

# Adoption Rights Alliance

REGAINING IDENTITIES, HISTORIES AND RIGHTS FOR ADOPTED PEOPLE

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## **ADOPTION (INFORMATION AND TRACING BILL) 2016 BRIEFING NOTE**

**6<sup>th</sup> December 2018**

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## 1. Introduction

Adoption Rights Alliance<sup>1</sup> (ARA) campaigns for the enshrinement of the rights of the adopted child and Ireland's 100,000<sup>2</sup> adopted adults in legislation. ARA provides advocacy and practical advice to adopted people and natural parents, including an online peer support group with 1,400 members.

While we welcome the fact that the Irish State is finally attempting to legislate for information rights for adopted people,<sup>3</sup> ARA is deeply concerned by many of the measures proposed in the Adoption (Information and Tracing) Bill 2016 (**the Bill**). It is our view that many elements of the Bill are deeply stigmatising and we are alarmed at the extent to which adopted people are singled out for discrimination. If this Bill is passed as it stands, it will have the effect of reinforcing a system which is already closed and secret. In recent years, Ireland has shown leadership in reforming its intercountry adoption system, and we have seen hugely positive social change in other areas of family life, including the introduction of equal marriage. Far from being a modernising mechanism, this Bill is an embarrassment, and sets Ireland's adoption system back by decades. In fact, the Bill does not even compare to the information

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<sup>1</sup> We are indebted to colleagues in our sister organisation Justice for Magdalenes Research who have, in a personal capacity, provided invaluable support and assistance to us in responding to this Bill.

<sup>2</sup> ARA estimates that a total population of 85,000 – 90,000 people were adopted from 1922 to 1998. This is a revised version of figures cited by our organisation in previous submissions and is based on the following:

- i. According to the Adoption Authority of Ireland (AAI), 44,000 children were adopted domestically from 1953 to 2013 (41,000 is the total number from 1953 to 1998);
- ii. At least 1,933 children were exported from Ireland to the US for adoption. ARA believes that this is a conservative figure as many who have approached our organisation were registered as the natural child of their adoptive parents and/or no Department of Foreign Affairs file exists for them;
- iii. ARA estimates that at least 10,000 children were illegally adopted or illegally boarded out from 1922 to 1998. This number is based on the percentage of such enquiries ARA has received from 2009 to 2015 and which our predecessor organisation received from the early 1990s until 2007. In addition, in June 2014, the then acting CEO of the AAI, Kiernan Gildea, informed the joint Oireachtas Committee on Health and Children that there were '*at least several thousand illegally adopted people; we might never know the total number because of the lack of a paper trail*';
- iv. ARA estimates that at least 30,000 children were informally boarded out (prior to the introduction of legal adoption) from 1922 to 1952 at a rate of 1,000 per annum. This number is based on the percentage of such enquiries we have received from 2009 to 2014 and which our predecessor organisation received from the early 1990s until 2007. It is also based on the numbers of files that appear to have been held by agencies such as the Sacred Heart Adoption Agency from this period The HSE took ownership of these files in Dec 2011; See: <http://www.irishexaminer.com/ireland/health/hse-still-without-vaccine-trial-files-169263.html>

<sup>3</sup> See **Appendix 1** for a brief background to adoption legislation in Ireland

systems legislated for decades ago in England, Wales (1975) and Northern Ireland (1987). Almost 100 years since the formation of the Irish State, it fails to enshrine for adopted people the basic identity rights which are enjoyed by all other citizens.

We are concerned that there may be a perception that the provision of unfettered access to birth certificates and adoption records to adopted people will bring with it demands for financial compensation. As we have already stated in communications with the Minister and her predecessor, for adopted people, in this context, 'redress' means unconditional access to birth certificates and files.

Moreover, we draw the Minister's attention to the fact that this Bill is in danger of violating the Good Friday Agreement,<sup>4</sup> and (as set out below) is arguably unconstitutional and in violation of the European Convention on Human Rights.

Our strong preference is for the abolition of the Bill in favour of an uncomplicated adoption bill providing (a) unfettered access to birth certificates for adopted persons, (b) automatic access for adopted persons to their adoption files, and (c) a tracing service for those who wish to avail of it. In the event that the bill proceeds, we submit our amendments in the event that the government chooses to proceed with the progress of this flawed document.

If the government attempts to enact a Bill which stigmatises and discriminates against adopted people, we will have no choice but to rigorously oppose it. If the Minister is unable to obtain Cabinet approval for a non-discriminatory bill, we respectfully submit that now may

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<sup>4</sup> In Northern Ireland, adopted people have the right to access their birth certificates when they turn 18. In its *Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries"*,<sup>4</sup> the (then) Irish Human Rights Commission (IHRC) noted in relation to the release of information that:

*'the situation in the Republic of Ireland contrasts with that which operates in Northern Ireland where there is a statutory presumption in favour of releasing an adopted person's birth certificate once they reach 18 years of age. Issues thus arise under the equivalence provision of the 1998 Belfast (Good Friday) Agreement. (Emphasis added)*

It is also important to note that Irish adopted people who were born in England and adopted in Ireland are entitled to their adoption files and birth certificates under UK legislation, though they must liaise with the UK authorities in order to avail of their entitlements. This gives rise to the anomaly that Irish adopted citizens born in Britain have full access to their adoption files without complaint or interference from their natural mothers, whilst those adopted people who were born in the Republic must endure the closed, secret regime.

not be the time to legislate, and we suggest revisiting the issue after the Commission of Investigation into Mother and Baby Homes has reported.

## 2. What does the Bill propose to do?

According to its *Explanatory Memorandum*,<sup>5</sup> the main purpose of the Bill is to ‘provide for a scheme whereby adoption information, including information required to obtain a birth certificate, may be provided to an adopted person subject to certain conditions’ (emphasis added). The Bill also makes arrangements for natural parents and others to seek information about an adopted person, subject to the adopted person's consent, and about the circumstances of their relinquishment of their child. The following is a brief summary of the main elements of the Bill, predominantly from the point of view of adopted people.

### 2.1. Safeguarding Records

Part 2 of the Bill makes provision for the Adoption Authority of Ireland to gather and safeguard adoption records. The Bill defines an ‘information source’ as a person who was involved in making arrangements (or attempting to make arrangements) for the adoption of a child. Information sources must, within three months of the date of commencement of this section of the Bill, furnish the Adoption Authority with a statement of the records in their possession. Information sources must then provide the records to the Authority within six months of the Authority issuing a direction regarding their transfer.

ARA and its predecessor organisations have been campaigning over the past two decades for adoption records to be stored and safeguarded centrally and we therefore welcome this aspect of the Bill. However, as we argue below in **Section 3.7**, the Bill’s definition of an information source is too narrow, as it fails to explicitly include illegal adoptions,<sup>6</sup> and this therefore potentially excludes these individuals from this section. We are also concerned that the records gathered under this section are being deposited into a closed, secret system which is being proposed by the Bill in its current format.

