The Separation, Appropriation & Loss Initiative:

An Scaradh, Toiliú agus Cailleadh Tionscnamh

Injustice | Recognition | Restoration

Comment on the General Scheme of a Mother and Baby Institutions Payment Scheme Bill

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1. Executive Summary

The General Scheme of a Mother & Baby Institutions Payment Scheme Bill, presents an opportunity for the Irish State to demonstrably rectify the wrongs of the past. That opportunity can manifest itself through leadership, accountability, contrition, inclusion and action, or, simply deliver a disappointment in its ambition.

In any jurisdiction, the production of initiatives and legislative instruments are not always successful, simply because a government can focus on replicating past solution models, misread a public mood, fail to carry out an adequate public consultation, maintain an institutional bias in the acknowledgement of Stakeholders.

This report examines the construct of the Bill and provides analysis and recommendations.

Section 2 of this report provides commentary on the key issues relating to the construction of the proposed Financial Redress. We note the basic tenet of compensating Victims & Survivors for 'time spent' and the 'commercial work without pay' and question the methodology of calculation. But it is the methodology of the construction of the scheme that attracts our greatest scrutiny. We demonstrate that whilst much has been made about the consultation of Victims & Survivors, their value is overridden by the safer options presented by institutional stakeholders. We express our deep concern over the use of the waiver in the Bill, not just in in its failure to comply with International obligations and practice but also through the failure of transparency it presents. Of equal concern is the disqualification and discrimination presented through the exclusion of those who died before the 13 January 2021, those who were boarded-out and former-children excluded by the 6 month rule. The core of our observations and concerns are represented through our Recommendation 1.

Section 3 of the report presents the findings of our report dated 30 March 2021 which had been circulated to all members of the Oireachtas. That report and our observations on Financial Redress had been created and published before the work of Oak Consulting. In that report, now replicated in section 3, we present our belief that a Mother & Baby Institution Financial Redress scheme could be constructed with ambition, through the use of a Universal Payment Model, or, if the Government rejected that model, to revert to older models of Financial Redress, but abandoning old methodologies, for example, importing disqualification criteria. Whilst the Oireachtas debates the present Bill and the Government seeks to rapidly introduce this Bill, we believe that the Universal Model we proposed offered the best opportunity to get it right by deploying a Universal Interim Payment for all, thus giving the Government time to construct a Financial Redress that delivers for all.

Section 4 of the report deal specifically with the different Heads to the Bill. Taking our themes from Section 2, we offer new clauses and amendments, thereby we believe, delivering a fair, inclusive and ambitious Bill. Our suggestions are contained within distinct Recommendations.

Section 5 of this report contains all the Recommendations we make in relation to the Bill

We conclude our report with a brief conclusion in which we challenge the Government to rethink its own methodology and deliver a real value and healing through this Bill. This is followed by the Authors' biographies, in which their skill-set, activism and motivation is demonstrated.

In presenting our report, we sincerely hope that it will add value to the debate amongst Deputies and Senators and cause a reassessment of the key issues that we have highlighted.

SALI

28 April 2022

2. Analysis of Key Issues

Opening Comments:

The Separation, Appropriation & Loss Initiative (SALI), has contributed extensive comment, analysis and opinion, on all issues related to the Scaradh (meaning, 'separation'), both within the Irish Republic and in the North of Ireland.

Our contributions deliver a constructive critique on both the Irish and Northern Irish government's proposals for legislation.

SALI presents its opinion, based on the experiences of the Victim/Survivor Community and through the authors own individual experiences. We acknowledge the sensitivities and subjectivity on the language and terminology used. SALI members have agreed on their personal use of language and terms, both generically and for the purposes of this report.

SALI has previously provided commentary on the whole issue of Redress, including Financial Redress. The members of SALI have noted Minister O'Gorman's view on the wide nature of Redress as comprising of many factors.

In 2021, the Irish Government produced its initial proposals for a Financial Redress Scheme for the Victim and Survivors of the Mother and Baby Home Institutions. The initial publication produced a wide outcry against its content with many observing and noting the discriminatory nature of its provisions. In response to the criticism, the Government has produced the General Scheme of a Mother and Baby Institutions Payment Scheme Bill. SALI has noted the content of the Bill, its apparent lack of change and it is in this response to the Bill's proposals that this report provides comment and recommendations.

Construction & Methodology:

The basics:

We must however note the construction of the Bill against the comments made by the Minister as they provide clues as to the methodology of its creation. Part of that methodology included a Public Consultation, partly supported by Oak Consulting, within which two of the Authors of this report engaged directly. The Government has subsequently described their ethic and ethos in relation to Redress.

In June 2021, Minister O'Gorman gave an early indication of the priorities and construction of the Redress Scheme[1], he stated that:

"The report [Commission of Investigation Report into Mother & Baby Homes] is the outcome of a statutory commission of investigation…[and would be used]…as the basis for the redress scheme and for the basis of my engagement with congregations in terms of seeking their contribution to the redress scheme…I am just really conscious that survivors want access to that enhanced medical card, they want access to those payments. We had 450 written submissions on the consultation we did on redress and about 180 joined the online consultations and the key theme arising from that was 'most of us are elderly, we want to be able to get access to that".

In November 2021, Minister O'Gorman apparently stated to Senators that engagement with Survivors[2]:

"brought home to me", the importance of a Redress scheme.

As Victims, Survivors and Activists started to digest the newly published proposals for a Redress Scheme, it was clear that the government had made some unilateral decisions about who would qualify for payment from the scheme and who would not.

Minister O'Gorman apparently indicated that Survivors who were born within the Mother & Baby Home Institutions and were there for 6 months or less, had informed him that their priority was to access their origin information. There was no apparent link to data or information to support that proposition[3].

In the same press article, the Minister was challenged as to the omission of former children from the scheme and is reported to have said:

"I suppose children who were in there less than six months wouldn't have been aware of their experiences and would have been too young to remember their experiences".

The following day, the Minister responded to the criticism of his comments by apparently stating:

"If I said that in the press conference yesterday that's a very inartful way of me to describe the experience and I apologise for that".

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[1] https://www.irishexaminer.com/news/arid-40306634.html

[2] https://www.irishtimes.com/news/social-affairs/mother-and-baby-homes-government-still-has-a-lot-to-do-to-address-survivors-concerns-1.4730679

[3] https://www.irishexaminer.com/news/arid-40746258.html

A question of time incarcerated:

In the same article, it is reported that the Minister went on to say that:

"We have used the criteria of time as a guide towards the degree of exposure that women and children had to the very harsh institutional conditions in the the mother and baby and county institutions".

SALI contends that this is the key element of how the Redress Scheme was being considered; time spent in the Institution. In other words, the period of incarceration. How long was an individual incarcerated or detained within an Institution, often without charge or legal basis? The basis of the scheme was clearly being considered in part, as a form of unlawful detention with individuals to be compensated accordingly.

The equality of consultation:

We can then see other key elements of the construction of the Redress Scheme through the comments of Minister O'Gorman within the Dáil Éireann debate on Thursday 25 November 2021[4]. During that debate, the Minister stated that:

"At the outset, I reiterate that the Government is under no illusion that there is any financial payment or service provision that could make up for the immense pain and suffering endured by so many of our citizens whose lives have been impacted by the shameful legacy of mother and baby institutions".

He went on to say:

"Throughout the past year, during the consultation with survivors and our engagement with stakeholders on a previous redress scheme, it was clear that the response, in particular the payment scheme, had to be non-adversarial and had to encompass the breadth of survivor concerns".

This latter comment indicated that there were two parallel consultations; one with Survivors of the Mother and Baby Home Institutions and another with Stakeholders from previous schemes. Those Stakeholders were likely (though it is not clear from the record), to have been with Government or State entities and quite possibly with some religious orders. This latter consultation therefore had the potential to introduce elements of past and indeed controversial scheme methodologies. Perhaps to many, the engagement with Oak Consulting had misguidedly raised expectations of a new way of doing business?

[4] https://www.oireachtas.ie/en/debates/debate/dail/2021-11-25/35/

To demonstrate our point, we hold the same concerns as Deputy Connolly about the 6 month qualifying criteria to be able to access payment from the Redress Scheme. In the debate on the Scheme, Deputy Connolly stated[5]:

"Where has the six-month criterion come from? When I spoke earlier this week, I tried to find out it where it came from. The interdepartmental group had no expertise on it. The Attorney General was represented on it, as was the State Claims Agency. This gives an indication of what was going on here. There was no expertise from the Irish Human Rights and Equality Commission. It made a submission, but it was not there because the Minister chose the instrument and the framework of an interdepartmental committee. That excluded all of the other expertise because an interdepartmental committee cannot, by its very nature, have anybody from outside the Department included. That was a mistake. We were going to get this type of report from them. It was a foregone conclusion. They tell us that the six-month issue would have cost implications as well as a risk of creating legislative and equity difficulties that could ultimately derail attempts to provide supports to those who require them. This is what they tell us as one of the justifications but I do not understand that logic. They repeat that on other pages where they say that such extensions could create risk. I believe that more than 24,000 children would have come within the six-month timeframe. My reading of that language is that it is simply to save money, with no understanding whatsoever of what it meant to be in a mother and baby home".

Despite the clear words of apology and the public desire to present a Scheme that delivers Justice, we note her observations that more than 24,000 people will be prevented from receiving a payout because of the arbitrary timeframe cut-off, created by the 6 month criteria; **this cannot be acceptable.**

Deputy Connolly's comments go some way to confirm our view about the methodology deployed by Government when consulting on the proposed scheme. Clearly the other Stakeholders included the State Claims Agency which, as happens within other European Jurisdictions, applies a conservative opinion or view on the construction of a 'claim' and its value. That ethos is palpable in the construction of this Scheme - what is not clear is just how much value has been placed on their views of value, lives, and complex trauma's suffered by the Victims & Survivors and their families?

But when considering the inequality of representation, we need look no further than the Interdepartmental Group (IDG), consisting of the Departments of DCEDIY, Education, Health, Public Expenditure & Reform, The Taoiseach, The Attorney General and the State Claims Agency[6].

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[5] https://www.oireachtas.ie/en/debates/debate/dail/2021-11-25/35/

[6] https://www.gov.ie/pdf/?file=https://assets.gov.ie/204591/dce1a5b9-de5e-4443-b4e1-b4e7eef02c06.pdf#page=null

In their report, you can see the structure of the Redress Scheme taking place along with expressions of concern about their own limitations.

At paragraph 1.16 they express concerns about including other Institutions and seeks to limit the range of Institutions to that investigated by the Commission of Investigation into Mother and Baby Homes because it would deliver more inequality and issues relating to costs. Tellingly they state:

"Firstly, the IDG has insufficient knowledge and information in respect of other institutions...[this was a remarkable admission given the membership of the IDG - perhaps they were considering those captured by the SALI descriptive list?[7]]...*to allow for any determination in regard to their inclusion in the Scheme or what that would mean for the Scheme in terms of scale.*

Secondly, it understands that, in the case of private maternity and nursing homes, records to support applications to the Scheme are highly unlikely to exist.

Thirdly, a decision to extend the Scheme beyond the institutions covered by the Commission's remit could give rise to calls to consider the circumstances of unmarried mothers and their children who never spent time in a Mother and Baby Home Institution but may have been subjected to stigma and abuse in their communities over the course of the time covered by the Commission's Report".

Within paragraph 1.17, using the Commission of Investigation as cover, they recommended the complete exclusion of those Children who spent time in a Mother & Baby Home and were Boarded-out (acknowledging provisions for those who subsequently inherited farms or property).

The die was cast; the structure was born without proper process or consideration.

