for copy of birth certificate] in relation to the making of an application to the General Register Office,
- (b) who wishes to make an application pursuant to Head 6 [Relevant person may apply for information and items] in relation to:
 - i. identifying the relevant body who may hold the categories of information set out in Head 6 [Relevant person may apply for information and items] pertaining to the relevant person; and
 - ii. the making of an application under Head 6 [Relevant person may apply for information and items] to the relevant body.
- (c) who wishes to make an application for a tracing service under Part 4,
- (d) who wishes to make an application to the Contact Preference Register under Part 5.

Section 1 should be amended to add the following:

- (e) Who wishes to make a GDPR Article 15 subject access request.

Head 36, Section 2

Section 2 as written:

The Agency and the Authority may also offer support to a person as part of the provision of information requested from a relevant body by means of an application made under Parts 2, 3, 4 or 5. This could include support in relation to reading and understanding records being provided on foot of an application, and support where information could be potentially distressing to the applicant.

Section 2 should be amended so it reads as follows:

The Agency and the Authority may also offer support to a person as part of the provision of information requested from a relevant body by means of an application made under Parts 2, 3, 4 or 5. This could include support in relation to reading and understanding records being provided on foot of an application, and information on counselling services if requested.

Head 36 should also be amended to add the following new section:

The Agency or the Authority may provide assistance insofar as practicable to a birth parent or birth relative:

- (a) who wishes to make an application pursuant to Head 11a [Relevant body to provide information to birth parents],
- (b) who wishes to make an application for a tracing service under Part 4,
- (c) who wishes to make an application to the Contact Preference Register under Part 5.
- (d) Who wishes to make a GDPR Article 15 subject access request.

HEAD 37: OFFENCES

Head 37 should be amended to add the following section:

- (6) A person who facilitates an illegal adoption shall be guilty of an offence.

HEAD 38: IMMUNITY

Head 38 should be deleted in its entirety.

HEAD 39: ACCURACY OF INFORMATION AVAILABLE TO RELEVANT BODIES

Head 39, Section 1

Section 1 as written:

Subject to Article 82 of the Data Protection Regulation, a relevant body shall not be liable in damages in respect of the accuracy of information processed, including the sharing or releasing of information, or facilitating contact between individuals, in the performance of their functions under these Heads.

Section 1 should be amended so it reads as follows:

Subject to Article 82 of the Data Protection Regulation, and unless the relevant body was involved in the creation of the original record or facilitating the adoption, a relevant body shall not be liable in damages in respect of the

accuracy of information processed, including the sharing or releasing of information, or facilitating contact between individuals, in the performance of their functions under these Heads.

HEAD 40: RESTRICTION OF RIGHTS AND OBLIGATIONS UNDER THE GDPR

We have not submitted amendments to Head 40 at this time, but reserve the right to do so when the Bill is published (see discussion under Section 3.5).

Schedule 1 List of Institutions

Schedule 1 should be amended to add the 182 institutions, agencies and individuals compiled by the Clann Project.

ADOPTION ADVISORY GROUP

(1) The Minister shall convene a permanent Adoption Advisory Group to inform the operation of this Bill.

(2) The group shall be comprised of:

- (a) Representatives of groups advocating on behalf of adopted people;
- (b) Representatives of groups advocating on behalf of natural parents;
- (c) A representative from the Authority;
- (d) A representative from the Agency [i.e., the agency providing the tracing service];
- (e) A representative from the Department of Children, Equality, Disability, Integration and Youth.

(3) The Minister, in consultation with the Adoption Advisory Group, may issue guidelines for the purpose of providing practical guidance to the Agency and the Authority in respect of the performance of their functions under this Act.

AMENDMENT OF SECTION 89 OF THE ADOPTION ACT 2010

Section 89 of the Act of 2010 should be amended by deleting subsection (2) in its entirety.

AMENDMENT OF SECTION 98 (3) OF THE ADOPTION ACT 2010

Section 98 (3) of the Act of 2010 is amended by the insertion of the following subsections after subsection (3) (e)—

- (f) a person who has been the subject of a domestic adoption who shall be over 21 years at the time of their appointment to the Authority, and

- (g) a person who has been the subject of an inter-country adoption who shall be over 21 years at the time of their appointment to the Authority;
- (h) a natural mother who has relinquished a child for adoption.

AMENDMENT OF SECTION 126 OF THE ADOPTION ACT 2010

Section 126 of the Act of 2010 is amended by the insertion of the following subsection after subsection (4)—

- (1) Tusla: The Child and Family Agency shall be registered as an accredited body and thus regulated by the Authority.

AMENDMENT OF THE *STATUS OF CHILDREN ACT 1987*

Section 35 (1)(a) of the Status of Children Act 1987 should be amended by removing '(other than an adopted person)'.

Section 35 (1)(b) of the Status of Children Act 1987 should be amended by removing '(other than an adopted person)'.

REPEAL OF GAGGING ORDERS

Section 28(6) of the RIRA 2002 must be amended to clarify that 'a person' refers to those working for the RIRB and Review Committee and not survivors.

Section 11(3) of the *Commissions of Investigation Act 2004* should be amended to ensure that those who wish to contribute testimony or documents to the national historical record or otherwise to publish their accounts. This section should also be amended so that all personal data given to the Commission in private is readily available to the individuals who own it as required by the GDPR, and State and other *administrative* records are publicly available (anonymised as necessary).

NATURAL PARENT OF ADOPTED CHILD MAY APPLY FOR INFORMATION AND ITEMS

- (1) A natural parent of an adopted child may apply to the Agency or the Authority, in such manner as may be specified by the Agency or the Authority, for the provision to her or him by the Agency of information or items referred to in subsection (6) relating to the adopted child.
- (2) The Agency or the Authority, on receipt of an application made in accordance with subsection (1), shall make every effort to—

- (a) inform an adoptive parent of the adopted child of the application, and
 - (b) require that the adoptive parent provide the Agency with the information or items to which the application relates, for the purpose of the transmission of these by the Agency or the Authority to the natural parent concerned.
- (3) The Agency or the Authority shall engage a *guardian ad litem* to act as a representative for the adopted child.
- (4) The adoptive parent, not later than one month after the date of receipt of the letter from the Agency or the Authority, shall provide the Agency or the Authority with the information or items to which the application relates, for the purpose of the transmission of these by the Agency to the natural parent concerned.
- (5) When an adoptive parent, pursuant to a request under subsection (2)(b), provides the Agency or the Authority with information and items, the Agency or the Authority shall arrange for the transmission of these to the natural parent.
- (6) The information and items referred to in this section can include but are not limited to—
- (a) information about the adopted child’s health, social and educational development and general well-being,
 - (b) letters, photographs or other mementoes relating to the adopted child,
 - (c) any information or items recommended by the guardian ad litem acting as a representative for the adopted child,
 - (d) any other information or items that an adoptive parent may wish to provide to the Agency or the Authority for the purpose of its transmission to the birth parent.
- (7) In this section, a reference to a natural parent of an adopted child includes a reference to a person who is a relevant guardian in relation to the adopted child.