### 2.2 Register of Adoption Contact Enquiries

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<sup>5</sup> <http://www.oireachtas.ie/documents/bills28/bills/2016/10016/b10016s-memo.pdf>

<sup>6</sup> See amendment 8 in Appendix 1 for a definition of illegal adoptions.

The Bill proposes the establishment and maintenance of a Register of Adoption Contact Enquiries, which will be maintained by the Child and Family Agency (the **Agency**). The Register will hold a record of the details of people who make enquiries to the Agency, and the wishes of each registrant with respect to the provision of information and contact with relatives. When a person applies for information under Part 5 of the Bill, their details will be automatically entered on the Register of Adoption Contact Enquiries. Where a natural parent has specified a 'no contact' preference on the National Adoption Contact Preference Register (**NACPR**),<sup>7</sup> the Agency will make an entry in the new register recording that contact preference. There appear to be no plans to transfer the thousands of other entries on the NACPR to the new register. The Bill makes no provision to safeguard and maintain the existing National Adoption Contact Preference Register. Our concerns around the Register of Adoption Contact Enquiries are discussed in greater detail below in **Section 3.8**.

### *2.3 Tracing service*

The Bill also establishes a tracing service which will be provided by the Child and Family Agency. The Agency must attempt to locate persons where contact is requested through the Register of Adoption Contact Enquiries (and Section 20), or where it is necessary to contact a person in relation to the provision of information under Part 5 of the Bill. The Agency will facilitate contact between parties, and where the person sought does not wish to have contact, the applicant is informed of this. Our concerns are discussed in **Section 3.9**.

### *2.4 Provision of Information*

Part 5 of the Bill sets out a highly convoluted process whereby individuals may apply for different kinds of information. In relation to the release of 'birth certificate information' or an adoption order to an adopted person, the Bill sets out two sets of circumstances. The first scenario is set out in Section 25, where a 'birth certificate information' and/or an adoption order will be released where: (1) a natural mother is deceased, or (2) the person was adopted before the enactment of the legislation and there is no entry in the Register of Adoption Contact Enquiries in respect of the natural mother, and the adopted person has signed an

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<sup>7</sup> The non-statutory National Adoption Contact Preference Register (NACPR) was launched by the late Fianna Fáil, Junior Minister for Children, Brian Lenihan in March 2005. The register launched with an extensive publicity campaign on TV, radio and press, as well as a leaflet drop to every household in the country. Unfortunately, the NACPR was not advertised overseas, was not advertised every two years as promised, was not an active register, and critically, did not reach the tens of thousands of natural mothers who fled this jurisdiction after their enforced detention in Mother and Baby Homes.

undertaking that they will not attempt to contact their natural mother, natural father or ‘relevant guardian’.

Section 26 sets out the process in instances where there is an entry in the Register of Adoption Contact Enquiries in respect of the natural mother or where the individual was adopted after the legislation is enacted. In these situations, the Bill stipulates that the natural mother must be consulted about the release of the information. The natural mother can cite compelling reasons, and the Agency can – independent of a natural mother’s wishes – also determine whether there are compelling reasons not to release the information.

If a natural mother does not cite compelling reasons, the ‘birth certificate information’ and/or the adoption order is released to the adopted person. However, for those adopted prior to the enactment of the legislation, if there is a ‘No Contact’ preference on the Register of Adoption Contact Enquiries (which, under the current iteration of the Bill, will include ‘no contact’ preferences from the NACPR), the adopted person must sign an undertaking that they will not contact their natural parent.

If a natural mother makes a statement citing compelling reasons and the Agency determines that this is not the case, the natural mother may appeal to the Circuit Court and also to the High Court if the Circuit Court upholds the Agency’s determination.

If a natural mother makes a statement citing compelling reasons and Agency determines that this is the case, the case is referred to the Circuit Court. The Circuit Court can decide whether or not to approve the Agency’s determination. If the Circuit Court disagrees with the determination, the Agency and/or the natural mother may appeal to the Circuit Court and also to the High Court if the Circuit Court upholds its original decision. If the Circuit Court agrees with the Agency’s determination, the adopted person may appeal to the Circuit Court and also to the High Court if the Circuit Court upholds the Agency’s determination.

We note that where an appeal has gone to the High Court, that the Bill states that the High Court’s decision is ‘final and conclusive’. We are concerned that this provision wrongly limits individuals’ ability to assert their Constitutional rights in the appellate courts.



Sections 27-31 set out similar complicated processes in relation to applications by adopted people for information about 'birth fathers' and 'relevant guardians'. These sections also include both the 'compelling reasons' ground and the requirement to sign an undertaking in certain circumstances.

Sections 32-34 outline distinctly less complex processes relating to the provision of information to natural parents about adult adopted persons or adopted children. Information about an adult adopted person will only be released with their consent, and the release of information about an adopted child appears to be at the discretion of an adoptive parent. Similarly, Sections 35-38 describe how adoptive parents of adopted children may apply for information and/or items, while relatives may apply for information under Section 39. There is no mention whatsoever in Sections 32-39 of the notion of a requirement for natural parents, adoptive parents or relatives to sign an undertaking promising not to attempt contact upon receipt of the information.

Section 40 states that the information which is sought by applicants shall be put in the form of a written statement. Section 40(1) stipulates that information about natural parents and relatives, early life information and medical information<sup>8</sup> must be non-identifying. We have many concerns about these proposals, which are discussed further below in **Section 3.4**.

Section 41 stipulates that in cases where (a) there is no entry in the Register of Adoption Contact Enquiries in relation to the natural mother or father or relevant guardian or (b) there is a no contact preference in the in the Register of Adoption Contact Enquiries in relation to the natural mother or father, the Agency will only release the relevant information to the adopted person after they have signed an undertaking. In the undertaking, which will be in a form specified by the Minister, the adopted person must agree to not:

- (a) contact, or attempt to contact, the birth mother, birth father or relevant guardian concerned, or*
- (b) make arrangements with any other person for that person to contact, or attempt to contact, the birth mother, birth father or relevant guardian concerned.*

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<sup>8</sup> And where information is sought by adoptive parents.

We oppose the undertaking measure in the strongest possible terms and our concerns are discussed further below in **Section 3.5**.<sup>9</sup>

### 2.5 Offences

Under the proposed legislation it is an offence 1) for information sources to ‘conceal, destroy, mutilate, or falsify’ records, and 2) for information sources to fail to comply with a direction of the Authority in relation to the transfer of records. We welcome this measure, however, as above, we are concerned that those involved in arranging illegal adoptions may be excluded from this because of how the Bill has defined and termed illegal adoptions (See **Section 3.7**).