Non-Disclosure Agreements & Waivers:

On the question of waivers and non-disclosure agreements, the Minister stated:

"On the subject of the waiver that is included in the proposals for the scheme, it is important to stress that the legal waiver would only be signed at the point where the applicant accepts an offer of a financial payment made under the scheme. An applicant will have full understanding of what offer is being made to him or her before signing. Until the point at which an offer is accepted, an applicant has every right to pursue legal action, if that is what the applicant chooses to do. All applicants who decide they want to take the payment and sign the waiver will be entitled to financial

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7 Other than MBH & County Homes, other Institution-types (regardless of the religious persuasion or denomination) include: Public & Private Orphanages, Public & Private Hostels, Flatlets, Public & Private Hospitals, Workhouses or Former Workhouses, Public & Private Training Centres, Public & Private Group Homes, Industrial Schools, Public & Private Alms, Alms Houses, Public & Private Family Schools, Public & Private Centres, Public & Private Reformatory Schools, Public & Private Nursing Homes, Public & Private nursed out residences, Public & Private Societies, Public & Private Orphan Societies, Private Residences, Public & Private Refuges, Public & Private Ragged Schools, Public & Private Holding Centres, Public & Private Holding Centres for the purpose of the NI Australia Migrant Scheme

support so they can get independent legal advice on the consequences for them of signing that waiver. Importantly, signing a waiver will not mean that survivors cannot discuss their experience of engaging with the scheme or the payment they may have received so, unlike previous schemes, there will be no gagging of survivors".

In this comment he makes clear that there is no room for non-disclosure agreement and this is indeed welcome.

SALI notes the concerns on the use of a waiver, expressed by Deputy Connolly[8].

However, despite representations made, both within the Oireachtas and externally, the Minister was clearly intent on delivering a waiver condition which as we can see, is replicated from that required by previous Redress Schemes. The waiver scheme is in effect a carrot and a stick. Applicants will receive a package of benefits but only if they give up all potential claims against the State for any illegality the State may be responsible for. So the Scheme had jumped from solely compensating for the time that a person was detained and for unpaid commercial work, to providing compensation for all of the potential wrongs the State could have committed.

In addition, SALI has noted that there was no drafted example of such a waiver produced either in the initial proposals nor within the Bill published in 2022. We consider that if the waiver is central to the operation of the Bill, then the text of the waiver should be included within the Bill as it is integral to the very construct of its provisions and indeed of the rights of the applicants.

The depth and breadth of wrongs:

To understand the breadth and depth of those wrongs, SALI has noted the comments of Taoiseach Martin's State apology in the Dáil Éireann debate on Wednesday 13 January 2021[9]. In giving the State's apology, he stated:

"Therefore, on behalf of the Government, the State and its citizens, I apologise for the profound generational wrong visited upon Irish mothers and their children who ended up in a mother and baby home or a county home. As the commission says plainly, "they should not have been there." I apologise for the shame and stigma which they were subjected to and which, for some, remains a burden to this day. In apologising, I want to emphasise that each of you were in an institution because of the wrongs of others. Each of you is blameless. Each of you did nothing wrong and has nothing to be ashamed of. Each of you deserved so much better. The lack of respect for your fundamental dignity and rights as mothers and children who spent time in these institutions is humbly acknowledged and deeply regretted. The Irish State, as the main

[8] https://www.oireachtas.ie/en/debates/debate/dail/2021-11-25/35/

[9] https://www.oireachtas.ie/en/debates/debate/dail/2021-01-13/10/

funding authority for the majority of these institutions, had the ultimate ability to exert control over these institutions, in addition to its duty of care to protect citizens with a robust regulatory and inspection regime. This authority was not exerted and the State's duty of care was not upheld. The State failed you - the mothers and children in these homes".

He went on to state that:

"While context is essential to our proper understanding of this chapter of our history, it does not lessen what happened or diminish the responsibility of churches and State for the failures laid bare in what we have learned".

So whilst the narrative seeks to place Institutional matters in context, the reality is that this and indeed successive Governments have been well aware of the intergenerational issues at play, confirmed by previous reports into allegations of Institutional crimes and abuses.

Taoiseach Martin's apology however reveals that *"generational"* wrongs had been committed by *"others"*. He also accepted that the Victims & Survivors received a *"lack of respect"* for *"fundamental dignity and rights"*. But, the depth of the State's culpability is found within his comment that *"the Irish State, as the main funding authority...had the ultimate ability to exert control over these Institutions, in addition to its duty of care to protect Citizens with a robust regulatory and inspection regime... authority was not exerted and the State's duty of care was not upheld"*. Funding by National Government and/or local authorities was well documented before the Commission of Investigation's report into Mother and Baby Home Institutions, as was clearly the lack of robust regulatory and indeed the practice of a duty of care, in other words a failure or an abdication of State Social Care, Protection of Citizens & responsibility.

The Government through the use of a waiver, is in effect air-brushing all other aspects of involuntary incarceration or detention without trial or detention without legal justification. This raises the potential of responsibility for Government to be found solely, or acting with complicity, or, to have breached their common law or statutory duty of care, whatever about failures or denial of Citizen rights contained within the Irish Constitution or indeed within any issues found in any criminal complaints made. This is the basic construct of the scheme, to simplify, indemnify and group together a wider set of wrongs or illegality, under the guise of a simple and problematic compensation model, created primarily for the time spent in detention within an Institution. Its premise, even now, fails to acknowledge the depth of trauma and abuse suffered by the act of that initial detention, and indeed, all the consequences of ill-treatment, however manifested.

Discrimination of Victims & Survivors:

We have noted the removal of children who were detained for less than 6 months and those who were boarded-out from being able to apply to this proposed scheme; **this cannot be allowed to stand.** On this point alone, we should perhaps give thoughts to those women also who may not have spent a great deal of time in any type of Institution, because they suffered miscarriages or stillbirths; **are they also due to suffer discrimination?**

Another intentional consequence of these proposals and the Bill is the clear removal of potential applicants to the Scheme, who died before the State apology given on 13 January 2021. The logic for this decision appears to be found in the creation of the Mother and Baby Home Report and the State's acknowledgement and the apology given on that date. But this is illogical if you consider the words of Taoiseach Martin, along with the documented issues contained within previous reports (noting that many will not initially be aware of their early life separation history or families may not be aware of a birth and death followed by their remains being placed within anatomical or medical research facilities). If this provision is retained it will deliver a living discrimination for past and existing generations and will send a message from Government, that past detentions and suffering, along with the subsequent generational suffering is not acknowledged and are therefore invalid. **This bar to Victims families must be removed if the Government's State apology is to deliver a valuable meaning of acknowledgement of the past.**

The 2022 Redress model:

In determining methodology, SALI makes reference to the Bill. It notes in particular use and reference to the Residential Institutions Redress Act 2002, Residential Institutions Statutory Fund Act 2012, Redress for Women Resident in Certain Institutions Act 2015. Whilst reference to these Acts deploys some practicality to the proposed Bill and its construction, it nonetheless delivers a discrimination in the scope and scheme of its operation.

In two critical areas, the removal of those who died before 13 January 2021 from any eligibility and the issue of waivers presents a clear use of past models, thus reinforcing a culture of how a State-interpretation of Justice must and shall be delivered.

Whilst the government's narrative is leading even objective observers to the conclusion that this Redress Scheme and the Bill is bespoke and designed around the Survivors wishes, it is clear that this is not the case.

The government will counter that this observation fails to acknowledge that their consultation with Survivors, has encapsulated everything about an all-encompassing Redress. But, in countering that response, we should remember that **this Bill relates**

only to Financial Redress and which is the cornerstone and the primary objective of Redress for many Victims, Survivors and their Families.

To demonstrate why this Bill is not bespoke and delivers disappointment and discrimination, we should look to the very pieces of legislation which the Government refers to in its draft heads of the Bill. In fairness to these references, they demonstrate the practicalities of the general construction or commonly deployed aspects of any scheme. But some of the key components of the proposed Redress Bill are quite simply replicated from a previous model.

For example, on the question of denying all those having experienced incarceration within a Mother and Baby Home Institution, the present Bill seeks to exclude all those who died before 13 January 2021. The same provision can be found within Section 9 of the Residential Institutions Redress Act 2002, based around the date of the State Apology on 11 May 1999 [10] [11]. Under the same Act the question of imposing a Waiver to prevent any further claims against the State is found under Section 13 (6) [12] (supported by Section 24). Section 1 of the Act makes clear that any applications under that Act was to be paid for any abuse suffered by those applicants within the Institutions it covered.

By contrast, the proposed Redress Bill proposes to compensate for time spent in an Institution and for the lack of pay for any commercial-type work, forced unpaid labour, carried out by Victims & Survivors. It makes no mention of various abuses and human rights violations, allegations of crimes involving trafficking of mothers and children, lack of or poor medical treatment, drug and vaccine experiments, physical/emotional/psychological torture, food and sleep deprivation, harsh unjustified punitive measures, and the loss of liberty, the loss of social and/or educational opportunity, whatever about the multiple complex traumas such as PTSD, grief, loss, abandonment and separation or scaradh.

In addition to that compensation an applicant can also potentially receive healthcare assistance.

Any waiver proposed under the current Redress Bill is clearly being proposed as a broad-brush waiver that prevents applicants who accept any such payments, the opportunity to pursue a legal action, for example, on distinct issues of abuse or psychological trauma.

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[10] https://www.irishstatutebook.ie/eli/2002/act/13/section/9/enacted/en/html#sec9

[11] https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/bertie-ahern-state-s-1999-apology-to-abused-children-was-absolutely-necessary-1.3887799

[12] https://www.irishstatutebook.ie/eli/2002/act/13/section/13/enacted/en/html

The Authors considered other pieces of legislation and Redress Schemes beyond the Bill and noted the provisions of the Redress Scheme proposed for the Victims and Survivors of the Magdalen Laundries.

The report of Mr Justice John Quirke[13] created a disqualification for those who died prior to 19 November 2013, the date of the State Apology for the Magdalen Laundries. **This same limitation is also proposed within the current Redress Bill.**

Further, an ex-gratia payments payable to women receiving in excess of €50,000 would not be paid into their estates.

The report then went onto exclude any woman who sought to seek compensation through any court or tribunal and compensation was to be paid for time spent in a Laundry and work carried out therein. **Here we can make the comparison to the proposals under the current Redress Bill.**

To secure compensation from the Magdalen Scheme, a woman would have to sign a waiver to prevent them from taking any legal action against the government or its agencies. This meant that such women would not be able to pursue claims for Abuse or other matters if they chose to accept the scheme's compensation. The Quirke recommendations demonstrate in a footnote that they took their cue from the Hepatitis C Compensation Tribunal Act 1997, section 13(6) of the Residential Institutions Redress Board Act 2002, section 10(2) of the Health Repayment Scheme Act 2006, Clause 11(4) of the Lourdes Hospital Redress Scheme document published by the Department of Health and Children, April 2007; this suggests a very clear mechanical and limiting approach for those who died before a State Apology (ignoring the generational suffering of these experiences, and the expunging of potential legal actions through a radical deployment of a waiver. **Again, we can see the same measure being deployed within the current Redress Bill.**

In relation to the construction of any actual Financial Redress, the Government should take the lesson from the report on the Mother & Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland which states[14] (it is also important to note the review of the Redress process in the North of Ireland which could perhaps be adopted in the Republic?[15]):

"As discussed previously, financial redress is considered by many victims-survivors and families to be a significant need. They propose that in accepting responsibility for the

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[13] https://www.gov.ie/pdf/?file=https://assets.gov.ie/45741/db3049b55fa744ca9a982070739fb592.pdf#page=1

[14] https://secureservercdn.net/160.153.138.71/w2w.113.myftpupload.com/wp-content/uploads/2021/10/30092021-Truth-Recovery-Final-Report-FINAL-Online-Version.pdf

[15] https://www.executiveoffice-ni.gov.uk/news/review-hia-redress-process-under-way-givan-and-oneill

harms done to girls and women through degrading and often arbitrary detention and forced labour, and to mothers and their babies through the process of internment and compulsory adoption, particularly the cruel circumstances of institutionalisation, redress payments should be made without waiting for legal determination… Compensation to prove that this was an injustice…Compensation – with an early redress scheme NOW".