ADOPTIVE PARENT OF ADOPTED CHILD MAY APPLY FOR RECORDS, INFORMATION AND ITEMS

- (1) An adoptive parent may apply to the Agency or the Authority, in such manner as may be specified by the Agency or the Authority, for the provision to her or him by the Agency of information relating to his or her adopted child.
- (2) The Agency or the Authority, on receipt of an application made in accordance with subsection (1) shall—
- (a) locate in its own archive any records relating to the adopted child,

- (b) obtain records from any agencies and individuals involved in the child's adoption either within or outside Ireland,
 - (c) make every effort to inform the natural parent of the adopted child of the application,
 - (i) where the child was adopted from a non-English speaking country, the Agency shall engage a competent interpreter to ensure effective communication with the natural parent(s).
 - (d) request that the natural parent provide the information or items to which the application relates, for the purpose of the transmission of the information or items by the Agency or the Authority to the applicant, and
 - (e) engage a guardian ad litem to act as a representative for the adopted child.
- (3) When a natural parent, pursuant to a request under subsection (2), provides the Agency or the Authority with information or items, the Agency shall arrange for the transmission of the information or items to the adoptive parent concerned.
- (a) where the child was adopted from a non-English speaking country, the Agency or the Authority shall engage a competent translator to ensure an accurate translation of any items which are not in English.
- (4) The Agency or the Authority may facilitate the implementation of an arrangement between a natural parent and an adoptive parent of an adopted child relating to the provision to the adoptive parent by the natural parent of information or items referred to in subsection (5)
- (5) The records, information and items referred to in this section include but are not limited to—
- (a) information relevant to the adopted child's health, social and educational development and general well-being,
 - (b) letters, photographs or other mementoes,
 - (c) medical information,
 - (d) medical information relating to a natural relative,
 - (e) records relating to the adopted child's placement before adoption,
 - (f) the adopted child's birth certificate,
 - (g) the name of the child's natural mother,
 - (h) the name of the child's natural father,
 - (i) a copy of an adoption order made in respect of the adopted child
 - (j) any information or items recommended by the guardian ad litem acting as a representative for the adopted child, and
 - (k) any other information or items that a natural parent may wish to provide to the Agency for the purpose of its transmission to the adoptive parent.
- (7) In this section, a reference to a natural parent of an adopted child includes a reference to a person who is a relevant guardian in relation to the adopted child

APPENDIX 1

A BRIEF HISTORY OF ADOPTION INFORMATION LEGISLATION IN IRELAND

To understand the inequities in the Scheme and to fully appreciate the struggle that Irish adopted people have endured over the past two decades, it is necessary to view this Bill in context with previous bills that have been published. The State has consistently taken a punitive and restrictive approach to providing adopted people with their personal data. The first legislative scheme was published in 2001 by Mary Hanafin, then Minister for Children. Had it been enacted, the legislation would have facilitated access to birth certificates for adopted people. However, the Bill also provided for a 'contact veto' mechanism, whereby natural mothers who did not want contact from their adult children could register a veto to this effect. Most significantly, adopted people acting in breach of the veto would be fined or imprisoned.¹ Minister Hanafin declared that she hoped the proposed contact veto would provide reassurance that the legislation granting information rights would 'not constitute a threat'. The proposal to criminalise adopted people was shelved by Minister Brian Lenihan in 2003.²

In the years that followed, access to birth certificates for adopted people was repeatedly stalemated. In 2014, in the wake of revelations about the deaths of children at the Tuam Mother and Baby Home, the Government was forced to again turn its attention to adoption information legislation, having largely ignored the issue for years.³ In July 2015, then Minister James Reilly published the *General Scheme and Heads of an Adoption (Information and Tracing) Bill*.⁴ It included a requirement for adopted people to sign a Statutory Declaration that they would not attempt to contact

¹ Department of Health and Children, *Heads of Proposed Adoption Information Post-Adoption Contact and Associated Issues Bill*, (Dublin, Stationery Office, 2001).

² Department of Health and Children, "Hanafin Announces New Draft Legislation on Adoption Information." In 2003, that draft scheme was published as part of an *Adoption Legislation Consultation*, established to facilitate discussions on adoption reform. After proposals to imprison adopted people who disregarded a contact veto were severely criticized, at the Consultation's oral stage, the new minister announced removal of this threat of criminalization. See: Department of Health and Children, *Adoption Legislation Consultation Discussion Paper*, (Dublin: Stationery Office, 2003) and Michael Brennan, "Laws Could 'Criminalise' Adopted Children," *Irish Examiner*, 23 July 2003, 10; Evelyn Ring, "Adoption Law to Allow Birth Parent Contact," *Irish Examiner*, 18 Oct. 2003, 4.

³ Dan Barry, "The Lost Children of Tuam," *New York Times*, 28 Oct. 2017.

⁴ Department of Children and Youth Affairs, "Minister Reilly Publishes Adoption Information and Tracing Legislation," press release, 27 July 2015, <https://www.dcy.gov.ie/docs/EN/Press-Releases-copy-dcya-gov-ie-2019/81/3498.htm>.

their natural parent(s) directly as a condition of obtaining their birth certificate.⁵ Minister Reilly's scheme also envisaged that there might be 'a compelling reason, *such as may endanger the life of a person*, for not disclosing...information' to an adopted person.⁶ Although the scheme was widely criticised, nonetheless, the new minister, Katherine Zappone TD, brought forward virtually identical proposals under the Adoption (Information and Tracing) Bill 2016.⁷ This Bill was also rejected by advocacy groups.⁸

The Adoption (Information and Tracing) Bill 2016 lay dormant until mid-2018, when adoption came under the spotlight once more, as TUSLA announced it had identified 126 illegal adoptions in records that were transferred to it by St Patrick's Guild Adoption Society.⁹ Advocacy groups continued to object to the bill, and in February 2019, Minister Zappone obtained cabinet approval to amend the legislation.¹⁰ In June 2019, Minister Zappone signalled her intent to legislate for a new administrative system whereby TUSLA would attempt to contact both natural parents when an adopted person requests access to their birth certificate and other personal data.¹¹ Under the new proposals, natural parents who opposed the release of information had a right to a hearing before the Adoption Authority of Ireland (AAI), who would then make a decision balancing the rights of everyone concerned.¹² ARA characterised the proposals as 'a grave interference with the privacy of both natural parents and adopted people'.¹³ Clann and ARA engaged in an intensive two-week consultation process with

⁵ Department of Children and Youth Affairs, *Heads and General Scheme of the Adoption (Information and Tracing) Bill 2015*, (Dublin, Stationery Office, 2015).

