



Adoption Rights Alliance
The Mill House
Millview Road
Malahide
Co. Dublin

12th November 2019

Minister Katherine Zappone, TD
Minister for Children
Block 1 Miesian Plaza
50-58 Baggot Street Lower
Dublin 2

**Re: Options for Legislative Pathway on the Adoption (Information and Tracing)
Bill 2016**

Dear Minister Zappone,

We write in response to your email and enclosures, dated 6th November 2019.

Adoption Rights Alliance (ARA) is deeply disappointed that the government has ignored legal advice from multiple experts which clearly indicates that the path is clear to provide automatic access to birth certificates for adopted people. Above all, we remain concerned for the tens of thousands of adopted people, their relatives, and others affected by the human rights abuses perpetrated by Church and State against vulnerable women and children. Yet again, they have been let down by another Irish government.

Since 2016, ARA has engaged comprehensively with you and the Department of Children and Youth Affairs (DCYA) in setting out clearly our objections to the Adoption (Information and Tracing) Bill 2016, and to developing and disseminating alternative proposals. This engagement and consultation has not been reciprocal, as evidenced (to give just one

example) in the short time allowed for consideration of your 'Options for Legislative Pathway' on the Bill. We are extremely concerned that the government expects us to provide feedback on proposals without seeing the revised Bill in full. As we know from previous iterations of the Bill, the devil is in the detail.

We are strongly disposed to respectfully decline to engage in this process. However, we feel the only responsible thing we can do is to provide you with feedback and recommendations (and inform the 2,000+ members of our online peer support group accordingly).

None of what is set out below should be construed as an endorsement by ARA of the government's refusal to legislate for information rights for adopted people, or of the manner in which the DCYA has conducted itself throughout this process.

For ARA, Options 1 and 2 are completely unacceptable. Regardless of the proposed presumption towards release of information, we are not prepared to support any scheme that leaves a single adopted person behind. Moreover, we will not back any measure which enshrines in law a system that blatantly discriminates against adopted people. If the government attempts to proceed with Options 1 or 2, ARA will oppose this move in the strongest possible terms.

After much deliberation, ARA is prepared to reluctantly support Option 3, subject to being afforded an opportunity to see, review over an appropriate length of time, and offer revisions to the draft amendments, and with the following strict caveats:

1. Safeguarding of Records

ARA strongly believes that all records must be safeguarded and maintained, so they can be made available to the people most affected by them. However, we are concerned that the Bill as written is not clear enough and may allow certain individuals and organisations to evade the law:

- Part 2 of the Bill must be amended to delete Section 12 (2)¹ and insert a new section clearly stating that the legislation is without prejudice to data subject rights as set out in the *Data Protection Act 2018*.

¹ Section 12(2): *A person who, having applied under Part 5 to the Agency for information, has been provided, in accordance with that Part, with information, may apply to the Authority, in such manner as may be specified by the Authority, for access, in accordance with this section, to the relevant records containing the information concerned that are held by the Authority under section 11(1).*

- Part 2 of the Bill must be amended to delete Section 12 (4)² and insert a new section clearly stating that nothing in the legislation prevents the Adoption Authority of Ireland (AAI) from accessing records for the purposes of giving effect to data subject applications.
- It is imperative to ensure that the legislation does not contain any loopholes allowing record holders to evade the law (in particular individuals or organisations involved in facilitating illegal adoptions). Therefore, the definition of an ‘information source’ in Section 2 must be amended to include: a) any agency, institution or individual involved with unmarried mothers and their children in Ireland, and b) any person(s) or organisations currently in possession of records relating to the treatment of unmarried mothers and their children. The AAI should be afforded the widest possible latitude to ensure that no records are missed.
- Similarly, the definition of a ‘relevant record’ must be amended to include any records relating to the treatment of unmarried mothers and their children in Ireland.