### 2.6 Immunity

Section 52 provides the Authority and the Child and Family Agency, along with their current and former Board members and employees, with immunity from damages claims in respect of the performance of their functions under the Act, unless there was an act or omission committed in bad faith. We strongly object to this provision, and our concerns are set out in **Section 3.12**.

## 3. ARA’s objections to the Bill

### 3.1 Stigmatisation and discrimination in the Bill

Recent years have witnessed a renewed social and political focus on the experiences of women and girls who were confined in Ireland’s Magdalene Laundries and Mother and Baby Homes; however prejudice and discrimination against adopted people – both past and present – is often overlooked in these ongoing debates. There is a very long cultural history where ‘the bastard’ is a stigmatised identity and even currently adopted people are placed under immense societal pressure to express gratitude for being adopted, while simultaneously they are often perceived and portrayed as disruptive forces who are at risk of turning up uninvited and unwanted on their natural mother’s doorstep at any time.<sup>10</sup>

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<sup>9</sup> See also Sections 5 and 6

<sup>10</sup> This is exemplified in former Minister Mary Hanafin’s announcement of a proposed adoption bill in 2001, in which she hoped that the proposed contact veto would provide reassurance that the legislation would ‘*not constitute a threat*’. [<http://health.gov.ie/blog/press-release/hanafin-announces-new-draft-legislation-on-adoption-information/>] Another former Minister for Children, Barry Andrews, T.D., asserted that ‘*[n]o matter how great the desire to meet a birth parent, unregulated contact can give rise to real disappointment and in some cases distress*’. [Andrews, B. (2010) ‘Balancing Act’, *Irish Examiner*, 23<sup>rd</sup> April, p.15.]

Unfortunately, this stigmatisation is perpetuated in the Adoption (Information and Tracing) Bill 2016, in particular through the proposed undertaking in Section 41, and the ‘compelling reasons’ ground for refusal of information, both of which apply to adopted people alone, thus singling them out for discrimination.

### *3.2 Information versus contact*

ARA believes that the Irish State’s attempts to legislate for information rights for adopted people have been, and continue to be, unnecessarily complicated. This is partially because the State has traditionally interpreted the *IO’T v B* Supreme Court judgment in a most conservative manner.<sup>11</sup> However, we also contend that in its approach to legislation in this area, the State has presumed that adoption information and contact go hand in hand in spite of the fact that this is not necessarily the case. In our experience, some adopted people do not want contact with their natural mothers at all, while others will wait for a period of time after obtaining their birth certificates<sup>12</sup> before attempting to contact their natural mothers and/or family members. This is because adopted people often choose to absorb the information before progressing any further. We understand that over ten times the number of adopted people than natural mothers have registered a ‘No Contact’ preference on the NACPR to date.<sup>13</sup>

The system proposed under the Adoption (Information and Tracing) Bill 2016 wrongly links information with contact and stipulates that in certain cases, natural mothers must be contacted before the release of ‘birth certificate information’ and/or an adoption order. Moreover, the services to adopted people and natural parents appear to be underpinned by the proposed Register of Adoption Contact Enquiries. Again, this title assumes that information and contact go hand in hand, and thus we propose that the word ‘contact’ is removed entirely.

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<sup>11</sup> See also Section 5 below.

<sup>12</sup> Adoption Rights Alliance provides information to adopted people on how to legally obtain their birth certificates by researching civil registration records.

<sup>13</sup> Information provided at a meeting with the Adoption Authority in January 2017. ‘No contact’ entries on the NACPR include individuals who have opted for ‘no contact currently’ or ‘no contact but will share medical information’.

We submit that Section 22 (5) of the 1952 Adoption Act<sup>14</sup> already ensures the privacy of both adopted people and natural mothers, and we contend that a simple amendment providing access to birth certificates and their adoption files would suffice to provide adopted people with information rights.<sup>15</sup>

In its Pre-Legislative Scrutiny report,<sup>16</sup> the Joint Oireachtas Committee on Health and Children highlighted concerns which were raised by adopted people and former Senator Jillian van Turnhout, who said:

*We very much have to separate the information and contact. One has a right to information and nobody wants to put anyone into distress, but that cannot be a compelling reason in terms of one's right to identity.*

### 3.3 No automatic access to birth certificates and adoption records

We are frankly astounded at the proposals contained in the Bill in relation to the provision of information to adopted people. The process envisaged is at best unnecessarily convoluted, and at worst, highly discriminatory. It provides that:

- (1) Where a person was adopted before the enactment of the Bill and there is no entry in the Register of Adoption Contact Enquiries in respect of their natural mother, that person must sign an undertaking that they will never attempt to contact their mother or father, or obtain the help of anyone else to do so.
- (2) Where a person was adopted after the enactment of the Bill OR any adopted person's natural relative is entered on the Register of Adoption Contact Enquiries, the Bill provides for consultation with 'birth mothers', 'birth fathers' and 'relevant guardians' under Sections 26, 28 and 31 respectively.

These complicated provisions are completely unnecessary and extremely insulting to adopted people. We note that there is no provision in sections of the Bill where individuals

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<sup>14</sup> *An tArd-Chláráitheoir shall keep an index to make traceable the connexion between each entry and the corresponding entry in the register of births. That index shall not be open to public inspection; and no information from it shall be given to any person except by order of a Court or of the Board.*

<sup>15</sup> See proposed amendment to Section 25 of the Bill

<sup>16</sup> [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

other than adopted people are seeking information a) for the applicants in these sections to sign an undertaking, and/or b) for the person sought to cite 'compelling reasons' why the information should not be released. We do not propose that these measures should be added to the sections concerned, as these would be discriminatory, however we do wish to highlight how the Bill singles adopted people out in this regard.

#### *3.4 Failure to supply adopted people with full, non-redacted records and birth certificates*

We are completely perplexed that, instead of supplying actual birth certificates to adopted people, the Bill provides 'birth certificate information'. We see no valid purpose for this measure, which, if upheld, will only serve to perpetuate the notion that adopted people should be hidden away. Similarly, the procedures set out in Section 40 state that the information provided to adopted people shall be non-identifying and will be put in the form of a written statement. Information which is 'non-identifying' is, by definition, not information. Information which is 'non-identifying' does not inform. This illogical legislation, operating on the basis of 'whatever you say, say nothing' leaves the State open to ridicule while leaving adopted people without access to their identities. Adopted people deserve nothing less than their full, non-redacted records, and not a written statement containing information which has been subjectively interpreted by employees of the Child and Family Agency. Unlike other Irish citizens, most adopted people have no knowledge of their lives before adoption, and a statement from a government agency where the public official is under the rather vague instruction to provide information on identity that does not identify anyone is no substitute for the full, unaltered copies of their actual records. Moreover, no other Irish citizen applying for their records held by the State would be supplied with a 'non-identifying' statement in lieu of copies of the original documents.