⁶ *Ibid.*, 55 (emphasis added). Minister Reilly referred the Heads of Bill to the *Joint Oireachtas Committee on Health and Children* for pre-legislative scrutiny. When its work was completed, the Committee said that, "based on the weight of evidence and the legal submissions received from witnesses, the Committee [could] find no convincing reason for the inclusion of a Statutory Declaration in the Bill." See *Joint Oireachtas Committee on Health and Children, Report on the Pre-Legislative Scrutiny of the General Scheme and Heads of the Adoption (Information and Tracing) Bill* (Dublin: Stationery Office, 2015), 12.

⁷ Adoption (Information and Tracing) Bill 2016 (Bill No. 100/2016).

⁸ Adoption Rights Alliance, *Briefing Note and Amendments to Adoption Information and Tracing Bill 2016* (Dublin: Adoption Rights Alliance, 2019).

⁹ Conall Ó Fátharta, "Thousands may have been illegally adopted," *Irish Examiner*, 30 May 2018.

¹⁰ Claire McGettrick, "'Old Ireland' still exists for adoptees," *Irish Examiner*, 2 June 2018; Conall Ó Fátharta, "Adoption bill's privacy provisions to be revised," *Irish Examiner*, 27 Feb. 2019.

¹¹ Department of Children and Youth Affairs, *Committee Stage Seanad Éireann 12 June 2019 – Briefing for Senators* (Dublin: Stationery Office, 2019), 2.

¹² *Ibid.*, 2.

¹³ Adoption Rights Alliance, "Adoption Rights Alliance Incredulous at Progression of Deeply Discriminatory Bill," press release, 8 June 2019, <http://adoption.ie/wp-content/uploads/2019/06/ARA-press-release-08-06-19.pdf>. See also Caitríona Palmer, "The State Demonises Adoptees as a Threat to their Natural Parents," *Irish Times*, 28 June 2019; and

the Minister and other TDs and Senators.¹⁴ Additionally, ARA launched an email campaign calling on adopted people, natural family members, and the general public to contact members of parliament about the Bill.¹⁵ The *Irish Examiner* newspaper reported that over 650 emails were received by the office of the Minister for Children, and on 19 June 2019 Minister Zappone announced that Committee Stage of the Bill would be deferred, pending a consultation process.¹⁶

Whether such a consultation process took place is unclear; however, in November 2019, Minister Zappone circulated four 'Options for a Legislative Pathway' on the *Adoption (Information and Tracing) Bill 2016*.¹⁷ Under the first two options the Bill would proceed in its entirety, with 'a presumption in favour' of the release of information to adopted people under Option Two. The third and fourth options provided for the safeguarding of records, while Option Three also included a statutory tracing service and put the National Adoption Contact Preference Register on a statutory footing.¹⁸

Also in November 2019, ARA contacted the Minister and other members of the Oireachtas with a draft adoption bill, which was supported by a legal opinion from Professor Conor O'Mahoney, Dr Fred Logue, Dr Maeve O'Rourke and other leading legal academics. ARA also provided Oireachtas members with the organisation's new [Information Guide for Adopted People](#).

Claire McGettrick, "Zappone's Haste Risks Further Offending Adopted People," *Irish Examiner*, 14 June 2019.

¹⁴ See, e.g., Claire McGettrick, Susan Lohan, Mari Steed and Angela Murphy, *Letter to TDs and Senators* (Dublin: Adoption Rights Alliance, 2019).

¹⁵ "Adoption Bill," Adoption Rights Alliance, <http://adoption.ie/adoption-bill-previous-news/>.

¹⁶ Conall Ó Fátharta, "Adoptees Write to Zappone to Express Disgust," *Irish Examiner*, 17 Aug. 2019; 266 No. 5, Seanad Deb., Adoption, Information and Tracing: Statements (19 June 2019) (Ir.).

¹⁷ Department of Children and Youth Affairs, *Adoption (Information and Tracing) Bill 2016: Options for Consideration 5 November 2019* (Dublin: Stationery Office, 2019).

¹⁸ See: Conor O'Mahoney, Fred Logue and Maeve O'Rourke et al., *Opinion on the application of the Irish Constitution and EU General Data Protection Regulation to the Adoption (Information and Tracing) Bill 2016*, (2019). http://adoption.ie/wp-content/uploads/2019/11/OMahoney_Logue_ORourke-Opinion.pdf; Claire McGettrick et al., *Information Guide for Adopted people*, (Dublin: Adoption Rights Alliance, 2019). http://adoption.ie/wp-content/uploads/2019/11/ARA-Information-Guide_Nov-2019.pdf; "Adoption Bill," Adoption Rights Alliance, Adoption Rights Alliance, <http://adoption.ie/my-front-page/adoption-information-and-tracing-bill-2016/>.

In December 2019, Minister Zappone announced her intention to progress with Option Three, based on responses received from stakeholders consulted on the four pathways.¹⁹ The Bill progressed no further after this time.

Irish adopted people have had to endure a long, relentless battle over the past two decades. They are exhausted and demoralised from having to repeatedly make the same arguments just to hold the line and prevent discriminatory legislation from being passed. But adopted people and their allies will continue to hold the line until the State puts in place legislation that respects their dignity and worth as equal citizens under the law.

¹⁹ Department of Children and Youth Affairs, "Minister Zappone announces decision in relation to progressing the Adoption (Information & Tracing) Bill, 2016," press release, 11 December 2019, <https://www.gov.ie/en/press-release/fdbb82-minister-zappone-announces-decision-in-relation-to-progressing-the-a/>.

APPENDIX 2

JOINT SUBMISSION TO THE OIREACHTAS JOINT COMMITTEE ON JUSTICE REGARDING THE GENERAL DATA PROTECTION REGULATION

26 March 2021

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INTRODUCTION

This submission focuses on the personal data rights of adopted people (including those illegally, informally and otherwise unlawfully adopted), mothers, individuals who were placed in state care, and others affected by Ireland's so-called 'historical' system of family separation and institutionalisation.

The recently published [Report](#) of the Mother and Baby Homes Commission of Investigation (MBHCOI) does not mention the [EU General Data Protection Regulation](#) (GDPR) anywhere within its pages, despite the Commission being subject to GDPR from May 2018 and notwithstanding that the core issue under investigation was – and is – the denial of personal and family identity.

