Health Information and Quality Authority

An tÚdarás Um Fhaisnéis agus Cáilíocht Sláinte

Review of the Child Care Act 1991

July 2020 Consultation Paper

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About the Health Information and Quality Authority (HIQA)

The Health Information and Quality Authority (HIQA) is an independent statutory authority established to promote safety and quality in the provision of health and social care services for the benefit of the health and welfare of the public.

HIQA's mandate to date extends across a wide range of public, private and voluntary sector services. Reporting to the Minister for Health and engaging with the Minister for Children and Youth Affairs, HIQA has responsibility for the following:

- **Setting standards for health and social care services** — Developing person-centred standards and guidance, based on evidence and international best practice, for health and social care services in Ireland.

- **Regulating social care services** — The Chief Inspector within HIQA is responsible for registering and inspecting residential services for older people and people with a disability, and children's special care units.

- **Regulating health services —** Regulating medical exposure to ionising radiation.

- **Monitoring services** — Monitoring the safety and quality of health services and children's social services, and investigating as necessary serious concerns about the health and welfare of people who use these services.

- **Health technology assessment** — Evaluating the clinical and cost-effectiveness of health programmes, policies, medicines, medical equipment, diagnostic and surgical techniques, health promotion and protection activities, and providing advice to enable the best use of resources and the best outcomes for people who use our health service.

- **Health information** — Advising on the efficient and secure collection and sharing of health information, setting standards, evaluating information resources and publishing information on the delivery and performance of Ireland's health and social care services.

- **National Care Experience Programme** — Carrying out national service-user experience surveys across a range of health services, in conjunction with the Department of Health and the HSE.

Introduction

HIQA welcomes the opportunity to participate in the Department of Children and Youth Affairs's (the Department) consultation on the review of the Child Care Act 1991 (the Act). The Act is an important piece of legislation for children and is the primary statute which governs children's reception into the care of the State. It is almost 30 years since the Act was commenced and HIQA recognises that it needs to be updated to ensure that it is compatible with our Constitution and our obligations under European and international law, particularly the United Nations Convention on the Rights of the Child (UNCRC). Any revisions of the Act must reflect legislative change, incorporate guidance from our courts and take due account of international best practice in this area.

HIQA monitors and inspects the Child and Family Agency (Tusla) child protection and welfare services, foster care services and statutory children's residential centres. We look forward to the proposed expansion of HIQA's remit to regulate all children's residential centres, which we believe will further enhance the protections available to at-risk children. HIQA registers and inspects special care units under the Health Act 2007 (as amended). We also inspect Oberstown Children Detention Campus and report to the Minister for Children and Youth Affairs in relation to its compliance.

HIQA is committed to giving children a voice in relation to the children's social services we inspect; we encourage children to talk to our inspectors and we afford them an opportunity to share their views. HIQA welcomes the review and reform of the Act to include guiding principles which will focus the implementation of the legislation on the best interests of the child above individual service interests. HIQA agrees with proposals for alternative dispute resolution to ensure children and parents participate in decisions regarding children's welfare.

In 2018, HIQA's report on the investigation into the management of allegations of child sexual abuse against adults of concern by Tusla recommended the development of national standards for children's services. HIQA has since commenced the development of draft national standards for all services tasked with the welfare and protection of children. These standards will ensure that the interests of the child are put first above individual service requirements, and will promote a consistent, child-centred approach to service delivery.

HIQA recognises that standards cannot, in isolation, improve the quality and safety of children's services. Through our inspection, we know that delivering consistent and integrated care and support for children at risk of harm or in the care of the State continues to be a challenge. All children have the right to be safe, to have timely access to appropriate services and support, and to maximize their wellbeing and development. HIQA supports the introduction of provisions in the Act for

information sharing and inter-agency cooperation. These provisions will strengthen the State's response to those children who are the most vulnerable in Irish society. Their needs require appropriate assessment, and the care and support they receive must be well planned, integrated, consistent and tailored to their individual needs and circumstances. To be effective, they must be supported by a legislative framework, and a national policy and local procedures which interact and complement each other to ensure safe, high-quality and consistent services.

