Oireachtas Joint Committee on Justice, Home Affairs and Migration

Opening Statement

Mr Gerry Hone

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Child and Family Agency (Tusla)

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Introduction

I thank the Chairperson and the Committee for the opportunity to provide observations on the General Scheme of the International Protection Bill 2025 on behalf of Tusla, the Child and Family Agency.

I am joined here by Lorna Kavanagh, Interim Service Director and Ruth Fanning from our Office of Legal Services.

Tusla's Separated Children Seeking International Protection service has grown exponentially following Covid-19 and the commencement of the war in Ukraine. The agency has had to rapidly scale up services to respond to an almost 500% increase in referrals. Throughout 2024, 900 children and young people were in care or accommodated by Tusla's Separated Children Seeking International Protection service. The demand for the service has continued to grow throughout 2025 with the service providing placements for over 1,000 people by the end of September 2025. We anticipate that placements will be provided to over 1,200 young people by the end of 2025.

The increased arrivals of separated children have required increased services and supports. In collaboration with our parent department officials and the Minister for Children, Disability and Equality, we have received significant additional budget which has enabled us to increase the number of residential beds for this cohort of children and young people from 70 beds in 2022 to in excess of 400 beds today. Demand is such that, even with this growth, there continues to be a requirement for Special Emergency Arrangements.

When enacted, this Bill will have a significant impact on children making international protection claims in Ireland.

Age Assessment Procedure

The Bill makes four references[i] to age assessments however, a Head specifically outlining the age assessment procedure was not initially included.[ii]

Under current legislation, the duty to undertake age assessments rests with the International Protection Office however, in practice, age assessments are not done prior to immigration authorities notifying Tusla in accordance with Section 14, International Protection Act 2015.[iii]

The current lack of an age assessment process, in place by immigration authorities, at the preliminary stage prior to notification of a separated child seeking international protection to Tusla creates a significant possibility of adults being placed with children, and consequential safeguarding risks. There is a concern that, without a robust assessment process, adults may

be referred to Tusla. A Head on age assessment has been drafted but will require to clearly set out responsibilities if children are to be protected.

Once a person is referred to Tusla by an immigration official under Section 14 a presumption of minority applies. This means the person must be accommodated in a registered children's centre or approved fostering placement. If Tusla has doubts that the person referred is in fact an adult, it is challenging for the Agency to rebut the presumption of minority. It is important to emphasise that it is outside the statutory remit of Tusla to undertake age assessments for the purpose of international protection.

The Agency is aware that a draft Head on age assessments is currently being worked on, and we welcome the fact that it is intended to clarify that immigration authorities, as the determining body, will be responsible for arranging and commissioning multi-disciplinary age assessments. Tusla would welcome sight of the full statutory process which outlines how immigration authorities will undertake age assessments prior to notification to the Agency.[iv]

Tusla as Provider of Reception Conditions

General clarity is required in relation to the definition and role of the competent authorities referred to under various parts of the Bill. Clarity is required in particular in relation to whether legislation will designate the Agency as the provider of material reception conditions for unaccompanied children. The Bill sets out that the Minister for Justice will allocate an accommodation centre to be the location at which material reception conditions shall be made available to an applicant.[v] However, details in relation to the provision of accommodation which will meet material reception conditions for unaccompanied children is not set out in the Bill. Without a clear determination of roles and applicable legislation, there may be a concern that an ad hoc system will be put in place in relation to reception conditions for unaccompanied children that is reactive as opposed to establishing a robust legal framework for the provision of reception conditions to unaccompanied children.

Conflict of Interest

The main role of a representative under the Pact is to guarantee the best interests of the unaccompanied child and represent, assist or act on their behalf[vi]. There is specific legal requirement for the representative to be independent.[vii] As provider of material reception conditions for unaccompanied children, Tusla would not be sufficiently independent to be tasked with the role of representative or to be involved in the designation of representative agencies or representatives. Tusla's relationship with the unaccompanied child is one of a service provider and, in that, the child must be able to independently assert their needs to the provider. They must be able to articulate if those needs are not being satisfied or be able to

understand, through their independent representative, alternatives, remedies, solutions and/or acceptance.

There is also a potential conflict of interest in the provision for the Agency's Chief Executive Officer to be on the advisory board for the Chief Inspector of Asylum Border Procedures in circumstances where Tusla is likely to be the competent authority for provision of material reception conditions to unaccompanied children who are not excluded from the border procedure in accordance with Head 63(3)(a)(ii).

As an agency we are committed to providing high-quality, safe and effective services, and to collaboration with other State agencies to promote the safety and well-being of children and young people who arrive unaccompanied into Ireland seeking international protection. I thank you again for the opportunity for this discussion today with the Committee and all stakeholders.

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[i] Head 110 refers to the competent authorities carrying out an age assessment in accordance with Head yy and Head 141 refers to the role of a representative in relation to age assessments.

[ii] There is a requirement for legislative provision to be made for age assessments in accordance with the PACT to ensure that unaccompanied children are not inappropriately placed in adult accommodation and subject to the truncated Border Procedure. An age assessment process is also important for child-safeguarding reasons, to ensure that adults are not inappropriately referred to the CFA and accommodated with other children.

[iii] Under the current International Protection Act 2015, where it appears to an immigration official that a person seeking international protection, who is subject to a preliminary interview, is an unaccompanied child, the officer shall notify the CFA in accordance with Section 14. After this notification it shall be presumed that the person is a child and the Child Care Act 1991, as amended, shall apply.

[iv] This is required as Head 141(6) sets out the presumption of minority applies once the notification is received by the Agency.

[v] Head 118(1)

[vi] Article 43 of the Reception Conditions Directive 2024/1346

[vii] Article 23(9) of the APR provides that "*Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as representative*". This is repeated in the 2024 Directive at Article 27(6) as transposed at Head 141(11)(b) of the General Scheme.