Compare how the decision was effectively made, by one side to the Consultation process, through the Interdepartmental Group (IDG), on how any Financial awards should be calculated (note how their statement at 2.7 dismisses a properly formatted calculation in favour of a replication of the Magdalen Laundries scheme and a binary approach into the actual setting of those figures)[16]:

*"**The payment will operate in a similar manner to the Magdalen Restorative Justice Ex-Gratia Scheme comprising a general payment, which rises based on length of stay, and a work type payment.** The work type payment would only apply to those in the categories outlined in Section 2.3.1(c) above. It should be noted that the **work payment is not intended to reflect loss of earnings** but, rather, represents further acknowledgement of the experiences of the women concerned. As with the general payment, **only a full investigation as part of an adversarial process could make individualised calculations of entitlements and, in all the circumstances, that is not considered feasible as part of this Scheme**".*

It is curious, given the resources at the disposal of the Government, why they should be attracted to the erroneous belief that a work payment is not meant to represent a loss of earnings - is this an admission that they know that a proper calculation would actually see women properly compensated for their Commercial Work rather than receive the paltry payments proposed in the Bill? Equally, when it comes to a general payment, the IDG presents to Government the threat of an 'adversarial process' as the only means to calculate this head of payment. What we ask is difficult about recognising and accepting the concept that 'time spent' is actually an aerosol phrase for illegal detentions or false imprisonment, for surely that is what they are as there was never any legal basis for these detentions?

It is SALI's opinion that it is entirely possible to calculate the true values for 'time spent' and 'commercial work without pay' without resorting to a claim that it is not possible to create a viable scheme without litigation!

Accessing Legal Advices:

The proposed Mother & Baby Home Institutions Redress Bill provides for the ability to access legal advices under Heads 13, 22 & 25, made possible by a small contribution

[16] https://www.gov.ie/pdf/?file=https://assets.gov.ie/204591/dce1a5b9-de5e-4443-b4e1-b4e7eef02c06.pdf#page=null

to legal costs. However, the ability of accessing legal advices appears to be primarily concerned with general advise about the scheme and to provide an affidavit to support an application. It does not appear, nor would it provide a financial value to an instructed solicitor, to provide detailed consideration or advices on the wide experiences and abuses of an applicant, **it therefore appears to only offer the veneer of accessing valuable independent legal advices.**

In order for a waiver to attract legal validity if must contain the following values[17]:

- Free Will;
- It must be Unequivocal in Manner, and
- Not be contrary to Public Interest.

It is important to note the wider International debate on the deployment of waivers, which it is argued, contains key elements applicable to the Survivors of the Mother & Baby Home Institutions.

In the International commercial environment, the Columbia & Harvard Law Schools comment upon the use of waivers against Victims[18]:

*"There should be a **strong presumption against waivers**, particularly in circumstances of **gross human rights violations**, extreme **structural inequality**, and where **rights-holders have limited choices** but to accept offers from companies. Businesses should bear the burden of ensuring and showing that rights-holders come to the table on more **equal footing**, and that the mechanism meets **strict human rights standards**. Claimants must have access to **legal advisors who are able to robustly represent the full range of claimants' interests**".*

Other key elements in this debate concern the Guiding Principles of the UN (at 31 (d))[19], they conclude that any process should be:

*"Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on **fair, informed and respectful terms**".*

In another document from the UN commenting upon the use of waivers against Victims in the commercial environment they state[20]:

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17 https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf

18 http://static1.squarespace.com/static/562e6123e4b016122951595f/t/565a12cde4b0060cdb69c6c6/1448743629669/Righting+Wrongs.pdf%2520

19 https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

20 https://www.ohchr.org/sites/default/files/Documents/Issues/Business/LetterPorgera.pdf

"...the presumption should be that as far as possible, ***no waiver should be imposed on any claims settled through a non-judicial grievance mechanism****. Nonetheless, and as there is no prohibition per se on legal waivers in current international standards and practice, situations may arise where business enterprises wish to ensure that, for reasons of predictability and finality, a legal waiver be required from claimants at the* ***end of a remediation process****. In such instances, the legal waiver should be a* ***narrowly construed as possible****, and preserve the right of claimants to seek* ***judicial recourse for any criminal claims****. This is particularly important for instances of* ***gross human rights violations****, such as rape and sexual violence. At no point, and in* ***no circumstance, should such a waiver seek to preclude criminal proceedings*** *against the alleged perpetrator or the company, or* ***prevent the victim from joining or participating in any criminal case****".*

As if to underline the concern on the use of a waiver, in the debate in the Irish Senate on 30 November 2021, Senator Alice-Mary Higgins had this to say about its use[21]:

"As regards the redress scheme, the Minister knows that during the heated debate on birth information and tracing I and other Senators made clear that any redress scheme must have no gagging order, no indemnity and no waiver. There is a waiver. That is a problem. ***The inclusion of a waiver contravenes international human rights, under which there should always be legal recourse in the courts and that should not be precluded. The Office of the United Nations High Commissioner for Human Rights has stated that compensation must not be seen as a means of buying the silence or acquiescence of survivors. Rather, it should be part of a comprehensive justice policy. It should not be a replacement for justice, but part of a comprehensive justice policy.***

The inclusion of waivers is a mistake. All present are aware that in previous schemes, such as that relating to Caranua, for example, a significant amount of money was left unspent because the waiver set the bar too high and operated as a barrier to people. I do not think everyone eligible for the scheme will go for it when there is a waiver because people want their legal rights and their right to justice. I have several specific questions on the waiver. It was stated that there is no gagging order. Can the Minister fully confirm there will be no restriction on anybody who signs a waiver speaking publicly?

The scheme is calculated on the basis of residence in a home rather than abuse. In that regard, ***I presume the waiver will not in any way preclude somebody from taking legal action relating to abuse, since abuse is not covered and is not part of the calculation. People need to be able to take action on that.***

Will the Minister clarify whether signing the waiver will be required to access the medical card? It certainly should not be. ***This last point is crucial. Will this be a***

[21] https://www.oireachtas.ie/en/debates/debate/seanad/2021-11-30/12/?highlight%5B0%5D=died&highlight%5B1%5D=mr

waiver only for the State or for State and non-State actors? If non-State actors are in any way protected by this waiver, that is an indemnity scheme and the whole scheme would just become another one of those. Perhaps the Minister will clarify that. I am hoping it is not the case. As previous speakers have said, the contribution from religious orders and the pharmaceutical companies is outstanding and must be addressed".

Therefore, in relation to the proposed Mother & Baby Home Redress Bill can it be said with certainty under its proposals that:

- Does the proposed waiver comply with International Human Rights and obligations?
- Does the proposed legal advice route provide a robust representation or experience on a range of important Human Rights issues or are Survivors being presented with a legal-factory level of representation, thus delivering a real detriment?
- Given the wide range of issues brought forward by incarceration, can Victims, Survivors and their Families, be said to have a real choice or free will in the signing of a waiver?
- Under the Redress Bill's proposals, can the proposed waiver (noting that there is no available text for such a waiver), be said to be unequivocal when the proposal is to compensate for time spent in such Institutions and for any commercial work/forced unpaid labour carried out, but is then qualified against the broader limiting proposals offered by the proposed waiver contained within the Bill?
- Given the controversy and complexity of the entire Mother and Baby Institutional issues, is the Government trapped in a difficulty of their own making in creating a scheme on the basis of limitation and protecting the public purse against the wider public revulsion and the successive and clearly admitted failing of Constitutional and Human Rights - which holds the greater Public Interest?

It must therefore follow that the deployment of waivers and the proposed advices on those waivers perhaps delivers an inequality in the resolution of a major Public Interest issue. It is SALI's view that potential issues arising from the use of waivers (remember, no text of a waiver appears within the Bill), from a lack Equality of Arms and the actual use of Waivers could contravene the European Convention on Human Rights decisions[22] [23].

Culture Change:

SALI notes the Government's heavy reliance upon the use of the Commission of Investigation's report, as the pretext to create this Scheme and the content of the Bill. We also note the recent legal challenge made by Survivors to the value and

[22] https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf

[23] https://www.echr.coe.int/documents/guide_art_6_eng.pdf

accuracy of the Commission's report, which led to the government accepting the points, acknowledging those concerns and the payment of the Claimant's legal bills. Importantly, the Chief Commissioner for the Irish Human Rights and Equality Commission raised the issue of culture within Government, they stated that[24]:

"We must see a change not only to the political rhetoric but a systemic change in the State's attitude and responsibility towards anyone who is a victim or survivor of State wrongdoing".

The issue of 'culture' is important in this debate because of its high and undoubted potential to deliver a continuing trauma and detriment and enforcing controlled methodology in how a Scheme is delivered. Oner important absence of information is demonstrated through the failure to publish the Collaborative Forum[25] Report which painstakingly collated the views of Victims, Survivors and Families and is as yet unavailable to members of the Oireachtas. This is clearly an area of concern as we have seen in the recent debate on the Birth Information and Tracing Bill. In that debate[26], Deputy Cairns stated that:

"The Minister just spoke about the need for a culture change in the context of releasing information to adopted people. We all know the history of that not really happening and of bodies trying to keep it hidden under the carpet. The Minister then said that his Department will be tasked with trying to change that culture not only within the Department itself but within organisations like Tusla and the AAI. I do not know on what planet it makes sense to task the very organisation that has potentially created that culture with trying to change it. It is not a practical approach to effecting the kind of change about which the Minister is talking. The very institution that has created a culture is bound to have an inherent aversion to changing it and it is really important to note that. If we need a change in culture, we should not ask the institutions that have that culture problem to implement that change".

Minister O'Gorman's responded to that criticism:

"Fundamentally, my Department and my officials have engaged in a huge amount of work to bring about that culture change, as demonstrated by this very substantial Bill that we have worked on and prioritised to bring about those changes. I have seen and I believe there is a culture change beginning in those organisations. If the Deputy does not accept my view she should, as a committee member, invite Mr. Bernard Gloster, the chief executive of the AAI and engage with him. I am extremely confident that those bodies are changing and that they see the need for change...There is a culture

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[24] https://www.irishtimes.com/news/crime-and-law/courts/high-court/rights-of-eight-mother-and-baby-home-survivors-breached-over-report-state-says-1.4758041

[25] https://www.gov.ie/en/collection/346782-mother-and-baby-homes-collaborative-forum-meetings/

[26] https://www.oireachtas.ie/en/debates/debate/dail/2022-04-27/20/

change that is exhibited in Government and which is feeding through the agencies involved but it will be up to all of us, in Government and in Opposition, to police that and make sure it is being delivered on".

As we can see in that debate, the raw concern about a need for culture change is expressed, whereas the response, however genuine, could perhaps be best described as aspirational? How could it be otherwise, without the direct and daily, necessary consultation, participation and co-design from the Victims, Survivors, their Families and their Representative Groups?

It is SALI's view that in order to improve on the construction of the Redress Scheme Bill, there is a need to import a strong culture change in its provisions. There is a need to move away from the 'de minimus' instincts of a State, to reduce access or disqualify people or actions. Only then can a Redress Bill be said to deliver value, accountability and contrition for the substantial failure of Human Rights.