In this response, HIQA makes observations on the Department's proposals to address the shortcomings in the Act and makes a number of suggestions where further improvements could be made.

New Part of Act: Guiding Principles

1.1 HIQA welcomes the focus on developing guiding principles which will inform each aspect of how the Act is implemented in practice. The move to guiding principles is in line with recent legislation in the UK and New Zealand, and standards such as the Scottish Health and Social Care Standards.

1.2 HIQA is currently undertaking a review of current practice in Ireland, an international review and an academic review to inform the development of a set of principles to underpin national standards for health and social care settings, including the two sets of interlinked standards focused on the care and support of children (currently in development). Findings from the evidence reviewed to date indicates there is a recognition that one set of principles can underpin all aspects of health and social care, irrespective of the service or setting, with consistency of principles found across the jurisdictions and literature reviewed.

Based on work undertaken to date, four key guiding principles have emerged:

- a rights-based approach
- safety and wellbeing
- accountability
- responsiveness.

It is generally recognised that these principles are interlinked and can overlap in places. 'Person-centred' is not viewed as a principle in itself, rather it is an approach to care, with all other principles working together to achieve person-centred care and support.

HIQA recommends that these should be adopted as the guiding principles in the Act, particularly in its implementation and in decision-making that takes place, whether within the court system or in a health or social care setting. A more detailed description of how these guiding principles can support child-centred care and support is set out in Sections 1.3-1.7.

1.3 Guiding Principle 1: A rights-based approach
While the development of guiding principles is welcome, based on the evidence gathered to inform the development of the *National Standards for Children's Social Services*, as well as evidence to support the development of principles to underpin all national standards, HIQA suggests that the two principles set out in the consultation paper, namely those of best interests of the child and parental participation, should be subsumed into the principle of a rights-based approach to care and support for children. HIQA proposes that

within the principle of a rights-based approach, it would then include the following areas:

- best interests of the child
- participation of the child, their parents and carers
- proportionality
- freedom to choose
- fairness
- dignity and respect
- empowerment
- privacy and confidentiality
- consent.

Adopting this approach is also in line with our enumerated and unenumerated rights under the Irish Constitution and our obligations under international human rights law, in particular the UNCRC, which Ireland ratified in 1992. It is these areas under the overarching principle of a rights-based approach to care and support for children that HIQA believes should be placed on a statutory footing in any reform of the Act.

An example of how the principle of a rights-based approach could work is in relation to participation. The importance of supporting children to participate in their care and support emerged strongly as a key theme in the development of the Draft National Standards for Children's Social Services and is clearly linked to Part V: Voice of the Child in the consultation document. By setting out that participation falls under the principle of a rights-based approach, supporting children to participate would become the obligation of all services involved in their care and support, not just when there are care proceedings.

1.4 <u>Guiding Principle 2: Safety and wellbeing</u>

While the fundamental purpose of the Act is the promotion of the welfare of children, HIQA believes there is an opportunity to set out that child safety and wellbeing as a guiding principle in the Act. This focus on the wellbeing of the child allows services to see the child's whole needs, rather than the needs that they may be presenting with. While a child's immediate safety is paramount, it is essential that services working with children at risk or in the care of the State, and focus on the child's overall wellbeing to support them to reach their full potential. This is all the more apparent when a child who is in need of immediate safety also has disabilities. When ensuring that the child's whole needs are looked at, a service focused on a child's wellbeing identifies what supports each child needs to enhance their wellbeing, and co-

ordinates these supports to ensure that these are put in place in a timely and proportionate way. This is also relevant in judicial decision-making and the need for the judiciary to consider the child's whole needs when making decisions that impact on the child's safety and wellbeing. It is HIQA's view that this is not happening at present and any reform of the Act needs to address these shortcomings.