2. Tracing for the purposes of reunion

We are willing to support this element of Option 3 to facilitate adopted people, natural mothers and relatives who wish to avail of a statutory tracing service. However, we are deeply concerned that this service will be carried out by Tusla. ARA has respect for most of the rank and file social workers around the country, many of whom have contacted us in confidence to express their frustration about the lack of information rights for adopted people. However, we have grave concerns about a disturbing culture at management level in Tusla, which betrays a deep prejudice against adopted people in particular.³ Therefore, we have the following strict stipulations:

- The tracing service should be operated according to international best-practice models, including a robust complaints mechanism.
- The tracing service should be adequately resourced.

² Section 12(4): *Nothing in subsection (3) shall be construed as authorising the Agency or the Authority to provide an applicant with access to a relevant record, or a part of such a record, that contains information that has not been provided under Part 5 to the applicant.*

³ For example, a senior member of Tusla management informed the Collaborative Forum in December 2019 that Tusla assesses the ‘likelihood of someone being harmed or not harmed’ before releasing personal data to adopted people. See: <https://www.irishexaminer.com/breakingnews/specialreports/tusla-relying-on-flimsy-grounds-to-justify-redacting-records-and-birth-certs-955334.html>

- All research relating to adoption traces should be carried out by trained genealogists and not social workers.
- If two or more service users state that they wish to be put in direct contact with each other with no further intervention or assistance from Tusla or any other State agency, they should not be obstructed from availing of this option.
- The tracing service should be regularly advertised internationally and on social media in order to facilitate people who were exported from Ireland for adoption as children.
- It is imperative that the government establish an independent assessment of how Tusla is interpreting the GDPR rights of adopted people, their natural relatives and others affected by so-called historical abuses.
- We are extremely concerned that Tusla is not currently considered to be an 'accredited body' as prescribed under the *Adoption Act 2010*, and it is therefore unregulated in its role as an adoption service provider. Therefore, Section 126 of the *Adoption Act 2010* must be amended by inserting the following:

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

3. Putting the National Contract Preference Register (NACPR) on a statutory footing

ARA has repeatedly called for the NACPR to be put on a statutory footing, and we are pleased to support this measure. However, given that the original Bill (as written) proposes to abolish the NACPR, our welcome is cautious, and subject to what we set out below:

- The NACPR itself, and not any new configuration of same (e.g., the Register of Adoption Enquiries as set out in the Bill as written), must be put on a statutory footing.
- The AAI has operated the NACPR since 2005 and it is imperative that the institutional memory and expertise developed since then is maintained. For this reason, and for the reasons set out above, **under no circumstances should the NACPR be handed over to Tusla.**
- If two or more registrants have been matched with each other on the NACPR and they wish to be put in direct contact with each other with no further intervention or

assistance from the AAI, Tusla or any other State agency, they should not be obstructed from availing of this option.

- If two or more registrants have been matched on the register and they do not wish to be reunited through Tusla, another service must be offered to them.
- The NACPR must be adequately resourced.
- The NACPR must be advertised both nationally and internationally at least every two years.
- The NACPR must be advertised regularly on social media platforms.

The feedback above is based on a very limited amount of information provided by DCYA, which we have had to take at face value. Notwithstanding any necessary amendments (including those submitted by us), **ARA would consider any significant departure from what has been set out in the enclosures sent on 6th November as a massive breach of our already diminished trust.** If such a scenario were to materialise, we would have no option but to withdraw our support for Option 3 and robustly oppose any iteration of this Bill.

Finally, if ARA is to engage sufficiently with this process and continue to support Option 3 (so that we can advise our supporters accordingly), we need to be afforded the necessary time for consideration and consultation. Therefore, we look forward to seeing the draft amendments at your earliest possible convenience.

Yours sincerely,

Three handwritten signatures in black ink, positioned horizontally. The first signature on the left is 'S Lohan', the middle one is 'C McGettrick', and the right one is 'M Steed'.

Susan Lohan, Claire McGettrick and Mari Steed
On behalf of Adoption Rights Alliance