Recommendation 1:

Whilst Section 3 of our report delivers further comment, change and recommendations on the Bill, we nonetheless consider that the following fundamental changes must be imported into the construction of the Redress Scheme and the provisions of the Bill, namely:

1. **That the Bill cements firmly that compensation offered is solely for the time spent in an Institution and for any commercial work/forced unpaid labour undertaken and excludes all other issues;**

2. **That the Government reconsiders the weighting given to the methodology of Consultation and consider the representations on the construction and form of the Financial Redress Scheme and make it truly bespoke to the wishes of the Victims, Survivors and their Families;**

3. **To further the aims of 2 above, the Government must cause for a proper calculation for the heads 'time spent' and 'commercial work without pay' and reject the notion that such calculations cannot be achieved without litigation;**

4. **That the government removes the discrimination imported against those spending less than 6 months in a Mother and Baby Home Institution, those who died before 13 January 2021 (and their representatives), those who were not returned to a Relevant Institution after their birth, those who were 'nursed-out', women also who may not have spent a great deal of time in any type of Institution, because they suffered miscarriages or stillbirths, families who may**

not be aware of a family member's birth and death followed by their remains being placed within anatomical or medical research facilities, and, those who were boarded-out from applying to this proposed scheme;

5. **The Government must not extend a proposed waiver beyond the aims of the proposed compensation in the Bill, that being for time spent within an Institution and for any commercial work undertaken - it must not deploy a greater limitation on access to Justice;**

6. **That the Government recognises its obligations under International obligations and practices, on the use and practice of waivers, and recognise the concerns of Survivors in relation to the gross human rights violations committed against them;**

7. **That the Government must produce text for any proposed waiver and publish that text as an annex within the proposed Bill;**

8. **In the production of a waiver text within the Bill, the Government should also publish all legal advices given to the Government, justifying the deployment, text and conditions of such a waiver;**

9. **That Government should reconsider the use of a so-called legal advice mechanism, to create an environment where transparency in the deployment of waivers delivers a robust and experienced legal advice and not simply a legal-factory method of advice delivery;**

10. **That Government resists the use of past modelling of any Redress offered, a model that delivers 'de minimus' solutions on the basis of protecting the Public purse and present a Redress scheme that represents a solution to the wider Public revulsion and Public Interest issues.**

3. The SALI opinion on how a Redress Scheme should be constructed

Introduction:

The members of SALI reproduce their commentary from 30 March 2021, which was circulated to all members of the Oireachtas. It provides for a unique review of the construct of a Redress Scheme, providing important observations by which the current proposals can be measured against.

The commentary provides two options for the construction of any Redress Scheme.

Importantly, the commentary also makes clear the serious detriment, now formally reflected in the Irish Government's proposals, which discriminates against all those detainees who died before 31 January 2021. The Governments proposals on this point delivers discrimination and wipes clean the history of all those who passed away before the Government's arbitrary dateline. We provide further comment and recommendations in Section 3 below.

The members of SALI have made some minor amendments to the following text for ease of reading and to recognise some developments since the first publication of the below comments.

The General Principle of Financial Redress:

Survivors right to financial redress is key; it can provide a degree of comfort for survivors whose lives have been negatively impacted and who decades later, are living in poverty due to lack of life chances dictated by early life experience – incarceration and separation (these factors have lead to a reduction in life chances, including deficits of social skills and preparedness or denial of those factors, as well as non-existent or lack of education and other opportunities).

Any opportunity for financial redress should ensure that any application will be assessed and applicant supported, by a wholly independent decision-maker, free from any form of governmental connection or pressure, who is informed and fully knowledgeable on the issues.

The Definition or Limits of Financial Redress:

Further in this Chapter we provide our views against making 'distinctions' within the Victim, Survivor or their Family groupings. In previous State Investigations, a methodology of calculation has been made which is perhaps akin to current State scheme (such as Criminal Injury Compensation) or through the practices found within

Personal Injury awards. In the creation of these 'limited' schemes, they have delivered a sense of dissatisfaction, particularly in the manner in which it has been divided and distributed, leaving many with a belief that they have been re-victimised and that recognition for their testimony, their suffering and therefore Justice, remains elusive.

We would strongly urge that such methodologies are not deployed against Victims, Survivors and their Families as those processes have failed to deliver appropriate levels of 'compensation' for their incarceration and the lost opportunities of life [27] [28] [29]. A scheme so designed will only deliver a just level of 'compensation' when measured against the total failure of any Victim or Survivors loss of Human Rights. Any scheme design therefore needs to present a unique and dynamic assessment and solution that truly reflects the horrors of the experiences.

The Modelling theory of any Financial Redress Scheme:

As previous models have demonstrated (for example, the Magdalene Laundries), the design and construction of a compensation scheme has gravitated toward a tariff-distinction-based scheme. This has its 'history' within the range of group-action compensation schemes found within civil law/personal injury disputes. The argument used to support this model is that it delivers a balanced response to the complaints made.

But the attraction to this model is flawed because where general legal issues are in dispute, they are usually centred upon one primary index point of harm. For example, a car produced by a manufacturer is found to have fundamental faults, which are hidden from view, altering how a Consumer makes an economic decision. A compensation scheme would be designed to correct that detriment. In a holiday illness claim, the index point will arise from poor hygiene conditions, resulting in a wide-spread illness and a loss of contractual 'enjoyment. A scheme so designed to accommodate these failures will properly compensate for the issues arising out of that primary event.

Another equivalent tariff-distinction-based scheme is found through the Criminal Injuries Compensation Scheme[30]. This follows the same methodology as that found in the civil law practices described above. But again, it is dealing with one specific index event, with the majority of claims delivering short to intermediate resolution of conditions, the long-term major injuries account for a minority of claims

[27] https://www.bbc.co.uk/news/uk-northern-ireland-47973826

[28] https://core.ac.uk/download/pdf/232772328.pdf

[29] https://www.irishtimes.com/news/shortt-awarded-1-9m-for-wrongful-imprisonment-1.1183470

[30] http://www.justice.ie/en/JELR/Pages/Criminal_Injuries_Compensation_Scheme

In the case of the Mother and Baby Home (MBH) crisis or 'event', we are dealing with something that has far more fundamental detriment and implications than those found within a contractual, illness or criminal injury claim and includes multiple index points of detriment suffered.

The issues arising from the MBH's presents matters of important Public Interest.

The detriment presented by the MBH's are not just confined to a period of incarceration, but have extensions into the original and continuing Forced Removals, Industrial Schools, Magdalene Laundries, the controversial system of 'Adoptions', along with the many common personal issues of loss of or continual breaking of bonding, abuses, prejudice, discrimination, isolation, loss of identity; this list of detriment has no limitation on the common sufferings of Victims, Survivors and their Families.

On the issue of Forced and Illegal adoptions, we note that an illegal adoption can only be constituted where proven in contravention of law. Therefore, Restorative or Reparative Recognition in Redress must be given to the falsification of certification of origin, i.e. documentation that was wilfully doctored and witnessed (in the presence of GPs, solicitors), presenting that the child would be registered as 'natural' to prospective parents, thereby feasibly circumventing any necessity for court order, visa/passport required at the time [31] [32] [33] [34].

Another important factor to consider is how these detriments have travelled through the generations, where the secret shame can be found not just within the Republic of Ireland but throughout the diaspora.

It is important in any modelling, not to view the Victims, Survivors or their Families as separate categories of Claimant but as joint Claimants.

As we have previously outlined, the Power of Words is vital. In considering how to model any compensation scheme it is important to recognise that the Women and Children were specifically identified, carrying with them a State and Religious 'mark of Cain'.

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[31] https://www.dailymail.co.uk/news/article-2257853/Irish-GP-scores-children-illegally-adopted-Lack-paper-trail-left-adoptees-unable-mothers.html

[32] https://www.irishtimes.com/news/social-affairs/up-to-4-000-irish-children-sent-abroad-for-adoption-over-30-years-1.4472519?mode=amp

[33] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118116/human-trafficking-report.pdf

[34] http://bastards.org/bastard-nation-history-analysis-endorsement-of-adoptee-citizenship-act-2019-2020/ - (This is another important reference for issues of dual citizenship)

For many Women and Children, they have distinct and collective views on what happened to them. Up to their incarceration, their lives were similar to many of their fellow Citizens, forming part of that society and its norms; they participated in and contributed to society's well-being. However their range of experiences then demonstrates their separation from that society, that they were categorised, they were deprived of agency, they were marked as a distinct group, subject to a range of 'attacks' from being a member of that group, such an attack was industrial by scale. This is the Scaradh Magdalen. The attacks on them were/are demonstrably multiple and common in nature. Where they were once part of society, the ranges of conduct committed against them, furthered a State, Religious or organisational policy. It has delivered substantial and continuing Human Rights breaches. It presents a uniqueness of circumstance as opposed to the generality of life.

It is on this latter basis that the government should carefully plan its modelling of any Financial Redress Scheme.

Therefore, the starting point must begin with a consideration of Interim Payments.

Interim Payments:

There should be an important requirement/consideration made to provide Interim payments; there are two options:

The first option is our preferred methodology.

Universal Interim Payment:

- There should be no distinction (age/time spent etc), qualification or criteria used to determine qualification for such a payment;
- The only qualification criteria that should be used is whether an individual was admitted (no matter the length or period within a MBH(s)) and following removal from a MBH was subsequently readmitted to a MBH following the giving of birth, or associated Institution or Adoption Agency. This criteria should extend to include all those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations;
- If the answer is 'yes', then the Victim or Survivor (of their families) qualify for payment of an Interim Payment;
- The payment should be immediate;
- The minimum payment should be €15,000 in lieu of a final award;

- All who were admitted or spent time from birth in a MBH should receive the payment;
- There may be political objections to such a Universal Payment but we consider that any political objections are misplaced for the following reasons:
    - The MBH issue presents a uniqueness of circumstance;
    - It is inappropriate to use previous compensatory 'Magdalene' schemes as the precedent simply because of the controversy that such schemes attracted and continue to attract. The same applies to any temptation to gravitate toward any civil law solutions as described above;
    - To consider the MBH issue in isolation delivers a continuing political fault in that the MBH issue is closely tied to issues and experiences, that lay beyond that primary entry point;
    - There is a simplicity and attraction of application through this method, presenting an immediate, non-discriminatory, equality of arms;
    - Some may argue that the capital outlay is excessive without qualification, but that argument presents a naivety in political thinking. It is obvious that the Irish government (and perhaps its predecessors) have suffered a continual loss of integrity and reputation. By creating a Universal Payment, it delivers a clear, strong political message that all have equality of arms, it would send a strong message to all Irish Citizens, that the government is listening. It would deliver a clear 'restorative' and constitutional message about Citizenship;;
    - It also presents a strong social and financial benefit in that if the government chooses to adopt this methodology, Victims, Survivors and their Families will be spared in retelling and reliving their testimonies and experiences, it would remove the possibility that some would be dissuaded from applying to any scheme (government should encourage engagement through simplicity), monies will therefore be saved in assessments and administration, delivering an ultimate benefit to Irish taxpayers and reputation to the operation of government;
    - All monies paid should be done so free of tax, charges or other financial encumbrances or conditions;
    - In summary, the benefits delivered would witness:
        - Simplicity of application;

- It would be cost-efficient in its administration;
- It would deliver overall simplicity for the Irish State and Tax-payers;
- It would deliver a very strong message of Restoration and a path toward ultimate Justice.

Alternative Model for an Interim Payment:

The alternative is of course found within the familiarity of a distinction/criteria led interim payment scheme. **It remains our view that all qualify and that no-one should suffer from any restriction, distinction or detriment suffered on any payment (noting that some will perhaps be unable to provide date-data confirming periods of incarceration).** If the government chooses to adopt the alternative model for payment, then any distinctions should be limited to:

- We repeat the qualifying criteria found in the preceding option, that being that the only qualification criteria that should be used is whether an individual was admitted (no matter the length or period within a MBH(s)) and following removal from a MBH was subsequently readmitted to a MBH following the giving of birth to also include all those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations;
- This would include those Mothers and Children now aged 30 or more (this takes into account that the last MBH on the island of Ireland, closed its doors in 2006);
- For those suffering with any illness or any serious illness or a combination of illness types (physical, psychological, psychiatric);
- Any Interim Payment made can be deducted from final settlement;
- It is suggested that the minimum payment should be €15,000;
- All monies paid should be done so free of tax, charges or other financial encumbrances or conditions;

The full award from any Financial Redress Scheme:

This presents the greatest challenge for the Irish government and many of the arguments we have made on Interim Payments are replicated here.

Our preferred method is found within the scope of a Universal Payment.