With this egregious gap in its analysis, the MBHCOI saw fit to conclude in its Report that the criticism by 'many...former residents...of the information and tracing arrangements in place' is 'unfair and misplaced'.ⁱ The MBHCOI described criticisms of TUSLA by those who have been denied basic information about the circumstances of their (frequently unlawful) separation from relatives as 'vitriolic'.ⁱⁱ Regarding records in the possession of dioceses and religious orders, the MBHCOI determined – without reference to GPDR – that 'Diocesan records and the records of the religious orders involved in the institutions are the property of the holders and they have the right to determine who gets access.'ⁱⁱⁱ

Throughout its investigation period, the MBHCOI refused to give to any survivor or adopted person a transcript of their own testimony as recorded by the Commission.^{iv} During its investigation the MBHCOI further refused all requests by survivors and adopted people for their own personal data or records of their disappeared baby or other relative (that the Commission had gathered from TUSLA or religious or other sources).^v This was despite:

- (i) the fact that, upon the entry into force of the GDPR, section 39 of the Commission of Investigations Act 2004 (as amended by section 198 of the Data Protection Act 2018)

provided for restriction of the Article 15 GDPR right of access only ‘to the extent necessary and proportionate to safeguard the effective operation of commissions and the future cooperation of witnesses’; and

(ii) section 12(1) of the Commissions of Investigation Act 2004, which states:

‘a commission shall disclose to a person –
(a) who is directed to attend as a witness before the commission,
(b) who attends voluntarily to give evidence to the commission, or
(c) about whom evidence is given to the commission,
the substance of any evidence in its possession that, in its opinion, the person should be aware of for the purposes of the evidence that person may give or has given to the commission’

Upon the MBHCOI Report’s publication, it transpired (from page 11 of the Confidential Committee Report Chapter of the MBHCOI’s Report) that the Commission had deleted the audio recordings of approximately 550 survivors’ and adopted people’s testimony. The Commission did so without creating a full transcript of each person’s evidence,^{vi} without using consent forms, and without providing written warning in advance.^{vii} It also did so in apparent contravention of section 43 of the Commissions of Investigation Act 2004, which requires every Commission of Investigation at the end of its work to ‘deposit with the specified Minister all evidence received by and all documents created by or for the commission’, ‘documents’ being expressly defined to include ‘records of interviews’.

These findings and procedures of the MBHCOI are symptomatic of an ongoing situation of continuing gross and systematic human rights violations by the Irish State against individuals and families who were subjected to institutionalisation and to coercive and unlawful separation during the 20th century.

The Clann Project and Conall Ó Fátharta (formerly of the *Irish Examiner*), among others, repeatedly notified successive Governments of the MBHCOI’s blanket withholding of personal data from the very individuals whom its work purported to serve. Not only did the Government fail to act to protect the data rights of these individuals, but the Minister for Children insisted in September and October 2020 (until compelled through public pressure to acknowledge the direct effect in Irish law of GDPR and reverse his position) that he intended to ‘seal’ for 30 years the entire archive due to be deposited by the MBHCOI in his Department.^{viii}

Similarly, in 2019, the Minister for Education introduced a Bill (entitled the Retention of Records Bill 2019) which proposed to ‘seal’ for at least 75 years every single document in the archives of the Commission to Inquire into Child Abuse (CICA), the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee. It was only through survivors’ mobilisation of public concern, an emergency sitting of the Oireachtas Education Committee, and survivors’ and other experts’ urgently-composed written and oral submissions (which among other things highlighted the existence of GDPR, which prohibits such blanket restrictions on personal data access) that this Bill was abandoned.^{ix} Still today, the archives concerned lie in limbo as the Government continues to fail to deposit them in the National Archives of Ireland (as the Commission to Inquire into Child Abuse Act 2000 requires in respect of the CICA archive^x).

In the past fortnight alone, the authors of this submission have been contacted by individuals who, for example:

- (i) have been informed by the Department of Children on a blanket basis that it will not be providing any data relating to their deceased mother to them from the MBHCOI archive (failing to recognise that personal data may be mixed, i.e., relating to more than one person at the same time – and, although not entirely relevant to this submission, failing to direct the person to the Freedom of Information Act); and
- (ii) are being refused access to the information which TUSLA holds demonstrating their identity at birth, having been told recently by TUSLA that they were illegally registered on their birth certificate as the child of a couple who were not their natural parents (and therefore were not ever legally separated from their natural family through adoption, and are not the natural child of the parents they always believed themselves to have been born to).

The MBHCOI spent only €11.5 million of its €23 million budget allocation (page 15, Introduction Chapter, MBHCOI Final Report).

Therefore, there is €11.5 million currently available to support immediate and wide-ranging measures to respect, protect and fulfil the information rights of those who are continuing to experience the abuse of secrecy.

The remainder of this submission explains that:

1. The State is routinely denying adopted people knowledge of their birth name in order to prevent them from accessing their publicly registered birth certificate; we argue that this is contrary to the GDPR, EU Charter and European Convention on Human Rights (ECHR), which require that any interference with the right of personal data access must be based on clear and accessible law, and necessary and proportionate;
2. The State and other data controllers are routinely misinterpreting GDPR rules to deny adopted people, mothers and others who were placed in state care access to their personal data, notably mixed personal data which names other people – whether family members or professionals – who were intimately involved in their life;
3. There is a need for the State to proactively monitor, guide, and make swift decisions on complaints about, the practice of all controllers of so-called ‘historical’ abuse, institutionalisation, ‘care’ and adoption records; we recommend the resourcing of a dedicated part of the Data Protection Commission for this purpose. [Section 12](#) of the Data Protection Act 2018 provides that ‘the functions assigned to the [DPC] by virtue of its being the supervisory authority for the purposes of the Data Protection Regulation and the Directive, the general functions of the Commission shall include...such other functions as may be assigned to it from time to time by or under any other enactment’.
4. The forthcoming legislation on adoption information must provide, as the Adoption Rights Alliance (ARA) draft Bill proposes: (1) unconditional access to birth certificates for adopted people and people placed in informal care arrangements; (2) a clear statutory right

of access to one's own 'care' or adoption file, and to records concerning a family member who died in 'care' or adoption; (3) a statutory right of access to State administrative records for survivors, adopted people and natural mothers; (4) the safeguarding and centralisation of all relevant records in an independent repository where access is provided by professional archivists; (5) an enhanced tracing service; (6) placement of the National Adoption Contact Preference Register (NACPR) on a statutory footing; and (7) the right to know you are adopted.

5. If the Government's forthcoming legislation on adoption information is to contain any restrictions on the right of access to personal data, those restrictions must comply with Article 23 GDPR and related provisions of the EU Charter and ECHR.
6. The Government's forthcoming legislation on adoption information must not contain restrictions on access to birth certificates under any circumstances.

The ongoing dignity violations, and continuing violations of Irish Constitutional, and European and international human rights, law must cease.

It is imperative that from this moment on, the right to the truth (which is the first requirement of redress) underpins all of the Irish State's efforts to achieve compliance with GDPR in the realm of adoption and so-called 'historical' institutionalisation and family separation.