1.5 Guiding Principle 3: Accountability

HIQA notes that the principle of accountability is not explicitly included in the consultation paper. Based on evidence gathered to date, HIQA would recommend the addition of this principle which would support the consistent implementation of the Act. This is a key principle that impacts on the achievement of the '*Proposed Solutions'* set out in each section of the Act, as without accountability, proposed changes to improve the likes of Voluntary Care Agreements, care for unaccompanied minors, and Emergency Care Orders are unlikely to be effective.

Accountability emerged as a key theme in the evidence review and stakeholder feedback to inform the development of the draft National Standards for Children's Social Services, and the work to date to inform underpinning principles for all national standards for health and social care services. This principle ensures that all parts of the system and the services that deliver care and support for children are accountable for their work. This ensures that children do not drift within the system or fall between services due to a lack of interagency collaboration or inconsistent staffing and resources. This accountability extends to ensuring that children's right to be safe is not diminished by pressure on resources.

An example of how the principle of accountability could work is in relation to placing corporate parenting on a statutory footing in the Act. This would place an onus on the State and its agents to uphold the rights of children, including their right to their best interests being paramount.

1.6 Guiding Principle 4: Responsiveness

It is essential that there is a responsive system in place for the care and support of children. A responsive system responds to the needs of children, recognising that all children and families are unique and that, although standardisation of certain administrative processes can be helpful, there should be scope for some degree of (limited) discretion and flexibility. By ensuring that that the system is accessible, children and families can be

engaged in flexible and creative ways to improve the long-term outcomes for the child.

1.7 Given that principles can be understood as fundamental values or goals that are needed to underpin good services, plans, practices and processes that can apply regardless of the service setting or type, there is an opportunity to develop higher-level guiding principles for the Act that are broader and can be generalised to all legislation, including ministerial guidelines focused on the care and support of children. HIQA believes that these guiding principles should not be viewed in isolation; each principle should be considered to ensure that the court system and health and social care services place children at the centre of what they do. This should be supported by a training programme for front-line staff (including the judiciary, social workers and others), which ensures that anyone tasked with making decisions in relation to children receives training on these guiding principles and what they mean in practice.

Finally, HIQA believes that these guiding principles should be used in and between each piece of legislation (including secondary legislation) to ensure that each piece of relevant legislation interacts with the other to achieve high-quality, integrated and consistent care and support for children. It would also mean that in the development of any new piece of legislation, including ministerial guidelines, they are 'proofed' for their compatibility with these guiding principles. HIQA believes that this could lead to a transformative effect on the everday lives of this vulnerable group in Irish society.

Part II - Promotion of Welfare of Children

Interagency co-ordination and collaboration

2.1 HIQA welcomes the proposals to strengthen interagency coordination and collaboration. Feedback from the extensive stakeholder engagement undertaken by HIQA to inform the development of the Draft National Standards for Children's Social Services highlighted that well-led and managed, and consistently resourced interagency collaboration is essential in:

- supporting children and families to have the best possible outcomes,
- in preventing child welfare issues becoming child protection issues, and also
- in the ongoing care and support of children within the care system.

Coordinated interagency working is therefore crucial to the provision of timely and appropriate services for vulnerable children. This position is also informed by findings from HIQA inspections in recent years.

2.2 In order for interagency coordination and collaboration to be effective, agencies and bodies must be able to communicate with each other and share information when it is in a child's best interests and when it is necessary and proportionate to do so. While HIQA welcomes the proposals in the consultation paper, we believe they could be strengthened by the following:

- By setting out clear timeframes in the Act for the assessment of children, rather than on a 'regular' basis. This can be open to interpretation and lead to inconsistent practices.

- The proposal to use an existing national structure for the oversight group is welcomed. It is important that it is adequately resourced and proper training and awareness raising takes places both within the oversight group and externally.