#### *3.5 The undertaking proposed in Section 41<sup>17</sup>*

The proposals published by former Minister James Reilly in 2015 were roundly criticised because of the requirement to sign a Statutory Declaration prior to the release of a birth certificate. In its Pre-Legislative Scrutiny report, the Joint Oireachtas Committee on Health and Children said that *'based on the weight of evidence and the legal submissions received from witnesses, the Committee can find no convincing reason for the inclusion of a Statutory*

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<sup>17</sup> See also Sections 5 and 6 below.

*Declaration in the Bill*.<sup>18</sup> The Pre-Legislative Scrutiny report quoted the evidence of legal academic Dr Conor O'Mahony, who stated that *'the right to access a birth certificate is a minimum core of the right to identity. In order to comply with our international human rights law obligations, this should be an automatic entitlement of every adoptee, with no exceptions or qualifications.'* Dr O'Mahony pointed out that there are *'extensive protections in both criminal and civil law for persons who life or safety is threatened by another'* and advised that *'the Bill should make access to a birth certificate an automatic entitlement that cannot be refused in any circumstances.'*

We were therefore deeply concerned to discover that the new Bill proposes an 'undertaking' under Section 41, which only applies to adopted people and which appears to be a rebranding of the original statutory declaration from the 2015 proposals, and would still have the effect of introducing statute-based discrimination against adopted people.

It is important to note that birth certificates are already public records and no other cohort of Irish citizens is required to sign a document prior to accessing this information. For example, persons applying for medical records under Freedom of Information do not have to sign an undertaking that they will not contact the doctors named in the records. Lesbian and gay couples getting married do not have to sign an undertaking that they will not include the names of their parents from their marriage certificates in instances where they might object.

In March 2016 the Committee on the Elimination of Discrimination Against Women (CEDAW) asked<sup>19</sup> the Irish State to:

*'explain the mischief that the proposed bill on information and tracing seeks to prevent in requiring surviving adoptees to sign a statutory declaration undertaking not to contact their biological mothers as a condition for gaining access to their birth certificates. Please also state whether adoptees have access to files, medical and other records and documents regarding their adoptions.'*

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<sup>18</sup> [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

<sup>19</sup> [https://www.ihrec.ie/app/uploads/2016/09/CEDAW\\_List-of-Issues\\_Mar16.pdf](https://www.ihrec.ie/app/uploads/2016/09/CEDAW_List-of-Issues_Mar16.pdf)

In its response<sup>20</sup> to CEDAW the Irish State contends that the declaration (now the undertaking) provides for the balancing of rights of adopted people with the rights of natural parents to privacy. We contend that the government's position fails to differentiate between privacy and secrecy. We further contend that it is an incorrect interpretation of the requirements of the Constitution and the European Convention on Human Rights.<sup>21</sup>

The undertaking in Section 41 presumes that adopted people are deviant and incapable of respecting their mothers' privacy. Mechanisms such as the proposed 'undertaking' also interfere with adopted people's right to a private life, by not allowing them unconditional access to their birth certificates and by forcing them to sign a document which presumes that they are incapable of respecting their mothers' privacy.

It is important to note that, for decades, social workers have been operating an informal system of 'tracing' assistance for adopted persons, which has involved social workers contacting adopted persons' natural parents, regardless of whether or not the parent has indicated their preference for contact on the National Adoption Contact Preference Register. On its face, the undertaking would make this practice unlawful, as it would amount to an adopted person seeking the assistance of another to make contact. This provides another example of why the undertaking is ill-conceived and unjustifiable.

### 3.6 Compelling reasons<sup>22</sup>

Under Part 5, the Bill states that there may be '*compelling reasons why an applicant under this Part should not be provided with information where the provision of the information, having regard to all the circumstances, is likely to endanger the life of a person*'. It is hugely stigmatising (and wholly inaccurate) to suggest that the provision of information to an adopted person would endanger life. We note that while the *Interpretation*<sup>23</sup> appears to apply to the

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<sup>20</sup>

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsgA84bcFRy75uIvS2cmS%2F%2BgXu7jKK136tSfAb4OE0W6I4Hr91sspJviT2dp8%2BG1F8flUbDSjhrklr1TujWeynYH%2BwcGAXNQaZUZp4%2B2qYAJ>

<sup>21</sup> See Section 5 below.

<sup>22</sup> See also Sections 5 and 6 below.

<sup>23</sup> Page 20, lines 25-28

whole of Part 5 (Provision of Information), the Bill only cites ‘compelling reasons’ in sections relating to the provision of information to adopted people.<sup>24</sup>

### *3.7 Illegal adoptions/incorrect registrations*

We strongly object to the Bill’s use of terminology such as ‘incorrect registrations’ as a description for illegal adoptions. As the Joint Oireachtas Committee on Health and Children stated in its report, terms such as “*wrongful registrations*” or “*incorrect registrations*” suggest an administrative oversight, and do not adequately reflect the covert nature of many adoptions carried out in the past’. Moreover, excluding illegally adopted people from the definition of an adopted person discriminates even further against this cohort.

Furthermore, because the Bill defines illegal adoptions as ‘incorrect registrations’, and because an information source is defined as ‘*a person who the Minister reasonably believes has, at any time, made or attempted to make arrangements for the adoption of a child*’ (emphasis added), we are extremely concerned that this will mean that individuals who were involved in making arrangements for illegal adoptions will not be legally required to provide the Adoption Authority with their records.

### *3.8 Register of Adoption Contact Enquiries and the failure to safeguard the NACPR*

Section 14 of the Bill provides for the establishment of a Register of Adoption Contact Enquiries. Subsection (9) of that section proposes that entries on the National Adoption Contact Preference Register (NACPR) in respect of natural parents who do not wish to have contact<sup>25</sup> will be transferred to the new register.<sup>26</sup> This measure once again singles adopted people out for discrimination, and is deeply offensive. Moreover, as we discuss in the section immediately below, we contend that all entries on the NACPR (with the exception of those who have been matched) should remain active.

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<sup>24</sup> Sections 26(4), 26(6), 26(8), 26(9), 28(5), 28(6), 28(7), 28(9), 28(10), 28(12), 31(4), 31(5), 31(6), 31(11).

<sup>25</sup> Many of this cohort will have registered over a decade ago.

<sup>26</sup> We understand that over ten times the number of adopted people than natural mothers have registered a no contact preference on the NACPR to date, however the Bill does not propose to transfer these preferences to the new register.