Universal Payment:

- Whereas the alternative would deliver what it perceives as fairness through distinctions, we suggest that distinctions can be viewed in a different and dis-unifying way;
- Distinctions will be found through the category of the individual and their experiences, many of which are common and collective;
- If you recognise the commonality of those distinctions then you must also recognise the equality of experience suffered by the Women and Children;
- For the sake of clarity we would define qualifying Victims & Survivors to include the Mothers affected, Children, Siblings and their surviving Relatives, to include all those 'nursed-out', 'boarded-out', 'farmed-out' and 'foundlings', within the scope and remit for eligibility and reparations. As we reject any attempt to provide any form of 'distinction' through the time spent within a MBH, we would go further and establish any such period to run from the point of conscious conception, the period up to removal to a MBH, incarceration in a MBH and through any separation and subsequent exit or transfer from a MBH, recognising also the combined trauma that subsequently results from this defined experience. As we provide this definition, it must also be recognised that this is accompanied by the high potential for physical/emotional/psychological treatment or detriment, experienced in the period before incarceration, followed by the period of confinement in what amounted to penal conditions and lack of medical care;
- Presenting a recognised equality of arms, sends a powerful message not just to the Victims, Survivors and their Families, but also to wider Irish society;
- Recognising a collective experience presents the opportunity for simplicity in assessment;
- In following our preferred model for Interim Payments, it presents the the basics of qualification;
- The issues of distinction and collective experience again presents a uniqueness of circumstance and provides for a narrative that justifies payment;
- Every Victim & Survivor (and qualifying families) should receive a Universal Payment, without distinction or separation;
- The Capital Sum to be paid should be calculated, not just by Ministers, their Legal Teams and Actuaries, but also in partnership with a Victim, Survivor, Family-led panel, working in real-time, alongside government and not in any

time-delayed Consultative process. This Victim/Survivor-led approach would deliver an important Stakeholder element at the heart of and into the moment that discussions take place, delivering a more solid assessment and agreement;

- Where any Victim, Survivor, Family-led Panel is created, they should be chosen from a wide pool of stakeholders and have their full expenses paid for their attendance at any meetings.
- We do not consider that any final Universal Payment should adopt the methodology of any tariff-distinction-based scheme and certainly not by any reference to any previous scheme (for example, the Magdalene Laundries), when determining the Capital sum. Determination of any Capital Sum presents the opportunity to import blue-sky thinking into its construction;
- Once a Capital Sum is agreed, we would recommend that payment is then made to all Victims, Survivors and their Families at six-month intervals, in the sum of €6,000, alternatively, every 3 Months in the sum of €3,000, until the final payment from the Capital Sum has been paid;
- All monies paid should be done so free of tax, charges or other financial encumbrances or conditions;
- With regards to any political objections, we simply repeat our observations found within our preferred methodology on Interim Payments.
- In summary, the benefits delivered would witness:
    - Simplicity of application;
    - It would be cost-efficient in its administration;
    - It would deliver overall simplicity for the Irish State and Tax-payers;
    - It would deliver a very strong message of Restoration and a path toward ultimate Justice.

<u>Alternative Model for a full award:</u>

Of course the government has currently decided to gravitate toward a more traditional tariff-distinction-based model.

It remains our view that all qualify and that no-one should suffer from any restriction, distinction or detriment suffered on any payment (noting that some will perhaps be unable to provide date-data confirming periods of incarceration).

For the sake of clarity we would once again define qualifying Victims & Survivors to include the Mothers affected, Children, Siblings and their surviving Relatives, including those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations. As we reject any attempt to provide any form of 'distinction' through the time spent within a MBH, we would go further and establish any such period to run from the point of conscious conception, the period up to removal to a MBH, incarceration in a MBH and through any separation and subsequent exit or transfer from a MBH, recognising also the combined trauma that subsequently results from this defined experience. As we provide this definition, it must also be recognised that this is accompanied by the high potential for physical/emotional/psychological treatment or detriment, experienced in the period before incarceration, followed by the period of confinement in what amounted to penal conditions and lack of medical care.

We must also recognise a continued academic/governmental/institutional narrative, which confers an admission pathway under a girl's/woman's own 'volition'. However, this narrative must not be given credence and must be reframed against the Religious/ State and ultimate familial context of duress and indoctrination, which pervades and defeats any notion of free will or voluntary compulsion. It is a distinction that must not be accepted.

As the government currently appears to favour this alternative model for a Capital Sum, it presents a perceptional difficulty amongst Victims, Survivors and Families, that once again, 'the suits' are determining the issues and in any event, it will deliver an inequality of arms.

If the government chooses to adopt this route, we would observe and strongly recommend that:

- Interim Payments are paid as per our preferred methodology; it would present a strong message that the government is listening, and
- The Capital Sum to be paid should be calculated, not just by Ministers, their Legal Teams and Actuaries, but also in partnership with a Victim, Survivor, Family-led panel, working in real-time, alongside government and not in any time-delayed Consultative process. This Victim/Survivor-led approach would deliver an important Stakeholder element at the heart of and into the moment that discussions take place, delivering a more solid assessment and agreement;
- Where any Victim, Survivor, Family-led Panel is created, they should be chosen from a wide pool of stakeholders and have their full expenses paid for their attendance at any meetings. Such expenses must recognise the difficulties

faced by this demographic and must account for overnight stays both pre and post such meetings of this Panel.

Minimum Requirements of a Tariff-Distinction-Based Ex-Gratia Compensation Scheme:

Survivors are concerned about the consideration, limitation, management and scale of any ex-gratia payment scheme. They call for the following minimums to be imported into such a scheme, for example:

- Where a Financial Redress scheme is created, the Redress Board must be independent and appropriately resourced in expert and experienced specialists in trauma, psychotherapy etc. The Redress Board must be fully resourced with adequate staffing, to facilitate speedy adjudication. There must be no judicial/ governmental role on the Board; it must be demonstrably independent. Appointments to the Board to be screened for potential conflicts of interest e.g. religious/governmental/judicial;
- Survivors do not accept that there should be any 'reinterpretation' on the nature of incarceration, or limits on what qualifies an individual to be considered to have been incarcerated. To do so not only causes discrimination to many victims and survivors but diminishes what many have experienced and would represent a failure by the State to accept the nature of those experiences;
- Based on their incarceration in Institutions, for mothers who gave birth either in the Institutions or at a local medical unit/hospital (and subsequently returned to the Institution), there should be no restriction, distinction or detriment suffered on any payment;
- For any child or children, their being accompanied and unaccompanied is irrelevant and therefore there should be no restriction, distinction or detriment suffered on any payment;
- Those who have been subjected to illegal birth registration, there should be no restriction, distinction or detriment suffered on any payment;
- For those who have suffered with physical/sexual or other abuse (there should be no limitation on the range of abuse that is claimed, for example, verbal, bullying or other degrading treatment). This category should include those who have suffered such injuries whilst in past or continuing care, there should be no restriction, distinction or detriment suffered on any payment;

- For any person (whatever their age) who has without informed consent, participated in any clinical vaccine trials, there should be no restriction, distinction or detriment suffered on any payment;
- There are two categories for onward care provided directly to any child/children from Institutions. For any child or children who were subjected to forced removal or separation, resulting in boarding out/fostering/or other adoption arrangements, which presented acknowledged vulnerability, with subsequent physical/sexual abuses or other abuses, arising from systemic failures and delivered through a process of non-vetting/regulation and reviews. Equally any child or children who were subjected to forced removal or separation, resulting in boarding out/fostering/ or other adoption arrangements, which presented acknowledged vulnerability, suffering with abuses (for example, discrimination, prejudice, verbal, bullying or other degrading treatment), arising from systemic failures and delivered through a process of non-vetting/regulation and reviews. In all categories, there should be no restriction, distinction or detriment suffered on any payment;
- Equitable and equal acknowledgement must be considered for early-life separation, innate trauma suffered therein and ramifications for later life for the Mother and Child. Most of this complex trauma goes undetected, undiagnosed and unrealised by both Mother and Child. Research exists that directs to the physiological, emotional and psychological affects[35]. Many birth/natural mothers downplay and/or fail to recognise child-relinquishment under any circumstance as an abuse and/ violation of human rights/trauma. We highly recommend trauma-informed education delivered by experts/agency to all affected by way of free access to night/day/further education online courses, literature (books hard/paper copy, electronic), pamphlets with access to specialist medical/therapeutic (holistic, hypnotherapeutic, mindfulness & wellbeing etc) measures and such measures should also includes greater GP training and awareness. This must be factored into any consideration of how a Redress scheme should be constructed.
- Where any State or Redress Board's recommendations are made to exclude time spent in an institution, before 6 months old and after 1973, these should be considered as exclusory are discriminatory, unjustified, unjustifiable and inappropriately remiss;
- Equally, anyone given medication (sedation etc), daily/regularly/occasionally, without fully informed consent, shall be awarded the same access to reparations;

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[35] https://www.originscanada.org/adoption-trauma-2/trauma_to_surrendering_mothers/adoption-trauma-to-mothers-dr-geoff-rickarbys-testimony-to-the-new-south-wales-parliamentary-inquiry/

- It is important to acknowledge the psychological/emotional abuse suffered, (this should include an acknowledgement of the seeping primal wounds, as these consequences have been dismissed in most, if not all output on the abuses, their ramifications, life and long-term impact, propensity to addiction etc. The category of 'nursed-out' to be included with boarding-out/fostering. Any mental institutional victims or survivors must be included in the scope of this Redress scheme;
- Any proposed scheme must cover loss of earnings for unpaid labour, loss of educational and social mobility/skills/opportunities. Submissions must be taken from the application and be separate and distinctive in merit and, must not be subject to any comparison to any previous statements/accounts given to a Commission/Inquiry when disparities/recollections etc will inevitably differ for a variety of reasons. Submissions to be considered with priority to age and health conditions, and, expedited within a maximum of 6 months from the application. The scheme must account for Legal Experts, who be available for applications/ applicants, paid at a set/standard fee by the State Redress Scheme, for each and every application regardless of complexity;
- There should be explicit rules that Legal Services cannot charge an applicant monies for services provided in producing applications on behalf of Victims, Survivors and their Families. Remuneration for such Services should be paid by the proposed Redress Board;
- Any allocated payments must be paid directly to the Applicant and not via a third party i.e. Law Firms and, awards must be paid within two weeks of any adjudication with the recourse to paid-for independent financial advice by the Redress scheme;
- Any questionnaires that are compiled for each applicant, should be considered as not being designed for any interrogative scrutiny, but to aid recollection of events and circumstances potentially forgotten;
- There should be no imposition of a Non-Disclosure Agreement (NDA) upon any victim or survivor or their families who are potential recipients of any payment from any Financial Redress scheme. Recipients should be free to discuss (privately or publicly) any element of such a Financial redress scheme. If government is concerned about its 'assessment' process, then it should create an open and publicly accessible scheme or tariff that demonstrates how calculations will be made. The insistence of any NDA, stifles any public commentary of the scheme and the issues that gave rise to that scheme. NDA's are not in the broader interests of the Irish State nor of its Citizens (SALI provides further commentary in Section 3 below on the issue of waivers);

- There should be no element of 'full and final settlement' of any of the issues claimed by victims and survivors or their families. There should be no claim from any Financial redress scheme that any payment made is in lieu of any wrongs committed by Church or State. Payment made should be free of all such encumbrances and further, there should be no condition attached that prevents any recipient of monies (victim, survivors or families) from taking any subsequent legal action in the future. Further, if any victim, survivor or family achieves further payment through any legal action, the rules of this proposed Financial redress scheme must preclude any clawback from any monies received and the rules of the scheme must prevent any court from taking into account any payment received from the Financial redress scheme (SALI provides further commentary in Section 3 below on the issue of waivers).