- HIQA observes the current landscape is underpinned by non-statutory policies, joint protocols and memoranda of understanding which are not legally binding on organisations and the level of protection can be limited in many instances. There may be many reasons for this: lack of resources, awareness and training; poor implementation of the working arrangement in place; poor case management and planning between organisations; the absence of performance metrics and outcome measures, as well as poor communication at local and national level within the organisation and

externally. These observations are also reflected in the Ombudsman for Children reports, for example, Molly One Year On (2019).

- HIQA believes it is important that the introduction of interagency coordination and collaboration is placed on a statutory footing and included in the Act rather than introduced through ministerial guidance. This would give interagency coordination the legal status it requires. It would also ensure the guiding principle of accountability, mentioned in 'New Part of Act' above, is at the heart of interagency coordination and collaboration and would provide clarity around the scope of interagency responsibilities in this context.

- Any new provision relating to interagency co-ordination and collaboration should reflect the four guiding principles proposed in the 'New Part of Act', as discussed above.

- Early intervention and preventative measures are not placed centre-stage in the current working arrangements nor is the recognition of the multi-dimensional issues that may be involved for children who have disabilities, children who may be homeless, and migrant children. This needs to be addressed comprehensively in the context of interagency co-operation.

- HIQA recognises that the responsibility for matters relating to child welfare and child protection can span across a diverse range of services and involve a number of sectors in Irish society, including health and disability, social protection, justice, immigration, housing, and educational sectors. Given the myriad of organisations involved and the complexity of the issues, there can be limited joined-up thinking or coordinated multi-agency approaches. We know, through our inspections, that children who live in residential centres for people with disabilities and who require care and protection can be engaged with multiple services and organisations. Often, where there are safeguarding concerns, these children are not provided with the same child protection arrangements that children in mainstream children's services receive. This can lead to a lack of clarity and poor accountability in relation to which agency has responsibility for ensuring the protection of those children. HIQA believes that a multi-agency, cooperative and collaborative approach is required to ensure that responses to child welfare and child protection issues are consistent and effective and that child welfare and child protection measures are preventative, child-centred, and adequately resourced with clear lines of management and oversight.

- Due to the nature and remit of particular agencies and bodies, consideration should be given to whether a 'one size fits all' approach is appropriate or whether particular obligations should arise for certain entities. For example, HIQA believes there is a particular need for strengthened interagency cooperation between Tusla and the HSE and also between An Garda Síochana and Tusla (as highlighted in the recommendations of Dr. Geoffrey Shannon set out in his 2017 Audit of Garda use of Section 12 of the Act).

  For example, one of the findings in the 'Case Review Mary' report is that there was ineffective cooperation between Tusla and the HSE and there was a lack of a shared understanding between services involved with Mary with regard to referral pathways. While the findings in the report also acknowledged that decision-making became more efficient following the formalisation of interagency co-operation by adoption of the Joint Protocol for Interagency Collaboration between HSE and Tusla, HIQA has found that its use in some geographical areas is inconsistent.

- The provisions for data sharing in the consultation paper should apply to all children receiving care and support, irrespective of whether this support is provided under Parts II, III and IV of the Act. Sharing of information is vital in this context, particularly where the child's needs may be multi-dimensional in order to ensure joined up thinking occurs. However, the introduction of any data sharing provision should also comply with data protection laws and information should only be shared when it is necessary and proportionate to do so, while always striking a balance between the rights of any persons affected and the best interests of the child.

- HIQA believes the introduction of a statutory obligation to report where an agency or body becomes aware of a missing child requires some consideration in the context of this review. Missing children constitute a particularly vulnerable group and the lack of data and early intervention by the relevant agency or body can result in a child at risk. The focus to date would appear to be reliant on An Garda Síochana for the appropriate response which may not always be sufficient or appropriate. HIQA believes this requires further attention in any reform of the Act.

Early intervention and family support

2.3 HIQA welcomes the proposal to remove Section 3(3) of the Act, but considers this alone is not sufficient or adequate to deal with the shortcomings in early intervention and family support.