Since the launch of the National Adoption Contact Preference Register (NACPR) in 2005 our organisation and its predecessor have called for the register to be placed on a statutory footing. We are deeply concerned that this Bill not only fails to do that, but also appears to discontinue the register altogether. There are at least 10,000 registrants currently on the NACPR.<sup>27</sup> These individuals registered in good faith, in the expectation that they would be informed if a match occurred. As stated above, we are concerned that the Department of Children and Youth Affairs may not have sufficiently consulted with the Adoption Authority (which has operated the NACPR since 2005) in drafting this element of the legislation, as it is missing many of the elements which are necessary for the new register's effective operation, and it seems to underestimate the importance of the existing data and the human beings who provided it.

### *3.9 Tracing service*

Having campaigned on the issue for many years, we welcome the establishment of a statutory tracing service for those who wish to avail of it. However, we question the wisdom of giving the Child and Family Agency sole responsibility for this service. Firstly, while we have had our differences with the Adoption Authority (and previously the Adoption Board), it makes no sense to eliminate the Authority from this service and relegate it to the role of a repository for adoption records, particularly given that the Authority has operated the NACPR since 2005. In recent years we have welcomed the Authority's leadership in overhauling the intercountry adoption system in Ireland, and we believe that the Authority could play a valuable role in modernising the areas covered by this Bill.

Secondly, given that the Child and Family Agency is already severely under-resourced, we question whether it will be capable of delivering an efficient service. In this respect we are seeking assurances from the Minister that the services proposed in this legislation will be adequately resourced, so that adopted people will no longer be on lengthy waiting lists to obtain basic information about themselves.

Finally, we are also disappointed to note that the Bill has not provided for instances where natural mothers and adopted people have chosen to be in contact with each other and wish to proceed with contact without assistance from the Child and Family Agency. If we are to

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<sup>27</sup> <https://www.aai.gov.ie/images/download/AAI-Annual-Report-2013.pdf>

truly modernise Ireland's adoption system, that system must no longer infantilise adopted people and natural mothers, who are just as capable as other citizens of conducting their own affairs.

### *3.10 Irish people sent to the US for adoption*

We are deeply disappointed to note that, over 20 years since the revelations that at least 2,000 children were exported from Ireland to America for adoption, the Bill makes no provision to reach out to this group of people. The 'Year of the Gathering' came and went in 2013 without a single invitation extended to Irish people who were sent to America for adoption as infants. This is in stark contrast to the Irish State's approach to other members of the diaspora who are afforded unfettered access to their history and heritage through free online access to the 1901 and 1911 Censuses and who are encouraged to avail of genealogical services in a dedicated space in the National Library of Ireland. This Bill should make explicit provisions which set out plans to facilitate those who were sent to America for adoption in the provision of information, tracing services, and visits to Ireland for those who are interested.

### *3.11 Intercountry adoption*

We are also disappointed to note that adopted people who were adopted from overseas have not been adequately provided for in this Bill. We note that a further Adoption (Information and Tracing) (No 2) Bill is listed on the government's legislative programme,<sup>28</sup> however, we fear that this cohort of adopted people is at risk of being forgotten, as no timeframe is evident for publication of that bill and no progress is reported on the government's legislative programme. Many of these adopted people are now adults and this Bill is an opportunity to ensure a statutory-based service for them. Furthermore, it is essential to ensure that natural mothers and fathers from non-English speaking countries are facilitated if they seek contact with their children (or now adult children). We are eager to know what plans the government has to explain to these natural parents their entitlements under the new legislation. Moreover, we submit that additional services will be required to facilitate reunions in the case of intercountry adoptions, not least of which translation services, however, the Bill makes no provision in this regard.

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[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2017/Legislative\\_Programme\\_Spring\\_Summer\\_2017.docx](http://www.taoiseach.gov.ie/eng/Publications/Publications_2017/Legislative_Programme_Spring_Summer_2017.docx)

### *3.12 Immunity*

We strongly object to Section 52 which provides immunity from damages claims to the Authority and the Child and Family Agency, along with their current and former Board members and employees in respect of the performance of their functions under the Act, unless there was an act or omission committed in bad faith. It is important to bear in mind that (a) the functions carried out under the Act will impact upon important basic rights of individuals, and (b) the State should be seeking to clearly distance itself from the wrongful, unaccountable conduct of adoptions in the past and their pernicious effects which presently continue. The State should now be seen to act with respect for the rule of law, rather than attempting to avoid accountability for its actions under the Act.

### *3.13 Language*

ARA prefers the terms natural mother/father/parent instead of birth mother/father/parent. There are several reasons for this, including the fact that many natural mothers cared for their children for up to two years before adoption, and the term 'birth mother' suggests that the role was terminated at that point. We also contend that the term 'birth father' is biologically impossible. While we would prefer the legislation to use these terms, it is not a 'red line issue' for us, and for ease of reference we have thus retained the Bill's own terminology in our amendments.

## **4. Summary of amendments**

As we have stated above, ARA's preferred course of action is for this Bill to be shelved, in favour of an uncomplicated adoption bill providing (a) unfettered access to birth certificates for adopted persons, (b) automatic access for adopted persons to their adoption files, and (c) a tracing service for those who wish to avail of it. The following is a summary of our principal amendments to the Bill, which are [available here](#). We urge the Minister to either abolish the Bill or consider implementing our suggested changes.

This Bill is unnecessarily complex and deeply discriminatory against adopted people, to the extent that it appears the adopted person is viewed not as a citizen and client of a service, but as a person who is incapable of acting responsibly and someone whose presumptive actions are to be feared and also dreaded in their being. Our amendments provide for automatic access for adopted people to their birth certificates and adoption records. We have

adapted Section 26(6) of the UK Children Act 1975 as a means to inform adopted people of the nature of the information they will be given. We propose the deletion of Sections 22 ('compelling reasons') and 41 (the undertaking) in their entirety. We also propose deleting Sections 25-31 completely, as they set out a wholly unnecessary and discriminatory process of consultation with natural parents and 'relevant guardians' before the release of information, including the notion of 'compelling reasons' and the requirement for adopted people to sign an undertaking. While we are not proposing that reciprocal measures be inserted for natural parents and others seeking information, we note that the Bill discriminates against adopted people alone in this regard.

We have also identified a number of issues in the definitions set out in Section 2. We found the definition of an adopted person to be entirely inadequate, to the extent that it potentially excludes many thousands of people (including those subjected to illegal adoptions). The use of the term 'birth certificate information' in the Bill (as opposed to 'birth certificate') is confusing, entirely unnecessary, and appears to be a euphemism for adopted people's actual birth certificates. The definitions of 'early life information' and 'birth parent information' were also insufficient, and in our view, reflected a lack of insight into the lived experience of being adopted.