Choices of Payment:

In the delivery of any ex-gratia compensation scheme, all victims and survivors should be given the following unrestricted choices:

- To receive the total amount awarded as one lump sum, free of any form of taxation, guaranteed by the Irish government, for receipt in any Jurisdiction the victim or survivor resides in;
- To receive no less than 60% of the lump sum awarded and the remainder 40% by way of an annual pension payment, properly and adequately invested (receiving annual reports as to the scale of the 'pension pot' and its performance, to deliver a high rate of return and offering a total financial protection. The option to defer 40% of the payment can be accepted by the victim or survivor either as an enhanced pension monthly payment or twice yearly payment:
    - A victim or survivor shall at any time during the operation of the deferred part of any compensation scheme, be free to withdraw and receive the deferred part as a lump sum, with interest, without any penalty or charges and free of any form of taxation, guaranteed by the Irish government for receipt in any Jurisdiction the victim or survivor resides in;
    - Where a victim or survivor opts to defer part of the payment, the recipient shall receive paid-for (by the Irish government), independent financial advices (at the request of the victim or survivor - one per annum as a minimum), as to any investment potential, so empowering them to maximise their investment and return;

- In offering any such investment advices, the victim or survivor shall receive the services of an independent paid-for advocate (paid by the Irish government), to help them determine the best outcomes of any financial advices received;
- At all times victim or survivor's capacity shall be considered and advocated for through the primary support of their family or other personal network. If such issues arise, then the victim or survivor or their representatives shall receive free (paid-for by the Irish government) independent legal advices to determine any issues, in whatever jurisdiction;
- When a victim or survivor dies, whether they witnessed the State Apology (Apologies) or not, the remaining 'pension pot' shall be paid in its entirety, as a lump sum, without any taxation or other charges, guaranteed by the Irish government, for receipt in any Jurisdiction the victim or survivor resided within for the benefit of their estate.

Pre-deceased Payments:

Where a victim or survivor has witnessed a State Apology (Apologies) or not, and has died prior to the roll out of any ex-gratia compensation scheme, the said payment shall be provided to the Estate of the deceased. Such payment shall be paid in its entirety, as a lump sum, without any taxation or other charges, guaranteed by the Irish government, for receipt in any Jurisdiction the victim or survivor resided within for the benefit of their estate. Special consideration to be given to relatives affected and eligible who may not have mental capacity to apply and who are at risk of exclusion for want of having no legal Power of Attorney in place.

SALI provides important comment on the latest proposal for predeceased persons in Section 3 below.

4. Review of the proposed Bill & Recommendations

This section of the SALI report will examine some of the Heads contained within the draft Bill and provide comment and recommendations.

Head 2 - Interpretation:

The title of the Bill and definitions include the word "Institution(s)". Relevant Institutions are identified by the list contained within Schedule 1, which can be added to by the Minister. With regards to the definition of "outside of a Relevant Institution", we must accept that there were many such Institutions, both Public & Private, Catholic or Protestant or from some other denomination. In the analysis of how the Bill is interpreted, it is important to not just understand what we mean by a location that is said to be 'outside of a Relevant Institution', but acknowledge and understand the observations of the IDG (section 2 above), where they recognise that there was a wide variety of locations which could also be potentially classed as 'Institutions' in their own right. SALI have created a generic descriptive list of such 'Institutions' which could be safely said to fall within the definition of what constitutes 'outside of a Relevant Institution'[36]. In this regard it is important to also understand the nature of such 'Institutions', for example, could they be safely said to be 'Orphanages' when in fact they contained many children who had been separated from their parent(s) under this system? **In understanding the nature of these 'Institutions' there is a need to carefully not just understand the range of Institutions, but of their descriptives, purpose and the reality they delivered, only then can an accuracy of purpose be delivered into the Bill.**

Currently the text of key definitions read:

"commercial work without pay" means work undertaken in Tuam, in a County Home or outside of a relevant institution in which a person was resident, by a person, to whom part (b) of the definition of a "relevant person" applies, for which the person was not remunerated".

SALI considers that the drafting of this definition is not consistent with the drafting terminology and intentions of the Bill. The direct reference to "Tuam" and "County Home", whilst then making reference to a "relevant institution" which are listed within Schedule 1, potentially adds frustration to the wider Survivor Community and who could claim a hierarchy of claimant and therefore potential discrimination.

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36 Other than MBH & County Homes, other Institution-types (regardless of the religious persuasion or denomination) include: Public & Private Orphanages, Public & Private Hostels, Flatlets, Public & Private Hospitals, Workhouses or Former Workhouses, Public & Private Training Centres, Public & Private Group Homes, Industrial Schools, Public & Private Alms, Alms Houses, Public & Private Family Schools, Public & Private Centres, Public & Private Reformatory Schools, Public & Private Nursing Homes, Public & Private nursed out residences, Public & Private Societies, Public & Private Orphan Societies, Private Residences, Public & Private Refuges, Public & Private Ragged Schools, Public & Private Holding Centres, Public & Private Holding Centres for the purpose of the NI Australia Migrant Scheme

Equally, the reference to "commercial work without pay" only provides a location of where that work may have taken place and not the methodology of calculating a value which would presumably provide for a more accurate calculation for any potential compensation for this element?

In addition, the reference to the word "resident" will be offensive to many Survivors and this should be amended with a new terminology to reflect the reality of the women's and children's experiences.

It is further observed that there is no definition for "outside a relevant institution" nor for "time spent".

These factors require amendment.

Recommendation 2:

The following clauses should be amended or added to the Bill:

The clause 'commercial work without pay" should be split and defined as follows:

"commercial work" means work carried out within a Relevant Institution as listed in Schedule 1 of the Bill, or within an Institution added to Schedule 1 or outside a Relevant Institution where a Relevant Person was engaged in manual or other labour for the benefit of that Institution or for benefits derived from a contract between such an Institution and a Third Party for the benefit of that Institution, work shall be construed accordingly"

"commercial work without pay" means work carried out within a Relevant Institution as listed within Schedule 1 of the Bill, or within an Institution added to Schedule 1 or outside of a Relevant Institution in which a person was detained in, by a person, to whom the definition of a "relevant person" applies, for which the person was not remunerated. Remuneration shall be calculated by the reference and use of commercial wages paid in the commercial environment, at the time the person was detained, and shall include all aspects of remuneration, for example overtime calculations, holidays, pension contributions or the loss of such benefits; this list is not intended to be exhaustive. The commercial value calculated at the time the person was detained will then be updated to a commercial financial value at the time the applicant makes a claim against the scheme".

The following is a new suggested clause, offered to provide fluidity to the Bill whilst reflecting the experience of many Survivors:

"Outside of a relevant Institution" means a place, not being contained within Schedule 1, were a relevant person was caused to be detained by any Relevant

Institution within that location, and the Relevant Person was required to carry out work as defined by that location or by the Relevant Institution. Any such Institution falling into this definition shall have the broadest meaning or type of location as possible, whether operated by private or public entities, irrespective of the religious purpose of denomination of that entity or location on the island of Ireland".

The following is an amendment to the clause that begins "resident in", to reflect a new terminology and reality for many Survivors:

"detained in" means having spent one night at minimum in an institution specified in Schedule 1 or outside of a Relevant Institution, and place of detention shall be construed accordingly".

The following is a new suggested clause to provide fluidity to the Bill:

"time spent" means the period of time that a person was detained within a Relevant Institution or outside of a Relevant Institution. The expressions detained and detention shall be construed accordingly".

Head 5 - Duration of the Scheme

SALI disagrees with the premise of this Head. Given the disparate nature of the Survivor cohort and the geographical challenges, it is imperative that Survivors and their families be given a realistic opportunity to become aware of and apply to the Scheme. There have been historic cases where those out of 'time' or where a scheme is narrowly interpreted, have had to seek redress from the courts to correct these injustices [37] [38]. The explanation provides for a conclusion that is aspirational and without evidence.

SALI provides its proposed amendment to this Head:

Recommendation 3:

Head 5 should be amended as follows:

[37] https://www.irishtimes.com/news/court-to-rule-over-legal-challenge-to-redress-board-1.786400?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fcourt-to-rule-over-legal-challenge-to-redress-board-1.786400

[38] https://www.irishtimes.com/news/crime-and-law/state-withholding-redress-from-school-abuse-survivors-seven-years-after-court-ruling-1.4614230

"(1) The Minister shall from the Establishment day of the scheme review the duties and responsibilities of the Chief Deciding Officer and their obligation contained within Head 7 (1) (e) and shall ensure that the Scheme is properly and robustly advertised within the island of Ireland and abroad. The effectiveness of the provisions of Head 7 (1) (e) shall be reviewed and reported by the Minister to the Oireachtas annually. The Scheme in its entirety shall be reviewed by the Minister on the fifth anniversary of its establishment and subsequent years of operation and reported upon to the Oireachtas by the Minister until its tenth anniversary of establishment, whereupon it shall cease to operate on that anniversary date with the prior agreement of the Oireachtas".

Head 7 (1) (e) - Functions of Chief Deciding Officer

As SALI has provided an amendment to Head 5 above and for the sake of consistency, we offer an amendment to Head 7 (1) (e).

Recommendation 4:

Head 7 (1) (e) should be amended to align its provisions to the SALI amendment found in this section at Head 5:

"to make all reasonable efforts, through public advertisement in Ireland and abroad, and otherwise, to ensure that persons who were residents of an institution are made aware of the Scheme and the functions referred to in subheads (1)(a) - (c). In addition, the Chief Deciding Officer shall comply with all requests made by the Minister according to their obligations under Head 5 to provide all information on activities relating to the promotion of the scheme through National and International advertising".

Head 13 - Regulations

SALI notes Head 13 (2) (g) and the explanation note Sub-head 2 (g). As we have already outlined in section 2 of this report, this sub-head confirms that the "...nature of the Scheme is primarily based on length of time". We also note that the Bill provides a secondary focus in that persons will be compensated for commercial work undertaken.

Recommendation 5:
As the basis of any legal work offered by this head will centre on a waiver, SALI strongly recommends that focus is given to our recommendations contained within section 2 of this report on the issues of waivers and legal advices and this and subsequent Heads in the Bill be amended accordingly.

Head 15 (7) - Assessment of Applications

SALI has noted the provision of Head 15 (7) and whilst it provides for an element of transparency, it nonetheless offers a limitation on access to personal information through the use of the expression "relevant to determinations made in relation to his or her application". This suggests a discretion which is not valid under the provisions of the GDPR.

Recommendation 6:

In order to be consistent with the proposed SALI amendment found below under Head 17 (2), the following amendment to Head 15 (7) is offered:

"The Chief Deciding Officer shall share with the relevant person a copy of all information accessed under Head's 15 (2) (c) & (d) which has been obtained by the Chief Deciding Officer in the process of the application".

Head 17 - Use of database and records of Commission of Investigation into Mother and Baby Homes

SALI notes the ability of the Chief Deciding Officer to access the database and records of the Commission of Investigation into Mother and baby Homes. It is noted that under Head 17 (2), the Chief Deciding Officer "may" share personal data from the records accessed, but it is silent on sharing that same information with the applicant. It is also inconsistent with Head 15 (7) as amended by SALI above.

Recommendation 7:

SALI therefore suggests that Head 17 (2) be amended as follows to ensure consistency with the SALI amendment of Head 15 (7) above:

" (2) The Chief Deciding Officer shall share with an Appeals Officer or the relevant person all personal data accessed from the copy of database and copy of the related records where necessary and proportionate for the performance by the Appeals Officer of his or her functions under this General Scheme".

Head 18 - Determination of Entitlement to Payment

SALI considers that Head provides the greatest potential for discrimination and exclusion; we would point to our comments in section 2 of this report and our recommendations at Recommendation 1.

In simple terms, there is no justification for the arbitrary exclusion of any Survivor to access the provisions of this Scheme. It is also important to provide for amendment to ensure consistency of language within the Bill.

Recommendation 8:

We would suggest the following clauses be amended as follows:

Head 18 (1) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution", and reference to "for a minimum of six months" be deleted.

Head 18 (2) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution".

Head 18 (3) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution", and reference to "for a minimum of three months" be deleted.

Head 18 (4) - the word "residency" be replaced by "detention", and "Tuam Home and County Home" shall be replaced by "Relevant Institutions contained in Schedule 1 or outside of a Relevant Institution".

Head 18 (5) - "A person shall qualify for a general payment in respect of a period of residence as a child in an institution. Where they have already received an award under the Residential Institutions Redress Scheme for their experience during the same time period, the payment received under the aforementioned scheme shall be offset against any payment received under the provisions of this Bill".

