THE CHILD & FAMILY AGENCY

Summary Key Feedback on Head of Bill Guardianship of Infants (Amendment) Bill 2025

June 2025

Submission: Key Points

In general, Tusla, the Child and Family Agency supports the belief that familicide, in this context, is a child protection and welfare concern and Tusla welcomes the opportunity to contribute to how as a statutory agency, guided by DCDE policy direction, Tusla would support children affected by domestic violence that results in the murder/incapacitation of one parent by another.

It is essential that the proposed Bill is reviewed in the full context and consideration of children's rights, as well as the Voice of the Child and the Best Interest of the Child. The EU Integrated Child Protection Systems recommendations emphasize the importance of maintaining links with the family of origin to the extent it is in the child's best interest. Paragraph 4.f. asks about the reflection in the proposal of the views and voice of the child. Consideration could be given to aligning this point on the voice and rights of the child with the UNCRC e.g. UNCRC Article 7.1 refers to the right to know and be cared for by his or her parents, and right of child to alternative care under Article 20

Head 1 Amendment of Guardianship of Infants Act 1964 – Tusla note the proposed amendments under this head but have no feedback to provide.

Head 2 Amendment of Guardianship of Infants Act 1964 – Please see Tusla's feedback below.

1. Tusla's concerns centres on how an agency with existing statutory function related to the protection of children is sufficiently aligned to the new statutory functions proposed amendments under Head 2 and in particular **sections 6G (1), (2), (3) (4), (5), (6), (7), (8), and (9)** in the Bill. As it currently stands:

    a. Tusla is required to promote the welfare of children having due regard to the rights of parents. Such rights flow from the constitutional rights of the family. This requires us to work in collaboration and support of children and families and to only request the removal of children from the care of parent when a specific legal threshold is met and robustly evidenced though a court application where a Judge will adjudicate on the matter. The removal of children does not result in the automatic removal of all parental guardianship rights and even when full care orders are in place, children's best interests often require us to support ongoing connection to birth family and inclusion of birth family in key decision making affecting that child. The parents retain their guardianship rights even in circumstances where a care order is granted until the child turns eighteen. Tusla's effectiveness under existing legislation is fundamentally prefaced by the principles of establishing effective and trusting working relationships with family and guardians. This legislation will potentially place us in direct conflict with these principles and undermine existing statutory functions.
    b. The only circumstances where full removal of all parental rights occurs is through a legal adoption with a High Court order confirming the significance of a decision that removes all parental rights, and which significantly affects the constitutional rights of the family and children being care for in their family unit. **Section 6G (1)(i)**

c. In family law matters Tusla is not required to make a formal opinion on custody or guardianship in family law proceedings as this has been the sole remit of the family courts and the Judge who has carriage of the case. Under S20 of the 1991 Child Care Act, Tusla is requested at times to provide an opinion to the family court based on the assessment of a child protection concern raised within those proceedings and we are asked in line with our core statutory function to determine if we should apply for a care order or for a supervision order with respect to the child or consider the provision of services or any other assistance/ action in respect of the child.

2. The new proposed statutory function fundamentally changes Tusla's existing statutory function and remit in that it requires the Agency to go beyond the determination of a child protection and welfare concern and a decision to enhance supervision or seek a care order of a child to

a. Recommending the future suitability of a parent to be a legal guardian and thus potentially removing all constitutional rights of that parent to their child – **Section 6G in general**. The nature of the assessment here is not one of just determining if past harm occurred and whether the child needs to be removed from the day-to-day care of that parent temporarily or longer term. This assessment in this context, is about the future suitability/risk a parent to have any right of involvement in any decisions affecting their child and whether such involvement could potentially be so harmful to the child's best interests that it would warrant the complete removal/cessation of all their parental rights. What is the difference here in this legal status and adoption?

b. Assess the suitability of any proposed guardian – **implied in Sub Section 7 and sub section 9(f)** Is there an implication that the suitability of any prospective guardians will be assessed and if so, what is the standard that will be applied. How will this be different from adoption and fostering and what might exclude a prospective carer? how will the court determine who this is and how suitability will be determined?

c. There is no central registry for guardians so it will be challenging for the Agency to independently verify who is already a guardian? Also is there a possibility that there might already be another guardian appointed? In some of these cases perhaps the family have already taken legal/guardianship proceedings, and another guardian has already been appointed, or the process has already happened – **Section 6G (2) and (9)(f)**

3. There are significant legal/other considerations and implications that would arise from the proposed legislation, if enacted:

a. Tusla's discretion is fettered. Tusla "shall" bring an application. It cannot assess if one is in fact necessary. – **Section 6G (1)**

b. Removing guardianship rights from a mother is, as far as Tusla is aware, unprecedented (adoption aside). Is it constitutional compliant? - **Section 6G (1)(i)**

c. What is the purpose/benefit of requiring a Court to make an Order that the "*parent concerned be confirmed as [the] [a] guardian of the child"?* The person is already a guardian. Also, this places Tusla in a challenging position of either applying to remove the person or applying to "confirm" – **Section 6G (1)(ii)**

d. Further, we note there is the possibility of appointing a GAL to the child together with legal representation for the GAL and costs will fall to the parties to the application, as Tusla is potentially the only party to this application therefore the costs of the GAL and legal representative will likely fall to be discharged by the Agency which has budget implications unless the newly established GAL office will hold budgetary responsibility for same. - **Section 6G (13)**