As stated above, the proposed services to adopted people and natural parents appear to be underpinned by the proposed Register of Adoption Contact Enquiries. Again, this title assumes that information and contact go hand in hand, and thus we propose that the word 'contact' is removed entirely. We also make provision for the entries in the National Adoption Contact Preference Register (NACPR) to be retained and preserved, and note that while the new 'Register of Adoption Contact Enquiries' is intended as a more 'active' mechanism than the NACPR, we are concerned that it is being defined in incredibly passive terms, with no mention of identifying matches between registrants on either the register itself or on the NACPR. We are concerned that the Department of Children and Youth Affairs may not have sufficiently consulted with the Adoption Authority (which has operated the NACPR since 2005) in drafting this element of the legislation, as it is missing many of the elements which are necessary for the new register's effective operation, and we have included amendments in this regard. Importantly, we propose the removal of the subsection providing that entries on the NACPR relating to natural parents who have registered a 'no contact' preference should be transferred to the new Register of Adoption Contact Enquiries. To be clear: we are

not proposing the transfer of *any* entries from the NACPR; rather, as stated above, at a minimum, the NACPR should be preserved and used in conjunction with the new register.

We propose the reinstatement of the Advisory Groups set up by then Minister for Children, Brian Lenihan, after the Adoption Legislation Consultation in 2003. We recommend that these Advisory Groups should act as a mechanism to advise the Minister, the Agency and the Authority, as the input of those with direct experience of adoption is absolutely essential if the proposed adoption service is to be effective.

We have proposed two amendments to the Adoption Act 2010, the first of which removes Section 89, which hides the adopted person's status as an adopted person from the document they use as a birth certificate. The second amendment provides for representation of adopted people and natural parents on the Board of the Adoption Authority. Finally, we propose two amendments to the Status of Children Act 1987. While that Act abolished the label of 'illegitimacy' which had been applied to children born outside of marriage, Section 35 (1) explicitly discriminates against adopted people.

## **5. Constitutional considerations**

The advice of Dr Conor O'Mahony (UCC Faculty of Law) to the Joint Oireachtas Committee on Health and Children in 2015 (See **Section 3.5** above) was that it *would* be constitutionally sound for the Oireachtas to legislate to provide all adult adopted persons with unfettered access to their birth certificates. We support this position and elaborate on it as follows:

### *5.1 IO'T v B [1998] 2 IR 321*

In 1998, the Supreme Court issued a judgment in the case of *IO'T v B* (involving 2 women, born outside of marriage and adopted informally prior to the 1952 Adoption Act) stating that both the right to know the identity of one's mother and the right to privacy are protected by the Constitution, and that neither right is absolute and either right may be restricted by the constitutional rights of others and the requirements of the common good. The Attorney General and the Rotunda Girls Aid Society argued strongly in that case in favour of natural mothers' right to privacy and confidentiality,<sup>29</sup> and since *IO'T v B*, social workers and the

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<sup>29</sup> *IO'T* at 353

Attorney General (it appears) have implemented a policy whereby, unless a natural mother has indicated her preference for contact, the natural mother's presumed wish for secrecy overrides the adopted adult's right to know their identity.

In fact, the *IO'T v B* judgment did not suggest or recommend such a restrictive blanket approach to the adult adopted person's right to know their identity, or to the weighing of the natural family's rights and interests. The Supreme Court's judgment (which was directed to the Circuit Court in this case) stated that:

*In the absence of evidence with regard to all the circumstances of the natural mother and her considered attitude with regard to the disclosure of her identity, it is neither possible nor desirable to lay down all the criteria to be applied in the balancing of the constitutional right of the child to know the identity of its natural mother and the constitutional right to privacy of the natural mother.*<sup>30</sup>

*While there is a conflict of constitutional rights, the obligation on the courts is to attempt to harmonise such rights having regard to the provisions of the Constitution and in the event of failure to so harmonise, to determine which right is the superior having regard to all the circumstances of the case.*<sup>31</sup> (emphasis added)

*The natural mothers...do not have an absolute constitutional or legal right to have the anonymity guaranteed them at the time they placed the applicant and the plaintiff respectively for adoption, preserved.*<sup>32</sup>

In any event, the *IO'T v B* judgment applies only tangentially to the question of legislating with regard to adult adopted persons' access to information, because the case concerned (a) individuals who had not been formally adopted and (b) their individual applications to court for declarations of parentage under section 35 of the Status of Children Act, 1987. It is worth noting that the very starting point in *IO'T v B* – the question of whether the Constitution

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<sup>30</sup> at 355

<sup>31</sup> 349

<sup>32</sup> 354

protects the right to know one's identity – was considered only in respect of children who had not been adopted and only as 'the right to know the identity of one's natural mother'.<sup>33</sup>

### 5.2 *The right to know one's identity*

The right to know one's identity is enshrined in the UN Convention on the Rights of the Child (Articles 7 and 8) and recognised as an element of the right to respect for one's private and family life under Article 8 ECHR.<sup>34</sup> The Irish Human Rights Commission<sup>35</sup> and then Ombudsman for Children, Emily Logan,<sup>36</sup> have both publicly emphasised this fact.

### 5.3 *Deference to the Oireachtas*

There is no Constitutional jurisprudence which directly addresses the matter which the Minister's draft legislation concerns. Given the sensitivity of the issues and the requirement to balance competing rights having regard to all the circumstances, we submit that the Oireachtas is uniquely placed to legislate on this matter. The Supreme Court case of *Fleming v Ireland*<sup>37</sup> supports this position. In considering whether the ban on assisted suicide violated the Constitution, the Supreme Court in *Fleming* stated that *[t]he presumption [of constitutionality] may be regarded as having particular force in cases where the legislature is concerned with the implementation of public policy in respect of sensitive matters of social or moral policy.*<sup>38</sup> The Court rejected the challenge to the existing law on the basis that *'the legislation in question called for a careful assessment of competing and complex social and moral considerations. That is an assessment which legislative branches of government are*

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<sup>33</sup> at 348

<sup>34</sup> The European Court of Human Rights has recognised that respect for private and family life requires that every individual be able to determine the details of his or her identity and that people have a vital interest protected by Article 8 ECHR in establishing the biological truth about themselves. The Court has held that a person has a right to know his or her origins, but that this may need to be balanced against the right of the mother giving a child up for adoption to anonymity. Even where the mother's identity is protected, the child should have access to mechanisms so that his or her origins can be explored: see for example *Odievre v. France* (App No 42326/98) ECHR 2003-III and *Godelli v. Italy* (App No 33783/09) 25 September 2012.

<sup>35</sup>

[https://www.ihrec.ie/download/pdf/ihrc\\_assessment\\_of\\_the\\_human\\_rights\\_issues\\_arising\\_in\\_relation\\_to\\_the\\_magdalen\\_laundries\\_nov\\_2010.pdf](https://www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf)

<sup>36</sup> <http://www.irishtimes.com/opinion/law-must-enshrine-child-s-right-to-birth-information-1.1313677>

<sup>37</sup> [2013] 2 I.R. 417.

<sup>38</sup> [2013] 2 I.R. 417 at 441.