1. BIRTH CERTIFICATES

The GDPR defines personal data as follows:

'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.

Therefore, a person's birth identity is their personal data to which they have a right under Article 15 GDPR.

Since 1864 all Irish birth certificates have been publicly available in the General Register Office. Adopted people are the only people in Ireland who are denied the ability to retrieve their own birth certificate, because institutions and individuals in control of adopted people's files (including TUSLA and the Adoption Authority of Ireland (AAI)) routinely refuse to inform adopted people of their name at birth or to provide adopted people with their unredacted adoption / early life file.

In the absence of an explicit right for adopted people to access their birth certificates, [Adoption Rights Alliance](#) (ARA) provides [information and resources](#) to assist adopted people and others affected by adoption in locating their birth certificates and obtaining adoption records.^{xi} The methodology was first developed in the early-1990s by AdoptionIreland, ARA's predecessor organisation, and ARA has since expanded its guides to incorporate data protection rights and genetic genealogy resources. Over the past thirty years, countless adopted people have made use of these methods to obtain their birth certificates.

It is also crucial to note that an adopted person's birth certificate contains considerably less information than that belonging to a non-adopted person. For example, an adopted person's birth certificate generally does not have the name of the father, the father's occupation and the parents' address(es).

The continuing refusal to tell adopted people their name at birth, or to provide them with their publicly registered birth certificate, is in our view contrary to the GDPR, the EU Charter of Fundamental Rights and the European Convention on Human Rights, as well as being unconstitutional.

Article 15(4) GDPR states that the right of access to one's personal data 'shall not adversely affect the rights and freedoms of others'. Controllers of adopted people's personal data *appear* to be relying on this provision; however, it is not clear that they are because there is no public access to the Attorney General's advice to data controllers, for example, or to TUSLA's official interpretation of the law.

Article 15(4) GDPR is not a free-for-all provision allowing data controllers to withhold any mixed data where they believe that its release to one person to whom it relates may have an adverse impact on another person to whom it relates.

Article 15(4) must be interpreted in light of Article 23 GDPR. According to Article 23 GDPR, the fundamental right of access to one's personal data can lawfully be restricted only if there is clear legislation that allows for such restriction and the restriction is a necessary and proportionate measure in a democratic society and respects the essence of the fundamental rights and freedoms at issue. (These criteria are discussed further at section 4 below, which refers to the European Data Protection Board's Guidance on Article 23 GDPR.)

Article 15(4) GDPR must also be interpreted in harmony with Article 8(2) of the Charter of Fundamental Rights of the European Union which states that '[E]veryone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.' The EU Charter provides in Article 52(1) that the rights and freedoms recognised by the Charter (including the right of access to personal data in Article 8(2)) can be limited only where the following conditions are met:

'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.'

Additionally, Article 52(3) of the EU Charter specifies that:

'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms [the European Convention on Human Rights], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

Article 8 of the European Convention on Human Rights states that the State may only interfere with the right to respect for private and family life where such interference is 'in accordance with the law and is

necessary in a democratic society’ for the pursuit of a legitimate aim – which the European Court of Human Rights has interpreted to require that the interference is only such as is ‘proportionate to the legitimate aim pursued’.^{xii}

There is no clear legislation that specifies how Irish controllers of adopted people’s personal data should make decisions regarding its release. The European Court of Human Rights has held that ‘in accordance with the law’ means, under Article 8 ECHR, that the law must be ‘accessible to the persons concerned and foreseeable as to its effects’.^{xiii} Similarly, the Court of Justice of the European Union has held that the ‘provided for by law’ requirement of Article 52(1) of the Charter means the same as it does under Article 8 ECHR, and that the law must clearly define the scope and manner of permissible interferences, so as to protect individuals from abuse of power.^{xiv}

It is not clear what law TUSLA, the AAI or other data controllers are currently relying upon in order to justify the withholding of adopted people’s name from them. Certainly, no legislation has at any time during the 20th century provided for ‘anonymous birth’ such that a mother’s identity could be withheld from public view on the Register of Births.

In fact, in February 2020 the Court of Appeal decided in *Habte v Minister for Justice and Equality* [2020] IECA 22 that there is an unenumerated Constitutional right ‘to have [one’s] identity correctly recognised by the State’.^{xv} Mr Justice Murray explained (at para 31):

The trial Judge rooted this conclusion, in part, in the widespread recognition of the right in international instruments (Article 24(2) of the International Covenant on Civil and Political Rights, and Article 7 of the Convention on the Rights of the Child) and the view that this right both necessarily inhered in Article 8 of the European Convention on Human Rights and was a corollary to the right to protection of data provided for in Article 8 of the Charter on Fundamental Rights of the European Union (in which connection the Judge further referred to section 74(3) of the *Data Protection Act 2018* and section 9 of the Freedom of Information Act 2014). He said (at para. 44):

‘...there is an implied constitutional onus on the State arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution to accurately record and represent central aspects of personal identity.’

In any event, and in addition, **the withholding of adopted people’s identity at birth cannot be said to satisfy the GDPR, EU Charter and ECHR requirements of necessity and proportionality because:**

- (1) a record of one’s identity is one of the most, if not *the* most, important forms of personal data;**
- (2) birth certificates are already public documents;**
- (3) access to personal data is a different matter to being enabled to contact a person; and**
- (4) contact between relatives can be voluntarily managed through a well-resourced and statutorily based National Adoption Contact Preference Register (NACPR).**

A Legal Opinion published in November 2019 by Professor Conor O’Mahony, Dr Fred Logue, Dr Maeve O’Rourke, Dr James Gallen, Dr Eoin Daly, Reader Máiréad Enright, Dr Sinéad Ring, Rossa

McMahon (solicitor) and Dr Laura Cahillane concluded, likewise, that a proportionate way of balancing the rights of adopted people and their parents would be to properly resource the voluntary NACPR while providing personal data access so that all relatives are enabled to manage their own family relationships without unnecessary and arbitrary State coercion and intrusion.^{xvi}

2. ADOPTION FILES, EARLY LIFE FILES AND MOTHERS' FILES

The vast majority of adoption agencies have now closed, and therefore most adoption files are now held by TUSLA. In today's *Irish Examiner*, Elaine Loughlin [reports](#) that TUSLA holds 70,000 adoption files while the AAI states that it holds more than 4,000 'incomplete' adoption files.^{xvii}

As noted above, the GDPR defines personal data in terms of a person's 'physical, physiological, genetic, mental, economic, cultural or social identity'. In this regard, adoption records contain personal data about the adopted person themselves, such as their physical condition and circumstances during their early months and years, including their place of birth, their care records, the names of the people responsible for their care, their genetic background, and their cultural and social identity which includes the adopted person's original name, their natural parents' names, their natural family members' names and the circumstances surrounding their adoption.