Head 19 - Determination of eligibility for health services without charge

SALI considers that Head provides the greatest potential for discrimination and exclusion; we would point to our comments in section 2 of this report and our recommendations at Recommendation 1.

In simple terms, there is no justification for the arbitrary exclusion of any Survivor to access the provisions of this Scheme. It is also important to provide for amendment to ensure consistency of language within the Bill.

Recommendation 9:

SALI considers that Head provides the greatest potential for discrimination and exclusion; we would point to our comments in section 2 of this report and our recommendations at Recommendation 1.

Head 19 (1) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution", and reference to "for a minimum of six months" be deleted.

Head 22 - Award of Payment

SALI refers to its comments contained in Section 2 of this report along with the issues contained within its Recommendation 1.

Recommendation 10:

To promote consistency within this report and of the goal of equality or arms for Survivors, SALI recommends that the following amendments be made to Head 22:

Head 22 (1) - "The Chief Deciding Officer shall, as soon as is practicable, notify the applicant in writing of the payment offered to him or her for the time spent in a Relevant Institution or outside of a Relevant Institution and for the commercial work without pay".

A new Head 22 (5) - "The Minister shall ensure that the text of any waiver used during the process contained within Head 22 shall be published and found within Schedule 4 to the Bill along with the full legal reasons justifying the use or limitations contained within the proposed waiver. In the construction of such a waiver, the Minister shall actively consult Survivors and their Representatives, legal or otherwise and work to achieve a consensus in the construction and drafting of any waiver used under the provisions of this Bill"

Present Head 22 (5) now promoted to Head 22 (6) (with subsequent sub-heads re-numbered) - "Where an applicant accepts an offer in accordance with subhead (2) or an offer made in accordance with a review undertaken under Head 25, the applicant may agree, following the receipt of detailed independent legal advices, to provide in writing a waiver for a right of action for the time they have spent in a Relevant Institution or that spent outside a Relevant Institution or for unpaid commercial work during that time period which he or she may otherwise have had against a public body and to discontinue any such proceedings already instituted by the applicant, against such public body. This does not preclude an applicant or relevant person to consider or commence an action which is supplementary to the

application to the Scheme, that being the said time spent or for the unpaid commercial work against any public body".

Present Head 22 (8) - This is now covered by the SALI amendment of Head 22 (6) above and so therefore, the current Head 22 (8) should be deleted in its entirety.

Head 24 - Deceased Relevant Person

In one stroke of the pen, the Government has disallowed entire generations and their families from being able to access this important part of Redress and Restorative Justice. It arbitrarily suggests that there is no value in the experiences or stories of those who were deceased prior to a certain date and does not recognise the generational harm and hurt that had been caused by their loved-ones incarceration.

SALI refers to its comments in Section 2 of this report and the content of Recommendation 1.

Recommendation 11:

Given the obvious discrimination deployed and to deliver true inter-generational Justice, the rights of all those who died before 13 January 2021 must be recognised and their estates compensated - the following important amendment is therefore offered:

Head 24 (1) - "All relevant persons, who are deceased or became deceased, at the time the Scheme is established shall be entitled through their personal representatives or family members to make an application for a general time spent within a Relevant Institution or for time spent outside a Relevant Institution or for a work-related payment which occurred in a Relevant Institution or outside a Relevant Institution on behalf of that deceased person, in accordance with Heads 14 and 18".

Head 24 (7) - "In this Head "personal representative" has the meaning assigned to it by the Succession Act 1965 or in the case where a person has died before the establishment of the scheme and the formal legal requirements, in whatever jurisdiction, to manage their estate have been concluded, their representative shall be their next or closest family member".

Head 33 - Review of the Scheme

In order to deliver consistency to the proposed SALI amendments, but also to ensure that the theme of Consultation is given greater emphasis (as detailed in Section 2 &

Recommendation 1 above), there is a need to import a greater obligation and methodology into the issue of review and consultation

Recommendation 12:

SALI recommends the following amendment be made:

Head 33 (1) - "The Minister must cause independent reviews of the operation of the scheme to be commenced- (i) as soon as possible after the first anniversary of the scheme start day, and (ii) in satisfaction of the provisions of Head 5 (1) [this is the SALI amendment above], and (iii) as soon as possible after the scheme has ceased, and (iv) in satisfaction of the Minister's obligations under this Head, the Minister shall create a Stakeholder Consultative Group drawn from a wide section of the Survivor Community and their Representatives, to inform on the issues contained within this Head and that of Head 5 (1)".

Schedule 3 - Payment Rates

SALI has noted the proposed payment rates and refer to their comments in section 2 on the construction of the scheme and the 'de minimus' approach taken by the government, preferring it seems to model the issues of payment around traditional Redress Scheme.

SALI has already amended the definition under Head 2 above, for "commercial work without pay". That amendment brings into focus a real-world calculation methodology on how a loss of earnings (noting that it does not appear to account for any other losses) and can be achieved, despite the IDG's position, without resorting to adversarial or litigation processes

We also note that the reference to a 'General Payment', actually relates to a detention or incarceration and that has a financial equivalence to illegal or false imprisonment detentions as we have observed in section 2 of this report.

Recommendation 13:

SALI strongly recommends that the Government urgently look at the proposals made by SALI in section 2 of this report, particularly on Universal & Interim Payments - these representations were made during submissions with Oak Consulting. The SALI proposals offer the ability of the Government to take a fresh approach to the calculations currently being offered through this Bill

Where the Government considers that it cannot accept the SALI methodology in section 2 above, then SALI strongly recommends that the methodology of calculation or rates used be urgently re-assessed according to real-world

principles, particularly wider serious legal issues and not based upon a small claims or low-value claim calculation. The Government must resist the IDG methodology to claim that calculations cannot be made without resorting to an adversarial or litigation position - the members of SALI reject that position. To achieve this, Consultation must be carried out with Survivor Groups, their Representatives and in particular the Claimant Legal Representative Community.

4. Summary of SALI Recommendations

Recommendation 1:

Whilst Section 3 of our report delivers further comment, change and recommendations on the Bill, we nonetheless consider that the following fundamental changes must be imported into the construction of the Redress Scheme and the provisions of the Bill, namely:

1. **That the Bill cements firmly that compensation offered is solely for the time spent in an Institution and for any commercial work/forced unpaid labour undertaken and excludes all other issues;**

2. **That the Government reconsiders the weighting given to the methodology of Consultation and consider the representations on the construction and form of the Financial Redress Scheme and make it truly bespoke to the wishes of the Victims, Survivors and their Families;**

3. **To further the aims of 2 above, the Government must cause for a proper calculation for the heads 'time spent' and 'commercial work without pay' and reject the notion that such calculations cannot be achieved without litigation;**

4. **That the government removes the discrimination imported against those spending less than 6 months in a Mother and Baby Home Institution, those who died before 13 January 2021 (and their representatives), those who were not returned to a Relevant Institution after their birth, those who were 'nursed-out', women also who may not have spent a great deal of time in any type of Institution, because they suffered miscarriages or stillbirths, families who may not be aware of a family member's birth and death followed by their remains being placed within anatomical or medical research facilities, and, those who were boarded-out from applying to this proposed scheme;**

5. **The Government must not extend a proposed waiver beyond the aims of the proposed compensation in the Bill, that being for time spent within an Institution and for any commercial work undertaken - it must not deploy a greater limitation on access to Justice;**

6. **That the Government recognises its obligations under International obligations and practices, on the use and practice of waivers, and recognise the concerns of Survivors in relation to the gross human rights violations committed against them;**

7. **That the Government must produce text for any proposed waiver and publish that text as an annex within the proposed Bill;**

8. **In the production of a waiver text within the Bill, the Government should also publish all legal advices given to the Government, justifying the deployment, text and conditions of such a waiver;**

9. **That Government should reconsider the use of a so-called legal advice mechanism, to create an environment where transparency in the deployment of waivers delivers a robust and experienced legal advice and not simply a legal-factory method of advice delivery;**

10. **That Government resists the use of past modelling of any Redress offered, a model that delivers 'de minimus' solutions on the basis of protecting the Public purse and present a Redress scheme that represents a solution to the wider Public revulsion and Public Interest issues.**

Recommendation 2:

The following clauses should be amended or added to the Bill:

The clause 'commercial work without pay" should be split and defined as follows:

"commercial work" means work carried out within a Relevant Institution as listed in Schedule 1 of the Bill, or within an Institution added to Schedule 1 or outside a Relevant Institution where a Relevant Person was engaged in manual or other labour for the benefit of that Institution or for benefits derived from a contract between such an Institution and a Third Party for the benefit of that Institution, work shall be construed accordingly"

"commercial work without pay" means work carried out within a Relevant Institution as listed within Schedule 1 of the Bill, or within an Institution added to Schedule 1 or outside of a Relevant Institution in which a person was detained in, by a person, to whom the definition of a "relevant person" applies, for which the person was not remunerated. Remuneration shall be calculated by the reference and use of commercial wages paid in the commercial environment, at the time the person was detained, and shall include all aspects of remuneration, for example overtime calculations, holidays, pension contributions or the loss of such benefits; this list is not intended to be exhaustive. The commercial value calculated at the time the person was detained will then be updated to a commercial financial value at the time the applicant makes a claim against the scheme".

The following is a new suggested clause, offered to provide fluidity to the Bill whilst reflecting the experience of many Survivors:

"Outside of a relevant Institution" means a place, not being contained within Schedule 1, were a relevant person was caused to be detained by any Relevant Institution within that location, and the Relevant Person was required to carry out work as defined by that location or by the Relevant Institution. Any such Institution falling into this definition shall have the broadest meaning or type of location as possible, whether operated by private or public entities, irrespective of the religious purpose of denomination of that entity or location on the island of Ireland".

The following is an amendment to the clause that begins "resident in", to reflect a new terminology and reality for many Survivors:

"detained in" means having spent one night at minimum in an institution specified in Schedule 1 or outside of a Relevant Institution, and place of detention shall be construed accordingly".

The following is a new suggested clause to provide fluidity to the Bill:

"time spent" means the period of time that a person was detained within a Relevant Institution or outside of a Relevant Institution. The expressions detained and detention shall be construed accordingly".

<u>Recommendation 3:</u>

Head 5 should be amended as follows:

"(1) The Minister shall from the Establishment day of the scheme review the duties and responsibilities of the Chief Deciding Officer and their obligation contained within Head 7 (1) (e) and shall ensure that the Scheme is properly and robustly advertised within the island of Ireland and abroad. The effectiveness of the provisions of Head 7 (1) (e) shall be reviewed and reported by the Minister to the Oireachtas annually. The Scheme in its entirety shall be reviewed by the Minister on the fifth anniversary of its establishment and subsequent years of operation and reported upon to the Oireachtas by the Minister until its tenth anniversary of establishment, whereupon it shall cease to operate on that anniversary date with the prior agreement of the Oireachtas".

Recommendation 4:

Head 7 (1) (e) should be amended to align its provisions to the SALI amendment found in this section at Head 5:

"to make all reasonable efforts, through public advertisement in Ireland and abroad, and otherwise, to ensure that persons who were residents of an institution are made aware of the Scheme and the functions referred to in subheads (1)(a) - (c). In addition, the Chief Deciding Officer shall comply with all requests made by the Minister according to their obligations under Head 5 to provide all information on activities relating to the promotion of the scheme through National and International advertising".

Recommendation 5:
As the basis of any legal work offered by this head will centre on a waiver, SALI strongly recommends that focus is given to our recommendations contained within section 2 of this report on the issues of waivers and legal advices and this and subsequent Heads in the Bill be amended accordingly.

Recommendation 6:

In order to be consistent with the proposed SALI amendment found below under Head 17 (2), the following amendment to Head 15 (7) is offered:

"The Chief Deciding Officer shall share with the relevant person a copy of all information accessed under Head's 15 (2) (c) & (d) which has been obtained by the Chief Deciding Officer in the process of the application".

