



18<sup>th</sup> June 2019

Dear TDs and Senators,

We, the directors of Adoption Rights Alliance (ARA), are writing to express our deep concern about the *Adoption (Information and Tracing) Bill 2016*. We are extremely worried that Minister Zappone is attempting to rush this Bill through before the summer recess, without allowing either Oireachtas members or representative groups sufficient time to consider the Seanad Committee Stage amendments carefully or to discuss alternative approaches. We explain below why we consider the Government's Bill and its recent Committee Stage amendments to be deeply discriminatory, and we set out our proposals for a different legislative framework.

ARA's strong preference is for the Government's Bill to be shelved in favour of non-discriminatory legislation, which recognises the **right to the truth** and the **right to identity** of all affected by adoption and informal placement practices.

**We stress that no legislation is better than this legislation.**

In this context we point out that adopted people already have a means of obtaining their birth certificates and (albeit heavily redacted) records, using information and resources provided by ARA over the past decade. Unfortunately, the process is by no means automatic or instantaneous, and records are generally heavily redacted. We would also point out that adopted people have been obtaining their birth certificates using the methodology provided by ARA and our predecessor organisations since the early 1990s, and no calamities have occurred as a result.

We request that you support our proposals for a different, much simpler legislative approach that would bring us into line with our neighbouring jurisdictions of Northern Ireland, Scotland and England & Wales, and would go a significant way to repairing the injustices of Ireland's past.

We thank the Senators who have already submitted amendments to the Government's Bill on our behalf. We are now re-circulating our list of proposed amendments to the Bill as initiated and we ask you to consider these amendments carefully. In the attached **List of ARA Amendments** we note where our proposals arise in the published list of Seanad Committee Stage amendments, and we provide explanations for each.

**Our amendments aim to establish** a simple, rights-respecting system which is, in essence:

- (1) Provision by the General Registrar of access to birth certificates for all adopted/informally placed people following an information session which provides advice about (among other things) the operation of the National Adoption Contact Preference Register (which should be properly resourced and widely advertised);
- (2) Further provision by an Independent Information Service of access to full unredacted copies of personal data for natural mothers, adopted / informally placed people, and next of kin of the deceased; and
- (3) A non-compulsory, properly resourced and trained family tracing service.

A longer list of our key proposed amendments is set out below. In addition to (1) this letter and (2) our [List of ARA Amendments](#), we also attach (3) a [Briefing Note on Access to Adoption Information](#) and (4) [annotations](#) by solicitor and information law expert Fred Logue to the Government's briefing note to Senators dated 12<sup>th</sup> June 2019.

### **Why ARA is deeply opposed to the Government's legislative approach**

#### ***Restrictions on access to birth certificates***

The Government's Committee Stage amendments would replace the previous requirement in the Bill for adopted / informally placed people to 'undertake' never to contact their parent(s) as a prerequisite for access to their birth certificate. The Government's new proposal is that Tusla will automatically attempt to locate and contact both natural parents as soon as an adopted person requests access to their own early life and adoption files. Where there is an objection, the adopted person will have to attend a hearing at the Adoption Authority of Ireland to make their case, with the possibility of review proceedings in the Circuit Court and High Court. This proposed 'system' is a grave interference with the privacy and information rights, and the dignity of, both natural parents and adopted people.

#### ***Censorship of files***

We are strongly opposed to Section 40 of the Bill as initiated (which the Government does not propose to amend), which requires Tusla to provide adopted/informally placed people with a written 'statement' of their early life information instead of a full copy of all personal data held on file. The statement will be written so as to 'not contain information that would identify a birth parent or a birth relative of the applicant'. Tusla's involvement in interpreting files and providing statements instead of original records is deeply disturbing not only because it denies information that people are entitled to

under the EU GDPR and other legal instruments, but also because ARA estimates that the number of people adopted legally and illegally from 1922 onwards exceeds 100,000 and Tusla is under-resourced in relation to its present responsibilities.

### ***No rights to information for natural mothers or relatives of the deceased***

The Bill as initiated contains no provision for natural mothers to obtain their personal data or information about their children following adoption or informal placement, nor does it provide for the relatives of deceased adopted/informally placed people or natural mothers to obtain information about what happened to their family members.

### **Key ARA Amendments in summary**

- We propose a system of providing (1) access for all adopted/informally placed people to their birth certificates, adoption records and early life files, (2) access for all natural mothers to their own personal data and information about their children, and (3) access for relatives of the deceased to their family members' files, following an information session by an Independent Information Service where people are advised how to read their files and advised of the purpose and methods of the National Contact Preference Register.
- Information and Tracing services should be completely separated.
- Tusla should have no role in the provision of information services. Instead, an independent, centralised national repository of adoption and related historic abuse records should be established, and information services should be provided by professional archivists. This was a key recommendation made by members of Minister Zappone's own Collaborative Forum in their report, which remains unpublished six months after completion.
- If tracing services (for those who wish to avail of them) are to be provided by Tusla as envisaged in the Government's Bill, this can only be after both Tusla management and social workers have been sufficiently trained in this area. We advocate that instead, tracing services would be outsourced to professional family researchers and genealogists who already possess the skills and resources to do this work efficiently.
- Tusla should be registered as an accredited body so that it can be regulated by the Adoption Authority. We are alarmed to note that the government's amendments propose to allow Tusla to carry out information and tracing services without regulation from the Central Adoption Authority.
- We propose the deletion of Sections 22 ('compelling reasons'), 40 ('statements' in lieu of files) and 41 (the undertaking) in their entirety.