ARA runs a [peer support group](#) of over 2,500 adopted people, natural mothers, natural fathers and relatives. Members report that since the implementation of GDPR, their treatment at the hands of TUSLA has worsened considerably. In recent years, adopted people have exercised their rights as data subjects and have made subject access requests to their adoption agencies, the AAI and TUSLA. In all cases that ARA is aware of, the records provided have been heavily redacted, and even information which has already been provided by the applicant as part of their subject access request (e.g., their original identity), if it is personal data that is shared with another person, has been removed. The rationale for these redactions – if any is given – is generally that the records contain 'third party information'. That is to say, any mixed personal data in the record is considered 'third party information' and withheld on a blanket basis unless express consent has been given by the person who shares it to its release. Adopted people are therefore routinely refused data relating to them which relates at the same time, for example, to the adopted person's natural mother, adoptive parents, family members, social workers or others involved in the adoption process.^{xviii} The adopted person is denied recognition as a full data subject with the same entitlement to information about themselves as any other Irish citizen or person subject to EU law.

The blanket redaction of mixed personal data, save where the express consent of the person who shares the data has been obtained, also means that natural parents are routinely prevented from knowing all available information about their treatment and the circumstances of their separation from their child.

These practices appear quite clearly to be contrary to the GDPR; the Court of Justice of the European Union (CJEU) held in *Nowak v Data Protection Commissioner of Ireland* (Case C-434/16, 20 December 2017) that information may be linked to more than one individual and this does not affect the right of access. According to the CJEU at para 45 of the *Nowak* judgment: 'The same information may relate to a number of individuals and may constitute for each of them, provided that those persons are identified or identifiable, personal data'. The rules discussed in Section 1, regarding the circumstances in which interferences with the right of access to personal data under Article 15 GDPR will be permissible, therefore apply equally to mixed personal data.

TUSLA has acknowledged that it undertakes a practice of ‘risk assessing’ all adopted people who request their records.^{xix} Adopted people have been categorised as a ‘threat’; the Irish State has consistently taken a punitive and restrictive approach to providing them with their personal data.^{xx} Rather than advocating reparation for a closed and secret, and routinely forced, adoption system, Government proposals have framed adopted people as untrustworthy individuals from whom their mothers need to be protected. No other cohort of Irish citizens is discriminated against in this manner, and it is time to resolve this issue once and for all. Since 2001, the Government has made a number of unsuccessful attempts to legislate for access to records for adopted people. Each of these Government schemes has prescribed (unwarranted and punitive) measures designed to ensure that adopted people do not contact their natural mothers. In addition, none of these schemes has provided for mothers’ access to their personal data. These proposals have been rejected by adopted people and many mothers as gross infringements of their rights.

The available evidence simply does not support the ‘adoption myths’ upon which previous Government proposals have been based. Click here for a briefing note from Claire McGettrick which demonstrates how this is the case. The briefing note also outlines (i) how adopted people can already obtain their birth certificates, (ii) how they are marginalised by the current system, (iii) what legislative proposals would be acceptable to them, and (iv) a simple short-term solution which would allow adopted people to access their birth certificates.

It should not be forgotten that adoption (and ‘informal’ adoption) during the 20th century in Ireland was generally forced and frequently illegal. This closed, secret system obliterated the identities of thousands of adopted people while disappearing children from their mothers and their wider families. The Irish State is obliged to remedy these abuses, rather than continuing to unjustifiably and unlawfully deny adopted people their identity and mothers their rights of access to their own personal data (including mixed data that records the interactions of other individuals, including professionals and religious personnel, with them).

GDPR and relatives of the deceased

Recital 27 GDPR clarifies that deceased persons do not have rights under GDPR. Therefore, the GDPR is not applicable to the data of deceased persons save to the extent that the data relates to a living person (in which case the living person has a right to access it under Article 15 GDPR).

However, the State’s current interpretation of Recital 27 appears to be that, because the GDPR does not apply to deceased persons the State is entitled to refuse to release all personal data relating to such persons.

In response to subject access requests from relatives of deceased people for personal data held in the Commission of Investigation archive, the Department of Children, Equality, Disability, Integration and Youth has stated in March 2021:

Please note the GDPR does not apply to the personal data of deceased persons and access requests seeking the personal data of deceased persons cannot be processed by the Department.

This position does not take into account the fact that deceased persons do not have data subject rights and thus such rights do not have to be taken into account in any balancing test used to determine the

release of mixed data. Moreover, as noted above, the Court of Justice of the European Union (CJEU) acknowledged in *Nowak v Data Protection Commissioner of Ireland* (Case C-434/16, 20 December 2017), information may be linked to more than one individual and this does not affect the right of access: ‘The same information may relate to a number of individuals and may constitute for each of them, provided that those persons are identified or identifiable, personal data’ (para 45 of the *Nowak* judgment).

The Government must ensure a clear pathway for mothers, adopted people and all those placed in care arrangements to access their own care and adoption files.

While more appropriately viewed as a matter of Constitutional and ECHR rights (rather than strictly GDPR rights), it is crucial to note that relatives also require access to information about the fate and whereabouts of their family member(s) who died while in an institutional or other 'care' setting. Notably and worryingly, such a right of access is not included in the Government's current General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill.

3. NEED FOR IMMEDIATE SUPERVISION OF ALL DATA CONTROLLERS OF ADOPTION AND ‘HISTORICAL’ INSTITUTIONAL AND CARE-RELATED RECORDS

In October 2020, following the reversal of its policy to ‘seal’ for 30 years all records received from the MBHCOI, the Government promised additional resources to the Department of Children, Equality, Disability, Integration and Youth and TUSLA to ensure the immediate implementation of GDPR rights in respect of the MBHCOI archive. In January the Clann Project called for the swift recruitment of data protection law expert committees, who are independent of government Departments and TUSLA, to administer the data protection obligations of the Department and TUSLA.

In addition, independent expertise should also be provided to the Adoption Authority of Ireland and to the **myriad other controllers of adoption and institutional records**.

We strongly believe that it is necessary to immediately create and resource a **dedicated unit of the Data Protection Commission, with a dedicated Advisory Committee** including those with direct experience of adoption, institutionalisation and State care, and human rights expertise, to ensure in relation to all institutional, adoption and 'care'-related records:

- (1) Cataloguing / identification of the location of all archives of historical institutional, adoption and care-related records;
- (2) Major improvements in data controllers' practice, including through published guidance and proactive monitoring and investigating of such practice;
- (3) The provision of accessible information and assistance to data subjects (bearing in mind the varied and particular needs of those affected);
- (4) Efficient and transparent appeals from contested decisions of data controllers; and
- (5) Detailed recommendations, following consultation with those affected, on future elements of the legislation to underpin the promised National Archive of Historical Care-Related Records.