e. Further concern relates to the proposed draft wherein Tusla is expected to bring such applications for offences that have occurred outside of Ireland. How would Tusla be aware, for example, if a parent murdered the other guardian in another jurisdiction and has served their time in prison, has been released from prison and is now caring for their child? Even, if we did know, are we expected to make an application to remove that parent because of their past offence in another jurisdiction, where they have served their time. Further, what if the child is a citizen of another country? Would there be international treaties/legislative/Governmental requirements to repatriate these children to their country of origin? - **Section 6G (14)**

f. Further, S16 is not workable in general in its current form but in particular reference to 'suspected killing' in S16 is not reflected in S17 and it is challenging to see how anyone (CFA/AGS) could act on this. Further, this potentially could involve retrospective cases for the last (up to) 18 years…noting that Tusla is only in existence since 2014. What is a suspected killing? Do parents not have inherent rights regarding their birth/legal children? Is there any other legislation that exists which places such an onus on the State and its agencies to review and make retrospective applications upon commencement? What about the views and voice of the child(ren) and their possible wish to continue to have contact and a relationship with the parent/suspect?- **Section 6G (16)**

Implementation Implications

1. **Section 6G (1)** - The Agency will be required to prioritise these assessments given the timescale set out in the Heads of Bill and this has resource implications particularly in the context of an unknown number of previous cases which all will be required to be assessed within 6 months of commencement. It is not clear how the Agency will be notified of these retrospective cases or what the potential number of cases that will require consideration.

2. This would require a number of special teams in the first instance if this is to have a priority and clarity on the purpose and function which is quite distinct from current Tusla roles.

3. **Section 6G (9)**
    - **a.** The assessment required here is not a typical child protection/welfare assessment which considers the past harm to a child and the future impact to a child from an abusive parent- as set out in sub-section (a) and (b). This assessment by virtue of (c) will require a more forensic assessment/determination as to whether an adult who has previously behaved in an abusive manner towards their children will continue to behave in an abusive manner and is unlikely and/or unwilling to change their behaviour which then allows the Agency to then indicate the potential longer-term impact on the child's best interests. Forensic assessments of adult behaviours are not typically conducted by the Agency in protecting children from harm and are typically more within the realm of justice and probation assessments. Assessing and engaging the convicted parent within a custodial setting will be more challenging
    - **b.** New guidance and learning support will be required to support staff utilising existing National Practice Approaches for Child Protection and Welfare in the completion of these assessments which will now be heard in private family law settings not the standard child-care law settings. This requires a lead in time for implementation planning
    - **c.** The assessment of the impact of harm sub section (b) will likely require other professional input from therapeutic teams to consider the full psychological/emotional impact likely to be required by the Courts and this has further implications for internal and/or funded resources. It is also inevitable that the assessment will require therapeutic supports to the child and such resources will be requested from the Agency if we are to support the child addressing such trauma. This will require expansion to existing therapeutic supports available to the Agency for children. At present Tusla directly provided therapy services are limited to children in care due to resource constraints.
    - **d.** Sub section (f) - The assessment of the suitability of a new guardian is also likely to be akin to a relative fostering assessment and therefore has both implication in terms of resources and may also impact on those currently caring for children where they might be deemed to not be suitable.
    - **e.** Sub section (e) - The assessment must also consider the role other guardians have play in meeting the child best interest to date. It is not clear how the Agency will be advised on who the relevant guardians are when there is no central registry.
    - **f.** It is likely the convicted parent will challenge the outcome of an assessment where they are to be removed, and this will lead to more protracted and adversarial matters before the Court i.e. this will affect core constitutional rights of a parent to have a say in their child's upbringing. This will inherently involve considerable legal costs. For the courts having an officer of the court carry out such assessments would inspire more confidence in the decision-making process and provide a clearer path for the workers involved who would be reporting with confidence to the Judges making these decisions. This would align with the family law functions here as opposed to the child protection or fostering or adoption functions currently carried out by Tusla.
    - **g.** The Court may schedule review periods and therefore the assessment of the child's best interests will require updating when those periods arise, and this could be demanding depending on the frequency or scale of what is being reviewed
    - **h.** Engagement with the Courts and stakeholders involved regarding the Agency's final approach to the assessment process is also strongly recommended so as to ensure all stakeholders understand how it is intended the Agency will meet our obligations in this regard.
    - **i.** All of the above will have time and resource implications, particularly retrospective cases, particularly when the Agency is challenged to meet current demand for service and in securing suitably qualified professionals.

Alternative Proposal

It is the Agency position that any new statutory functions should promote the welfare of children by aligning to the Agency's existing functions. Therefore, as an alternative proposal we suggest that , where a parent or guardian has killed or seriously harmed another parent Tusla will work within its existing statutory functions to

a. Assess any child protection and welfare concern in line with current provisions under S20 of the Child Care Act 1991, or as amended, and therefore assist the Court in its independent determination the issue of guardianship. This would include consideration of the impact of future harm to a child from a coercively controlling parent.
b. Recommend and provide support to any child who has experienced harm, as a result of domestic violence in the home.
c. Provide family support to any guardian who requires additional parenting support.
d. Consider if supervision orders or care orders would be warranted in such circumstances i.e. if there is a concern about ongoing harm to a child from the offending parent.
e. Assess a relative as a foster carer if the child were to come into care.