

## NATIONAL YOUTH COUNCIL OF IRELAND

### SUBMISSION ON THE GENERAL SCHEME OF THE CHILDREN AND FAMILY RELATIONSHIPS BILL JANUARY 2014

#### Introduction

The National Youth Council of Ireland (NYCI) is the representative body for national voluntary youth work organisations in Ireland. It represents and supports the interests of around 50 voluntary youth organisations and uses its collective experience to act on issues that impact on young people.

Following the recent publication of the General Scheme of a Children and Family Relationships Bill on the 30<sup>th</sup> January 2014, we are very pleased to have the opportunity to submit our considerations on this important legislation.

We understand that the aim of the General Scheme of a Children and Family Relationships Bill 2014 is to 'put in place a legal architecture to underpin diverse parenting situations and to provide legal clarity on parental rights and responsibilities in such situations'.

The Children's Referendum, if upheld, (as its currently awaiting the Supreme Court ruling following a legal challenge), puts an obligation on the State to protect and vindicate the rights of children. It also requires that the best interests of the child shall be the paramount consideration in proceedings concerning a child's welfare or safety or on decisions concerning the adoption, guardianship or custody of, or access to a child.

The National Youth Council of Ireland made the decision, with its members consent, to support the Children's Referendum and to promote a 'Yes' vote. This decision was based on our youth work principles being in line with those the key principles underlining the constitutional amendment.

In light of this decision, NYCI supports the inclusion of the key principles of 'best interest' and 'voice of the child' which are now reflected in the Children and Family Relationships Bill.

This submission highlights the provisions which refer specifically to these key principles. NYCI will *not* take a position on Parts One, Two, Three, Five, Six, Nine, Ten, Eleven, Twelve and Thirteen, as they do not directly relate to our particular areas of work.

However, in line with NYCI's commitment to the principles of the child's best interest and the voice of the child, we will comment on **Parts Seven and Eight**.

## Part Seven

This section deals with the **best interests** of the child being made central to the courts determinations as to who will have responsibility for the major decisions affecting a child's life and for their day to day care of the child. The Heads also provide a comprehensive definition of 'best interest' which is to be applied to all decisions concerning guardianship, custody and access.

NYCI broadly supports this section as we believe it reflects the constitutional amendment 42a Section 4.1 in relation to decisions being taken which are in the best interest of the child. See Appendix One.

We specifically welcome the change of language from 'welfare' to 'best interest' as the first and paramount consideration in specified types of proceedings.

We consider the proposal to allow those who are caring for a child to apply for guardianship to be a positive development for children and young people, as this gives a child security and a mechanism in which decisions regarding their care can be made more quickly and by those who have day to day care of them.

In particular, we welcome the provisions under Head 32 and consider this as an essential inclusion regarding 'best interest' and would hope that this provision is maintained in the final legislation.

We welcome in particular, the provision which refers to a child ... 'must be consulted in relation to applications for guardianship, custody and access orders', and may be entitled to refuse her or his consent. Specifically in Head 39 subhead 4 dealing with guardianship, Head 47 subhead 3 dealing with custody and Head 48 subhead 3 dealing with access.

NYCI supports the inclusion of these provisions as a clear commitment to the voice of the child.

### Recommendation

However, regarding the proposed age limit of 12 years, we believe that this is not in line with the first National Goal of the National Children's Strategy which expresses a commitment to give children a voice in matters that affect them or in line with Article 12 of the UN Convention on the Rights of the Child, which was ratified by Ireland in 1992. See Appendix Two.

NYCI recommends that the legislation instead include views to be heard regardless of age, in a child friendly manner and with due consideration given to capacity and maturity of the child’.

We believe that age is not a good indicator of the ability to have a say, all children are entitled to express their view freely and the state must provide ways to accommodate this. How much weight those views are given should be based on the children's evolving capacity and maturity, not age. This is in line with the report by the UN Committee and recommendation 51 in the ‘Day of General Discussion on the Right of the Child to be Heard’. See Appendix Three.

## **Part Eight**

This section concerns court proceedings relating to relationship breakup and the focus being maintained on the best interest of the child. Provision is also made regarding the child’s voice being heard and their views of the child being ascertained.

NYCI supports this section as it reflects the constitutional amendment 42a Section 4.2 in relation to the voice of the child. See Appendix Two.

Provisions are made in the scheme for a new and changed ‘guardian ad litem’ (GAL) system in the private law area. NYCI welcomes this, as it supports the voice of the child in specified proceedings.

### **Recommendation**

However, we have some concerns relating to the appointment of a GAL as a discretionary option for the judiciary.

We would recommend that clear guidelines are issued on the appropriate appointment of advocates on behalf of the child. We strongly believe that equality of access to the GAL and any other systems of advocacy must be facilitated and that each child or young person should have equal access and opportunity to avail of the support and advocacy system.

Also, in relation to costs, (Head 60 subhead 8) we have concerns relating to situations whereby there is parental financial inability to pay costs of GAL, thus potentially preventing a child being appointed a GAL.

To this end, we would recommend that the State makes provision to cover costs when dealing with such situations, thus ensuring equality of access to the GAL and other advocacy systems for all children and young people.

## Appendix One

### Thirty-First Amendment of the Constitution

#### PROPOSED NEW ARTICLE 42A

##### Children

1. The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.
  
2. **1°** In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.  
**2°** Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.
  
3. Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.
  
4. **1°** Provision shall be made by law that in the resolution of all proceedings -
  - i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or
  - ii concerning the adoption, guardianship or custody of, or access to, any child,the best interests of the child shall be the paramount consideration.
  
- 2°** Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

## **Appendix Two**

### **UNCRC Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## **Appendix Three**

### **COMMITTEE ON THE RIGHTS OF THE CHILD**

#### **Forty-third session**

**11-29 September 2006**

#### **Recommendation 51**

The Committee affirms that age should not be a barrier to the child's right to participate fully in the justice process. In cases when States parties have established a minimum age for the right of the child to be heard, measures should be taken to ensure that the views of the child below the minimum age be considered in accordance with the maturity of the child by specially trained social workers or other professionals.