2.4 HIQA believes the proposals could be strengthened by the following:

- Any new provision relating to early intervention and family support should adopt the four guiding principles mentioned in the 'New Part of Act' discussed above, in particular the guiding principle of 'safety and well-being'.

- A key theme emerging from the evidence review and extensive stakeholder engagement to inform the development of the National Standards for Children's Social Services was the importance of well-resourced and consistent community-based services that are proportionate to the needs of the families and communities and that can move in and out of their lives, as required.

  HIQA believes it is important that this is reflected and detailed in the Act rather than in ministerial guidelines to strengthen its legal status, importance and centrality in strengthening families and communities so that they can meet children's needs. Ministerial guidance may be appropriate to outline the various range of measures, which can change over time.

- Any new provision should include a positive obligation on certain agencies and bodies to take certain steps when they become aware of a child welfare or child protection matter in order to prevent escalation in the needs of vulnerable children. The scope and nature of this positive obligation requires further consideration in the context of this review. For example, early intervention should not only apply to children with higher levels of risk and this should be made clear in the Act. Also, multi-agency cooperation and collaboration is vital in this context and the sharing of information should be required in particular circumstances, for example where the child's needs may be multi-dimensional in order to ensure joined up thinking.

2.5 HIQA recognises that the law is only one instrument of change and without proper resourcing of services targeted at early intervention and family support, change will not happen. The needs of a child will escalate and when this happens, the cost to the child, their family, the State and society as a

whole are incalculable. Proper resourcing must therefore be a priority of the State when implementing any reform in this context. In this way, the guiding principles recommended in the 'New Part of Act' as mentioned above would be adhered to, in particular the principles of responsiveness and safety and well-being of the child.

Voluntary Care Agreements

2.6 HIQA welcomes many of the proposals put forward in the context of voluntary care agreements, particularly those on the collection and reporting of data around the length of time children spend in voluntary care, the introduction of time limits for voluntary care agreements and review mechanisms.

2.7 Following HIQA inspections in 2019 and again in 2020, the poor management and oversight of voluntary care agreements was identified and brought to the attention of Tusla. HIQA has concerns around the drift in care for some children, poor review of the voluntary care agreements, and a lack of permanency planning. There is limited data available which means we don't know the prevalence of voluntary care agreements, their duration, or the circumstances in which they are used or misused in practice. It is imperative that the Act includes a reporting obligation in the context of voluntary care as well as statutory care orders.

2.8 HIQA believes the proposals could be strengthened by the following:

- Any new framework or mechanism for dealing with voluntary care in the Act should adopt the four guiding principles recommended in the 'New Part of Act'.

- Inclusion in the Act of any factors that must apply when making a decision around voluntary care. This will help ensure consistency in approach and promote accountability in decision-making. These factors should be consistent with the four guiding principles recommended in the 'New Part of Act'.

- Inclusion in the Act of a provision for a Guardian ad Litem to be appointed for the child or another form of advocate.

  While Article 9(2) of the UNCRC affords the right of all 'interested parties' to be heard in proceedings, as it currently stands, there are no legislative safeguards in the system of voluntary care to ensure that the voice of the child is heard in the decision-making process. In Tusla's best practice

guidance on court proceedings, there is no requirement for the voice of the child to be considered when a child is placed in voluntary care. In the absence of formal proceedings, a child is not deemed to be an 'interested party' who is consulted in the process. Unlike in care proceedings that come before the court, there is no provision for a Guardian ad Litem to be appointed. The UNCRC Committee recommends that states ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family. It does not distinguish between different types of care.

- Inclusion in the Act of the requirement for consent of the parent(s) to be informed consent where their child is placed in voluntary care. Proper supports should be made available to the parent(s) to ensure they fully understand what voluntary care means for their child and themselves. This may be in the form of independent legal advice for the parent(s) in circumstances or other forms of advocacy support. Without informed consent, there is a risk that the agreement is invalid and unenforceable and the Act should reflect the appropriate steps the parent can take in the event that this occurs.