*uniquely well placed to undertake.*<sup>39</sup> The Supreme Court took a similar approach in *MR v An tArd Chláratheoir*,<sup>40</sup> overturning a High Court judgment which sought to create new rules regarding parentage in the area of surrogacy. Chief Justice Denham commented that *‘[a]s a significant social matter of public policy it is clearly an area for the Oireachtas, and it is not for this Court to legislate on the issue ... Any law on surrogacy affects the status and rights of persons, especially those of the children; it creates complex relationships, and has a deep social content. It is, thus, quintessentially a matter for the Oireachtas.*<sup>41</sup>

#### 5.4 Necessity and proportionality

As set out above, the Irish Supreme Court and the European Court of Human Rights (ECtHR) have both recognised that, when it comes to balancing rights which are not absolute and in respect of which attitudes are changing, legislatures are afforded a certain amount of deference, or, in the words of the ECtHR, a ‘margin of appreciation’. However, the legislature’s action is liable to be rendered unconstitutional and/or in violation of the European Convention on Human Rights (ECHR) where it interferes with a protected right in a manner that is **unnecessary or disproportionate**. Wide consultation is an important way of ensuring that all circumstances have been taken into account and that the legislature’s balancing act is necessary and proportionate.

## 6. Satisfying the Constitution and ECHR

This section makes two arguments:

- a) The current Bill is at risk of interfering with the right to know one’s identity, and with the private and family lives of both adopted persons and natural parents, in a manner that is both unnecessary and disproportionate; and
  
- b) ARA’s proposed amendments demonstrate that the privacy rights of natural parents and adopted persons could be safeguarded in a way that does not unnecessarily and disproportionately interfere with other rights by (a) the continued use and better publicising of the NACPR; (b) the continued implementation of Section 22 (5) of the

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<sup>39</sup> *Ibid.*

<sup>40</sup> [2014] I.E.S.C. 60.

<sup>41</sup> *Ibid* at [96] and [113]. She went on to say at [118] that ‘The issues raised in this case are important, complex and social, which are matters of public policy for the Oireachtas. They relate to the status and rights of children and a family.’



1952 Adoption Act;<sup>42</sup> and (c) the implementation of existing laws which protect the privacy and safety of all persons in this jurisdiction.

## *6.1 Interference with protected rights in a manner that is unnecessary and disproportionate*

### *6.1.1 Interference with protected rights*

The undertaking interferes with several rights. The undertaking interferes with an adopted person's (a) right to know their identity, insofar as it may deter a person from seeking access to their birth certificate; (b) right to respect for their private life, in the sense that it creates a stigma regarding the adopted person's wish to know their identity and perpetuates a harmful stereotype that an adopted person is not capable of respecting another person's privacy in the way as their natural parent(s) and other members of society are presumed to be; (c) right to respect for their family life, in that it precludes an adopted person whose natural parent is alive and has not registered their wish to be contacted on the NACPR from making any attempt of any form, however respectful, to contact their natural parent; and (d) right to equality before the law and freedom from discrimination, because the above interferences apply only to adopted persons.<sup>43</sup> The undertaking also interferes with natural parents' right to respect for their private and family life, in the sense that it seeks to prevent their now-adult child(ren) from making any attempt of any form to contact them.

The 'compelling reasons' ground for refusal of 'birth certificate information' and/or other information interferes with the adopted person's right to know their identity, first and foremost, and with other aspects of the adopted person's right to respect for their private and family life mentioned above. It also interferes with the adopted person's right to equality before the law and freedom from discrimination, because it only applies to adopted persons.<sup>44</sup>

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<sup>42</sup> *An tArd-Chláraitheoir shall keep an index to make traceable the connexion between each entry and the corresponding entry in the register of births. That index shall not be open to public inspection; and no information from it shall be given to any person except by order of a Court or of the Board.*

<sup>43</sup> In addition to the constitutional protection of equality before the law, Article 14 ECHR provides for a protection against discrimination in the enjoyment of fundamental rights. Importantly, birth status is among the prohibited grounds of discrimination prohibited under Article 14 ECHR.

<sup>44</sup> While the *Interpretation* appears to apply to the whole of Part 5 (Provision of Information), the Bill only cites 'compelling reasons' in sections relating to the provision of information to adopted people.

### 6.1.2 *The undertaking is unnecessary and disproportionate*

The undertaking is an unnecessary measure for the protection of the privacy of natural parents because:

- (a) There is no evidence that the majority of natural parents never want to be contacted by their now-adult children.
- (b) It is unclear whether the undertaking will actually be effective. It is not clear that there will be any penalty for breach of the undertaking (and it is highly questionable whether a penalty would be constitutional). If the undertaking is not effective, it cannot be said to be necessary to achieve the aim of protecting privacy;
- (c) On its face, by prohibiting an adopted person from asking any person to contact their natural parent on their behalf, the undertaking would outlaw a practice that has been occurring for several decades, whereby social workers have made contact with adopted persons' natural parents even if the parent has not expressed their preference for contact on the National Adoption Contact Preference Register. The fact that this practice has been allowed to happen for so long undermines any argument that the undertaking is necessary;
- (d) Protections against harassment already exist in law and offer protection from unwanted contact;
- (e) Section 22 (5) of the Adoption Act, 1952<sup>45</sup> already prevents public disclosure of the link between the Register of Births and the Adopted Children's Register, which offers more than sufficient protection for the privacy of both adopted people and natural mothers;
- (f) The undertaking will not keep the natural parents' identities secret; and
- (g) The undertaking does not prohibit contact between the adopted person and any family members or friends of the natural parents.

The undertaking is also a disproportionate attempt to achieve the aim of protecting natural parents' privacy because:

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<sup>45</sup> *An tArd-Chláraitheoir shall keep an index to make traceable the connexion between each entry and the corresponding entry in the register of births. That index shall not be open to public inspection; and no information from it shall be given to any person except by order of a Court or of the Board.*

- (a) It is a discriminatory measure, applying only to adopted persons and not to natural parents (despite the fact that many more adopted persons have registered their preference for 'no contact' on the NACPR than natural parents);
- (b) It is over-broad, affecting far more families than there is evidence to suggest have a preference for 'no contact';
- (c) Less intrusive measures are available, which would achieve the aim pursued. For example, information can be given to both adopted persons and natural parents regarding the ability to register one's contact preference on the NACPR and the resources available to all parties; and
- (d) It embeds stigma, silence and secrecy, in circumstances where the State failed to protect human rights in the past and has an ongoing responsibility to make reparation for its previous failures.