Recommendation 7:

SALI therefore suggests that Head 17 (2) be amended as follows to ensure consistency with the SALI amendment of Head 15 (7) above:

" (2) The Chief Deciding Officer shall share with an Appeals Officer or the relevant person all personal data accessed from the copy of database and copy of the related records where necessary and proportionate for the performance by the Appeals Officer of his or her functions under this General Scheme".

Recommendation 8:

We would suggest the following clauses be amended as follows:

Head 18 (1) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution", and reference to "for a minimum of six months" be deleted.

Head 18 (2) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution".

Head 18 (3) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution", and reference to "for a minimum of three months" be deleted.

Head 18 (4) - the word "residency" be replaced by "detention", and "Tuam Home and County Home" shall be replaced by "Relevant Institutions contained in Schedule 1 or outside of a Relevant Institution".

Head 18 (5) - "A person shall qualify for a general payment in respect of a period of residence as a child in an institution. Where they have already received an award under the Residential Institutions Redress Scheme for their experience during the same time period, the payment received under the aforementioned scheme shall be offset against any payment received under the provisions of this Bill".

Recommendation 9:

SALI considers that Head provides the greatest potential for discrimination and exclusion; we would point to our comments in section 2 of this report and our recommendations at Recommendation 1.

Head 19 (1) - the words "resident in" be replaced by "detained in", and reference to "relevant Institution" shall be extended to read "relevant institution and outside of a relevant institution", and reference to "for a minimum of six months" be deleted.

Recommendation 10:

To promote consistency within this report and of the goal of equality or arms for Survivors, SALI recommends that the following amendments be made to Head 22:

Head 22 (1) - "The Chief Deciding Officer shall, as soon as is practicable, notify the applicant in writing of the payment offered to him or her for the time spent in a Relevant Institution or outside of a Relevant Institution and for the commercial work without pay".

A new Head 22 (5) - "The Minister shall ensure that the text of any waiver used during the process contained within Head 22 shall be published and found within Schedule 4 to the Bill along with the full legal reasons justifying the use or limitations contained within the proposed waiver. In the construction of such a waiver, the Minister shall actively consult Survivors and their Representatives, legal or otherwise and work to achieve a consensus in the construction and drafting of any waiver used under the provisions of this Bill"

Present Head 22 (5) now promoted to Head 22 (6) (with subsequent sub-heads re-numbered) - "Where an applicant accepts an offer in accordance with subhead (2) or an offer made in accordance with a review undertaken under Head 25, the applicant may agree, following the receipt of detailed independent legal advices, to provide in writing a waiver for a right of action for the time they have spent in a Relevant Institution or that spent outside a Relevant Institution or for unpaid commercial work during that time period which he or she may otherwise have had against a public body and to discontinue any such proceedings already instituted by the applicant, against such public body. This does not preclude an applicant or relevant person to consider or commence an action which is supplementary to the application to the Scheme, that being the said time spent or for the unpaid commercial work against any public body".

Present Head 22 (8) - This is now covered by the SALI amendment of Head 22 (6) above and so therefore, the current Head 22 (8) should be deleted in its entirety.

<u>Recommendation 11:</u>

Given the obvious discrimination deployed and to deliver true inter-generational Justice, the rights of all those who died before 13 January 2021 must be recognised and their estates compensated - the following important amendment is therefore offered:

Head 24 (1) - "All relevant persons, who are deceased or became deceased, at the time the Scheme is established shall be entitled through their personal representatives or family members to make an application for a general time spent within a Relevant Institution or for time spent outside a Relevant Institution or for a work-related payment which occurred in a Relevant Institution or outside a Relevant Institution on behalf of that deceased person, in accordance with Heads 14 and 18".

Head 24 (7) - "In this Head "personal representative" has the meaning assigned to it by the Succession Act 1965 or in the case where a person has died before the establishment of the scheme and the formal legal requirements, in whatever

jurisdiction, to manage their estate have been concluded, their representative shall be their next or closest family member".

Recommendation 12:

SALI recommends the following amendment be made:

Head 33 (1) - "The Minister must cause independent reviews of the operation of the scheme to be commenced- (i) as soon as possible after the first anniversary of the scheme start day, and (ii) in satisfaction of the provisions of Head 5 (1) [this is the SALI amendment above], and (iii) as soon as possible after the scheme has ceased, and (iv) in satisfaction of the Minister's obligations under this Head, the Minister shall create a Stakeholder Consultative Group drawn from a wide section of the Survivor Community and their Representatives, to inform on the issues contained within this Head and that of Head 5 (1)".

Recommendation 13:

SALI strongly recommends that the Government urgently look at the proposals made by SALI in section 2 of this report, particularly on Universal & Interim Payments - these representations were made during submissions with Oak Consulting. The SALI proposals offer the ability of the Government to take a fresh approach to the calculations currently being offered through this Bill

Where the Government considers that it cannot accept the SALI methodology in section 2 above, then SALI strongly recommends that the methodology of calculation or rates used be urgently re-assessed according to real-world principles, particularly wider serious legal issues and not based upon a small claims or low-value claim calculation. The Government must resist the IDG methodology to claim that calculations cannot be made without resorting to an adversarial or litigation position - the members of SALI reject that position. To achieve this, Consultation must be carried out with Survivor Groups, their Representatives and in particular the Claimant Legal Representative Community.

5. Conclusion

The Financial Redress Bill for the Survivors of Mother and Baby Home Institutions is disappointing, unambitious and presents contradiction and discrimination.

The Irish Government makes much of its methodology of consultation, but from the initial presentation of ideas to the structure of this Bill, nothing has changed, the scaradh between and experienced by Victims, Survivors and their Families continues.

The Government must change its own culture away from its 'de minimus' model and create an ambition in Redress that satisfies the wider Public Interest and indeed revulsion.

Through this report, SALI has offered a critical analysis of the formation, structure and delivery of this financial redress.

The question now exists; 'will the government plough on down the road of denying virtually every suggested amendment, as they have done with the Birth Information & Tracing Bill, just to tick another box - was this tokenism is practice?'

We believe that through our proposals on how to change this Bill, that real value and healing can be delivered. However, the real revolution is contained within section 2 of this report where the concept of no division, of a universal interim payment and full payment system can deliver a strong message of a Government who believes in 'Justice for All' and not a model of Justice delivered by the legal-suits that guide them.

What a message for Ireland and the world that would be!

Will the Irish Government rise to that challenge?

SALI

Breeda Murphy

Eunan Duffy

Frank Brehany

28 April 2022

The Authors:

Breeda Murphy - MA (Hons); BA (Hons) (with a secondary degree in Archeology); Dip. Psychology of Counselling

Breeda is committed to issues of social justice and in particular societal structure and how power is controlled to deny certain groups of people their rightful place in society.

Breeda began researching and working in the area of disability in the 1990's and returned to studies at NUIG to research the 'Forgotten Irish'; people who had left Ireland for the UK, during and following the war, to rebuild Britain and support families in Ireland by way of remittances.

Breeda argues that those men and women built the Irish system of health, education and social care by sending monies home regularly. It was while researching in London that Breeda first met women and men from Ireland's maze of institutions who left for Britain as teenagers.

The recent Commission's report looked at exit pathways; many stigmatised within their own country 'took the boat' to begin a new life without support structures. She cites that those men and women are her heroes, forgotten sadly by two communities – the one they left behind and the one they contributed to and yet, being Irish felt an outsider in.

Over eight years ago Breeda began working with survivors of Tuam Mother and Baby Home and witnessed the weight of testimonial evidence, then largely ignored by the Government.

Breeda vowed to advocate alongside survivors and families of the lost children in an effort to garner support and convey the imbalance of power which remains evident today. Breeda when asked 'Why', replies that on witnessing injustice reined upon such vulnerable people, one cannot walk away.

Working at grassroots Breeda has enabled those affected to avail of tangible support, including grant aid, and new independent social housing, in collaboration with Galway County Council, medical support from HSE and the recording of testimonies in a dedicated archive held at NUIG. Today Breeda advocates alongside survivors and families seeking answers from Religious Orders and the Government. Survivors Breeda engage's with are located in the North and South of Ireland, the UK and the United States. Collectively, they are eager to ensure the survivor narrative, speaking

truth to power, rises above the din of conjecture contained in state commissioned publications.

Eunan Duffy

Eunan is an Adoptee, Activist and Advocate. He was adopted from the Marianvale, Mother & Baby/Magdalen Institution in Newry, Co.Down; this Institution was operated and owned by the Good Shepherds Sisters from 1946 until 1984. He is currently a member of the NI Government Task Force for the Adoption Practice Group.

Eunan only became aware of his adoption circumstances in 2016, when it became necessary for him to provide a full birth certificate, as part of satisfying marriage requirements in Poland.

This life-changing revelation had a profound impact on Eunan and his family.

Added to his personal and family concern, was made all the more worrying, through the subsequent discovery that the origins of his adoption involved one of many and now infamous carceral institutions, renowned for a catalogue of Human Rights abuses and crimes.

For Eunan, the immediate challenge became a race against the clock to try and trace his biological origins, identity and heritage, within a system still designed to obstruct and discourage the discovery of family roots and medical genesis.

That was one battle within the complex war that he has overcome and conquered.

Through his commitment and work, Eunan has helped reunite 7 separated families in the last 3 years, who were associated with the issues common to Eunan's experience.

Eunan considers that yet again, it is those affected who are doing the heavy-lifting, where the State has continued to abdicate its responsibilities in assisting with reunifications, via archaic and discriminatory legislation, and in some cases actually went further in abetting the obstruction of reunion.

Eunan acknowledges that many continue their quest for their origins; they have and will continue, now and in the future, to struggle in the same vein for the ultimate truth, disclosure and justice.

For Eunan, he believes that his work is not yet complete and is dedicated to ensure that the battle for his own truth and that of others goes on!

Frank Brehany LLB (Hons)

Frank is a dual-Citizen, one of which delivers long-standing European Citizenship. He is a medically retired Police-Officer and qualified in 1997 as a practising Solicitor in England & Wales, working initially in formal legal practice. This lead to ownership and management of a National Consumers Organisation in the UK where he has actively represented the Travel Consumer story in Westminster, Brussels, Strasbourg, the USA and Australia. Over the last 17 years, Frank has written over 70 major reports on Consumer and Political detriments.

Frank's interests in Law covers not just Consumer Law, but also the problems found within Consumer Contracts, European Law, Human Rights and National and cross-border solutions to Consumer problems.

He has extensive media experience, and comments on Legal issues for Consumers, Travel Trends and the Travel related problems experienced by Consumers.

Frank continues as a self-funded practising solicitor, not currently working in Legal Practice, but he maintains his competency as required by the Solicitors Regulatory Authority of England & Wales and provides occasional pro bono assistance. Frank currently applies his legal training and experience, to develop solutions within the Standards-making and Political environments and for 5 Years he was the Chair of the Cabin Air Quality Standards Committee and served as the UK Head of Delegation within the EU Standards-making body CEN. Frank also serves as a passenger representative on the USA Standards-making body, ASHRAE, dealing with issues of Cabin Air Quality. He is the Author of a book on Cabin Air Quality called - Gaspers, Clean Air for Passengers?

He has never been a member of any political party or grouping and he voluntarily subscribes to the Nolan Principles for Standards in Public Life.

Frank's interest in the 'Magdalene' story stems from the fact that his family held a 'secret', stretching across the decades. This secret brought a connection to the Tuam

Mother & Baby Home and the High Park Laundry in Dublin. He discovered that his Father, Francis Brehany, was a ‘Magdalene Child’ and was separated from his Mother and subsequently ‘boarded out’. His GrandMother, Mary Julia Breheny (aka “Charlotte”), was incarcerated within the Mother & Baby Home and Magdalene Laundry Institutions for a total of 42 years, until her death, never to be reunited with her child or family, but never forgetting them. Both yearned for connection; both yearned for home. Their family remembers and honours them, seeking Justice for their Scaradh.