- We propose deleting Sections 25-32 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 propose deleting Section 52 (immunity) and replacing it with a provision to establish an Adoption Advisory Group. These Advisory Groups should act as a mechanism to advise the Minister, the Agency and the Authority on the implementation of the bill and on current adoption policy and practice. The input of those with direct experience of adoption is absolutely essential if the proposed adoption service is to be effective.
- We 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 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.

### **Why ARA’s proposed amendments properly balance all rights at issue**

The right to privacy is key to the issue of Adoption Information and Tracing. It includes the right to know one’s identity, to obtain a copy of (and to correct) the personal data that others hold in relation to oneself, and to be free from unnecessary or disproportionate state interference in one’s personal and family life.

In the current context, the Oireachtas needs to find a balance that provides to the greatest extent possible for (1) the needs of adopted / informally placed people to know their identity and access all of their personal data, (2) the needs of natural mothers and other family members to access full information about the circumstances of their family separations, (3) family relationships that were interfered with in the past to be allowed to develop free from unnecessary or disproportionate state interference, and (4) the personal privacy of all individuals affected to be respected.

Particularly given Ireland’s history of forced and coerced separation of unmarried families and the ensuing rights of those affected to now know the truth of their treatment, to know their identity and to know the fate of their relatives, the best the Government can do by way of giving maximum effect to everyone’s rights is, we argue:

**An Independent Archive with rights to full personal data access, along with an Information Session where everyone is informed about the existence of the National Contact Preference Register - allowing them to navigate their lives and relationships as adults, without further state intervention (save to the extent that they may wish to avail of non-compulsory tracing services).**

In response to the Attorney General's advice to Government, which (although undisclosed) seems to be that natural mothers must be given the option to remain secret from their children and that this supposed constitutional requirement justifies major Tusla intervention and delay, and privacy interferences, in the form of tracing and contacting all parents and then interpreting and summarising files, we highlight that:

- (1) the Government has not produced evidence of natural mothers desiring secrecy from their children (rather than desiring respect and privacy from society, which imposed great stigma on women);
- (2) ARA has only ever seen evidence of 'consent' forms to adoption that required women not to seek out their children, rather than promising anonymity to women;
- (3) the Supreme Court in the 1998 case of *IO'T v B* expressly stated that even a mother who was promised anonymity does not have an absolute constitutional or legal right to such anonymity, and that privacy rights must be balanced; and
- (4) the Attorney General, as far as the Government's position and Bill suggests, appears not to be adequately considering the strength and importance of a range of other Constitutional and European rights, including adopted/informally placed people's right to identity and to receive their own personal data; mothers' rights to know the truth about their treatment and the treatment of their child; the right to non-discrimination; and families' rights to be allowed to develop their relationships without unnecessary or disproportionate state intervention.

We recognise and understand that the Attorney General wishes the State to take some steps to protect people from unwanted publicity or unwanted contact. It should be noted – although this has not been highlighted by Government – that far more adopted people than parents currently express a wish for no contact on the National Adoption Contact Preference Register. Our long-standing proposal is that before receiving any information, all those who request information should receive an **information session** in order to learn about the National Adoption Contact Preference Register and the fact that their family member may have expressed a certain preference on it. Beyond that, all those concerned should simply be subject to the same laws in Ireland as everyone else.

## **Senator Ivana Bacik's amendment**

ARA welcomes the efforts of Senator Ivana Bacik to bring forward an amendment on access to birth certificates and adoption records. While we support the general thrust of Senator Bacik's amendment, there are aspects of the approach which must be revised. We have therefore reproduced our suggested revisions to Senator Bacik's amendment in the attached. In brief, we fully support the proposal of a six-month period of extensive advertising and outreach, however this awareness campaign should be focused on all stakeholders, and it should not assume that natural mothers are the only party who will have privacy concerns. We are opposed to the provision to allow natural mothers to 'object' to the release of information, and as stated above, we strongly oppose the requirement for adopted people to attend a hearing if there is an objection. Natural mothers (and indeed adopted people) should have the right to state their contact preferences and any privacy concerns they may have, and this is more than sufficient to protect the privacy of all concerned. In short, adopted people do not require additional measures to ensure they comply with existing privacy laws.

On a final note, we would like to draw TDs and Senators' attention to the preamble which we include in our amendments to the Bill. Our proposed Preamble demonstrates that this legislation could mark the beginning of Ireland's Transitional Justice process; the State could finally acknowledge statutory rights to information as a key element of its efforts to address the injustice of Ireland's closed, secret, forced adoption system and related historic abuses.

Yours sincerely,

Claire McGettrick, Susan Lohan, Mari Steed and Angela Murphy