Section 12 of the Data Protection Act 2018 provides that ‘the functions assigned to the [DPC] by virtue of its being the supervisory authority for the purposes of the Data Protection Regulation and the

Directive, the general functions of the Commission shall include...such other functions as may be assigned to it from time to time by or under any other enactment’.

4. FORTHCOMING INFORMATION AND TRACING LEGISLATION AND THE GDPR

On 19 January 2021, Roderic O’Gorman, TD, Minister for Children, Equality, Disability, Integration and Youth stated that:

Progressing Information and Tracing legislation is an absolute priority for myself, for the Taoiseach and for the entire government. I have already been engaging with the Attorney General intensively to this end, approaching the issue **in a manner grounded in GDPR, where the right of an individual to access personal information about themselves is central**. My department and the Attorney General’s Office are working with a view to have Heads of Bill of Information and Tracing legislation by end March/ early April. This can then proceed rapidly to pre-legislative scrutiny.^{xxi}

We urge the Oireachtas Justice Committee to review the [alternative Adoption \(Information and Tracing\) Bill](#) which ARA published and submitted to Government in November 2019. Drafted by Claire McGettrick, Dr Maeve O’Rourke, Reader Máiréad Enright and Dr James Gallen the proposed Bill draws on GDPR provisions and amends the Government’s 2016 Bill to provide for:

- a) Unconditional access to birth certificates for adopted people and people placed in informal care arrangements;
- b) A clear statutory right of access to one’s own ‘care’ or adoption file and to records concerning a family member who died in ‘care’ or adoption;
- c) A statutory right of access to State and administrative records for natural mothers, survivors and adopted people;
- d) The safeguarding and centralisation of all relevant records in an independent repository where access is provided by professional archivists;
- e) An enhanced tracing service;
- f) Placement of the National Adoption Contact Preference Register (NACPR) on a statutory footing; and
- g) The right to know you are adopted.

Restrictions on the right of access: GDPR requirements

Given that the Minister intends to ground the legislation in the GDPR, it is essential that all the requirements of the Regulation are met. In addition to providing data subjects with rights and data controllers with obligations to allow the exercise of these rights, the GDPR also sets out a framework for any intended restriction of these rights through legislative measures. Any national law which imposes restrictions on data subject rights must meet the requirements of Article 23 GDPR.

It must be stated up front that any restriction on a person’s access to their birth certificates will not, in our opinion, meet the requirements of Article 23 GDPR because – as explained above at section 1 – such a restriction would not be necessary and proportionate in Ireland’s democratic society where all birth certificates are public documents. ARA will not support any Information and Tracing Bill that proposes a restriction of rights to one’s birth name or birth certificate.

The Heads of the Government’s promised Information and Tracing Bill have not yet been published; therefore, it is not yet clear what, if any, restrictions on data subject rights the Government will propose in its Bill. If any restrictions are proposed, they must comply with Article 23 GDPR.

Article 23 GDPR allows legislative measures which restrict data subject rights only where the legislative measure meets all of the following criteria:

- (1) Firstly, as the European Data Protection Board (EDPB) explains, to satisfy Article 23 GDPR any restriction of rights must pursue a clear objective (i.e. restrictions cannot be made simply for the purpose of restricting rights) and the **objective** which the restrictions seek to achieve must be clearly stated. The EDPB states that the ‘link between the foreseen restrictions and the objective pursued should be clearly established and demonstrated in the concerned legislative measure or additional supplementary documents.’^{xxii}
- (2) Restrictions are only permitted for the purpose of safeguarding one or more of an exhaustive list of interests (Article 23(1)). If one or more of these grounds is not present then the restrictions cannot be lawful.
- (3) The legislative measure must respect the essence of data subjects’ rights (Article 23(1)). The EDPB explains that ‘One of the main objectives of data protection law is to enhance data subjects’ control over personal data concerning them. Any restriction shall respect the essence of the right that is being restricted. This means that restrictions that are extensive and intrusive to the extent that they void a fundamental right of its basic content, cannot be justified.’
([EDPB Guidelines 10/2020 on restrictions under Article 23 GDPR, para 14](#))
- (4) Any proposed restrictions must pass a **strict necessity** test per the case law of the CJEU ([EDPB Guidelines, para 39](#)). If the strict necessity test is satisfied, the restriction must also be **proportionate** (Article 23(1)).
- (5) Recital 73 GDPR states that restrictions ‘should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.’
- (6) The risks to the rights and freedoms of data subjects must be considered in the development of any legislation which will restrict data subject rights. The EDPB suggests a Data Protection Impact Assessment may be an appropriate way to assess these risks, and identifies ‘erroneous profiling leading to discrimination, reduced human dignity, freedom of speech, the right to privacy and data protection, a bigger impact on vulnerable groups (such as children or persons with disability)’ as some potential risks which could be taken into account. ([EDPB Guidelines, paras 58-60](#))

- (7) Article 23(2) requires that the legislative measure ‘contain specific provisions at least, where relevant, as to:
- a. The purposes of the processing or categories of processing;
 - b. The categories of personal data;
 - c. The scope of the restrictions introduced;
 - d. The safeguards to prevent abuse or unlawful access or transfer;
 - e. The specification of the controller or categories of controllers;
 - f. The storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
 - g. The risks to the rights and freedoms of the data subjects; and
 - h. The right of data subjects to be informed about the restriction unless that may be prejudicial to the purpose of the restriction.

Article 57.1(c) GDPR provides for the **Data Protection Commission**, as the relevant Supervisory Authority, to advise ‘the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons’ rights and freedoms with regard to processing’.

As a final point, separate to GDPR, it is worth noting that the outdated Supreme Court decision in *IO’T v B* [1998] 2 IR 321 creates no barrier to the Oireachtas legislating to provide automatic access to birth certificates. As explained in the above-mentioned [Legal Opinion](#) by O’Mahony, Logue, O’Rourke et al., the *IO’T v B* was decided in a legislative vacuum, did not address the issue of access to publicly available birth certificates, and does not affect the position expressed by the Supreme Court in *Fleming v Ireland* [2013] 2 IR 417 that legislation ‘concerned with the implementation of public policy in respect of sensitive matters of social or moral policy’ will attract a particularly strong presumption of constitutionality.

ⁱ Mother and Baby Homes Commission of Investigation, Final Report, Recommendations Chapter, para 3, <https://www.gov.ie/en/publication/38afd-recommendations-of-the-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid, para 52.

^{iv} See letter dated 1 June 2016 from Maeve Doherty, Solicitor to the Commission of Investigation, to Rod Baker, Hogan Lovells, http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_01-06-16.pdf

^v See <http://clannproject.org/wp-content/uploads/Letter-from-COI-re-Subject-Access-Request.pdf> and Conall Ó Fátharta, ‘Commission says they are prohibited from telling surviving family members about burial locations’ *Irish Examiner* (19 April 2019), <https://www.irishexaminer.com/news/arid-30918869.html>.