### *6.1.3 The 'compelling reasons' ground is unnecessary and disproportionate*

The 'compelling reasons' ground for non-disclosure of personal information is unnecessary because, as advised by Dr Conor O'Mahony to the Joint Oireachtas Committee in 2015, there are extensive protections in both criminal and civil law where a person's life or safety is threatened by another person. In light of the existing, extensive protections, the 'compelling reasons' ground for non-disclosure is also a disproportionate interference with adopted persons' rights because:

- (a) It discriminates against adopted persons<sup>46</sup> and perpetuates a harmful and untrue stereotype that they are more likely than other members of the population to harm their natural parents; and
- (b) Less intrusive measures would achieve the aim of offering protection in addition to existing legal protections from threats to personal safety, such as services for natural parents and adopted persons.

## *6.2 ARA's amendments*

ARA's proposed amendments provide for automatic access for adopted people to their birth certificates and adoption records in a way that safeguards the privacy rights of both natural

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<sup>46</sup> As the 'compelling reasons' ground appears only in sections relating to the provision of information to adopted people.

parents and adopted people in a way that does not unnecessarily and disproportionately interfere with other rights.

### *6.2.1 Continued use and better publicising of the NACPR*

Since the establishment of the NACPR in 2005, adopted people and natural relatives have had the ability to register their contact preference with the Adoption Authority. Unfortunately, despite ministerial promises of regular advertising both in Ireland and abroad, the NACPR has not been advertised since it was launched 12 years ago. A contact register is only ever as good as its advertising, and thus the NACPR has never reached its full potential.<sup>47</sup> With sufficient resources, the NACPR could still act as a useful mechanism for adopted people and natural relatives to register their wishes regarding contact.

However, it is also important to note that even if an adopted person or natural mother has not registered a 'no contact' preference on a contact register and they are contacted by the other party, the person sought need only express that they do not wish to have contact at the moment. Over-complicated discriminatory mechanisms are not required to ensure that adopted people comply with other people's wishes.

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<sup>47</sup> However, contact registers should only ever be seen as complementary mechanisms.

### *6.2.2 The continued implementation of Section 22 (5) of the 1952 Adoption Act*

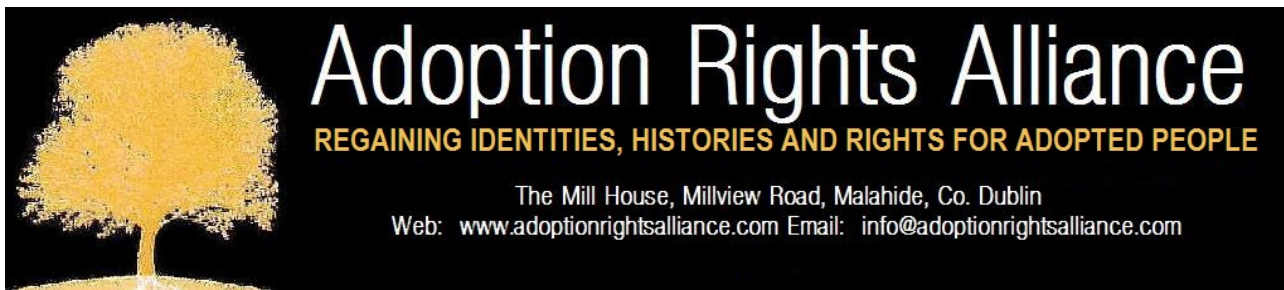
As we have already pointed out, Section 22 (5) of the Adoption Act, 1952<sup>48</sup> already prevents public disclosure of the index which makes traceable the link between the Register of Births and the Adopted Children's Register, which offers more than sufficient protection for the privacy of both adopted people and natural mothers. The General Registrar has access to the index concerned, which facilitates our amendment to provide for automatic access for adopted people to their birth certificates via the General Register Office.

### *6.2.3 The implementation of existing laws*

As we have stated above, existing legislation against harassment already offers more than sufficient protection for all citizens from unwanted contact. Additional mechanisms are not required to ensure that adopted people comply with existing legislation.

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<sup>48</sup> *An tArd-Chláraitheoir shall keep an index to make traceable the connexion between each entry and the corresponding entry in the register of births. That index shall not be open to public inspection; and no information from it shall be given to any person except by order of a Court or of the Board.*



## Appendix 1 - Background to adoption information legislation in Ireland

Legal adoption was first introduced in Ireland on 1<sup>st</sup> January 1953, when the 1952 Adoption Act was brought into force. Since then, the legislation has been amended eight times, and none of the adoption acts from 1952 to date have provided information rights for adopted people. Irish adoption is, and always was, closed and secret; that is, adopted people have no legal right to information about themselves or their natural families. In this regard, the Irish system lags behind many other countries by decades.<sup>49</sup>

The Irish State's first attempt to legislate for adoption information rights occurred in 2001, when former Minister Mary Hanafin introduced proposals which included a provision where adopted people who were in breach of a contact veto would be fined or imprisoned.<sup>50</sup> Minister Hanafin said she hoped that the contact veto would provide reassurance that the proposals would '*not constitute a threat*'. The threat of criminalisation was removed by former Minister Brian Lenihan after a successful campaign by our predecessor organisation.

In July 2015 former Minister James Reilly published the General Scheme and Heads of an Adoption (Information and Tracing) Bill. The proposals were roundly criticised because of a requirement for adopted people to sign a Statutory Declaration that they would not attempt to contact their natural parent(s) directly if their birth certificate was released to them.<sup>51</sup> Minister Reilly referred the proposals to the Joint Oireachtas Committee on Health and Children for pre-legislative scrutiny. In its report, the Committee said that '*based on the weight*

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<sup>49</sup> <http://www.irishtimes.com/opinion/law-must-enshrine-child-s-right-to-birth-information-1.1313677>

<sup>50</sup> <http://health.gov.ie/blog/press-release/hanafin-announces-new-draft-legislation-on-adoption-information> The same heads of bill were published in 2003 as proposals for discussion at the Adoption Legislation Consultation: <http://health.gov.ie/wp-content/uploads/2014/03/Adoption-Legislation-Consultation-Discussion-Paper.pdf>

<sup>51</sup> [http://adoptionrightsalliance.com/ARA%20PR\\_27-07-15.htm](http://adoptionrightsalliance.com/ARA%20PR_27-07-15.htm)

*of evidence and the legal submissions received from witnesses, the Committee can find no convincing reason for the inclusion of a Statutory Declaration in the Bill*<sup>52</sup>

The present Minister for Children, Katherine Zappone, TD published the current Adoption (Information and Tracing) Bill on 25<sup>th</sup> November 2016. We acknowledge that the Statutory Declaration has been removed from the Bill, however the requirement of an undertaking appears to be a rebranding of the declaration and would still have the effect of introducing statute-based discrimination against adopted people. In communications with Minister Zappone neither she nor her officials, were able to explain the practical difference between the two and neither could they rule out whether the current or future Minister could attach penalties for the breach of an undertaking.

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<sup>52</sup> [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)