^{vi} RTE Radio 1, Today with Claire Byrne, ‘Mother and Baby Homes’ (with Noelle Brown), 13 January 2021, <https://www.rte.ie/radio/radioplayer/html5/#/radio1/21892875>.

^{vii} Commission of Investigation into Mother and Baby Homes and Related Matters, Information Note regarding the Confidential Committee, <http://clannproject.org/wp-content/uploads/Information-for-Witnesses-at-the-Confidential-Committee.pdf>

^{viii} Department of Children, Equality, Disability, Integration and Youth, Press Release, ‘Minister O’Gorman to introduce legislation to safeguard the Commission on Mother and Baby Homes general archive of records and database’, 15 September 2020, <https://www.gov.ie/en/press-release/96a99-minister-ogorman-to-introduce-legislation-to-safeguard-the-commission-on-mother-and-baby-homes-general-archive-of-records-and-database/>; Roderic O’Gorman, TD, Written Answer to Gary Gannon, TD, Questions 646 and 653, 29 September 2020.

^{ix} See Justice for Magdalenes Research, Campaigns, Retention of Records Bill, for survivors’ and others’ submissions, <http://jfmresearch.com/retention-of-records-bill-2019/>.

^x See Maeve O’Rourke, Máiréad Enright and Sinéad Ring, Submission on the provisions of the Retention of Records Bill 2019, 13 November 2019, http://jfmresearch.com/wp-content/uploads/2019/10/ORourke_Enright_Ring-Submission.pdf.

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- ^{xi} See: <http://adoption.ie/records/>
- ^{xii} ECtHR, *Leander v. Sweden*, No. 9248/81, 26 March 1987, para. 58.
- ^{xiii} ECtHR, *Amann v. Switzerland* [GC], No. 27798/95, 16 February 2000, para. 50; see also ECtHR, *Kopp v. Switzerland*, No. 23224/94, 25 March 1998, para. 55 and ECtHR, *Iordachi and Others v. Moldova*, No. 25198/02, 10 February 2009, para. 50.
- ^{xiv} European Union Fundamental Rights Agency, *Handbook on European data protection law*, (FRA 2018), 43, https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf.
- ^{xv} *Mahelet Getye Habte v Minister for Justice and Equality* [2020] IECA 22, <http://clannproject.org/wp-content/uploads/Habte-v-Minister-for-Justice-and-Equality.pdf>.
- ^{xvi} Professor Conor O'Mahony, Dr Fred Logue, Dr Maeve O'Rourke, Dr James Gallen, Dr Eoin Daly, Reader Máiréad Enright, Dr Sinéad Ring, Rossa McMahon (solicitor) and Dr Laura Cahillane, 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', 5th November 2019, <https://aran.library.nuigalway.ie/handle/10379/15923>.
- ^{xvii} Elaine Loughlin, "Not possible" to say what happened to thousands of babies with incomplete adoption files' *Irish Examiner* (26 March 2021), <https://www.irishexaminer.com/news/arid-40251569.html>.
- ^{xviii} See for example Conall Ó Fátharta, 'Tusla relying on 'flimsy grounds' to justify redacting records and birth certs' *Irish Examiner* (7 October 2019), <https://www.irishexaminer.com/lifestyle/arid-30955334.html>.
- ^{xix} Conall Ó Fátharta, 'Tusla considers damage release of personal information can cause' *Irish Examiner* (16 July 2019), <https://www.irishexaminer.com/news/arid-30937257.html>.
- ^{xx} See Claire McGettrick, 'Illegitimate Knowledge': Transitional Justice and Adopted People'. *Éire-Ireland: An Interdisciplinary Journal of Irish Studies* 55, nos. 1 & 2 (Spring/Summer 2020): 181–200.
- ^{xxi} Department of Children, Equality, Disability, Integration and Youth, 'Statement of Roderic O'Gorman TD: Report of Commission of Investigation into Mother and Baby Homes and certain related matters, Seanad Éireann, 19 January 2021, <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/>.
- ^{xxii} European Data Protection Board, Guidelines 10/2020 on restrictions under Article 23 GDPR, adopted on 15 December 2020, para 19, https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202010_article23_en.pdf.

APPENDIX 3: SAMPLE INFORMATION BOOKLET

1. HOW TO OBTAIN YOUR RECORDS FROM TUSLA OR AAI

Here information should be provided on how people can obtain their records held by the State . Information should also be provided about people's data subject rights and how to complain.

2. SECONDARY INFORMATION SOURCES

Here information should be provided about secondary information sources and how people can obtain their records from these data controllers.

3. HOW TO READ YOUR RECORDS

ABBREVIATIONS AND TERMINOLOGY

By way of demonstration, below we set out a small number of examples of the types of abbreviations, technology and forms found in adoption records. The Information Booklet should explain all terminology and documentation.

Adoption Order

An adoption order (sometimes abbreviated as AO) is the legal mechanism whereby the adoptive parents became the legal parents of the adopted child.

AP

AP means adoptive parent or parents.

BF

BF means birth father.

BM

BM means birth mother.

Form 1

Form 1 was an application for an Adoption Order, filled out by the prospective adoptive parents.

Form 2

Form 2 contained the particulars concerning the child who was being adopted.

NF

NF means natural father

NM

NM means natural mother

PFI

Pregnant from Ireland

SW

Social worker

4. CONTACT PREFERENCE REGISTER

WHAT IS THE CONTACT PREFERENCE REGISTER?

The Contact Preference Register is a way for people affected by adoption to make their wishes known about having contact with their natural family members.

If you are an adopted person, or a member of the natural family of an adopted person, you can choose to put your details on the Register. You can state who you would like to have contact with, or who you would like to share information with. You can select the kind of contact you would like or you can select not to have any contact at all.

When you join the Register, your details are checked against other people on the Register to see if there is match. In other words, this check will find out if there is someone on the Register who is looking for you, or is willing to share information with you.¹

WHAT DO THE CONTACT PREFERENCES MEAN?

Willing to meet

This preference simply means that the other party is happy to meet.

¹ Adapted from the Adoption Authority webpage about the National Adoption Contact Preference Register.

Exchange of letters/information, contact via telephone/email

This preference generally means that the other party would like to exchange correspondence before deciding whether to meet.

No contact but willing to share medical information

This preference means that the other party does not wish to have contact but is willing to share medical information.

No contact but willing to share information

This preference means that the other party does not wish to have direct contact at the moment but they are happy to share information about themselves.

No contact at the moment

This preference means that the other party does not wish to have contact at the moment.

4. SUPPORT INFORMATION

Here information should be provided about the various supports that are available, including peer support and counselling.