  The Act should also include an avenue for the parent(s) where they decide to withdraw their consent.

- Inclusion in the Act of a robust provision that facilitates and provides for family mediation with a view to reunification of the child with his/her parent(s). This is in line with the principle of a rights-based approach and what may be in the best interests of the child. It is important that mediation services in this context are well-resourced and staff are appropriately trained in order to ensure the service can be effective for families.

- HIQA does not agree with the proposal around the transfer of parental rights in the context of short-term voluntary care. This should only come into effect after 12/14 months when it is known that the child is remaining in long-term care. The scope as to what constitutes 'day to day parental rights' also needs to be carefully considered and very narrowly defined in the Act to ensure consistency in approach and to avoid situations where the child's parent(s) are not consulted around what may be significant life events.

- Inclusion in the Act of a time limitation for voluntary care agreements is welcome. However, further consideration may be required to assess whether the time limitation should be aligned with those in place for statutory reviews.

- Inclusion in the Act information on what recourse or action can be taken in the event that the mechanism for voluntary care agreements does not comply with legislative requirements or safeguards.

- Inclusion in the Act of a formal permanency planning mechanism to ensure that continual voluntary care agreements are only used if appropriate to do so.

- Review of the three-day standstill period as proposed in the consultation paper. While this may be appropriate at the end of the voluntary care agreement, it may not be appropriate in practice at the beginning of the agreement where a child may need immediate care. Further consideration is required in this context around alternatives to the three-day standstill, for example the presumption that the voluntary care agreement is valid until the expiration of three days so that an emergency care order or interim care order can be applied for.

- Inclusion in the Act of appropriate safeguards around information sharing in this context. In addition, HIQA considers the development of information sharing protocols between agencies and bodies may be beneficial given the lack of oversight mechanisms in this context.

- Inclusion in the Act or through secondary legislation, of the recognition that children in voluntary care should have the same access to services as children in statutory care. here should be no dilution of supports made available to children (and their families) in voluntary care.

Unaccompanied children seeking asylum and taken into care

2.9 HIQA welcomes the proposal to include an unaccompanied minor in the provisions dealing with interim care orders and full care orders. We also welcome the proposed definition for an unaccompanied child.

2.10 HIQA has a number of concerns with some of the proposals and believes they could be strengthened by the following:

- Any new framework or mechanism for dealing with unaccompanied children seeking asylum and taken into care should adopt the four guiding principles recommended in the 'New Part of Act'. Many features of these principles are not reflected in the proposals in the consultation paper.

- Voluntary care is not suitable in the context of an unaccompanied child; an unaccompanied child does not have a legal guardian to sign informed voluntary consent. Getting voluntary consent signed by an absent parent is fraught with challenges, including potential difficulty in verifying parentage. Any reform needs to consider alternative safeguards to protect the rights of the child in this context and how the voice of the child can be heard, for example, the appointment of a Guardian ad Litem or other form of advocate may be appropriate. Access to language or translation services is also necessary.

- Applications should not be made on an ex-parte basis. HIQA believes that it is paramount that an unaccompanied child is a party to proceedings and where possible should be legally represented, as well as assisted by a Guardian ad Litem or other form of advocate to ensure their rights are upheld. Similarly, access to language or translation services is also necessary.

- The vulnerabilities of an unaccompanied child are significant and there can be a myriad of challenges which give rise to a high-risk situation for the child, not least the child's health status (physical, emotional and psychological), language difficulties, and other issues. Many children may have experienced trauma and fear those in authority. It is essential that interagency cooperation and collaboration takes place between relevant agencies and bodies in this context, not least between An Garda Síochana and Tusla, but also advocacy support services.

- HIQA believes any national guidance in relation to the application for residency status for unaccompanied children seeking asylum and taken into care is introduced (following consultation) through ministerial guidelines rather than by Tusla. Tusla will then act as the primary entity responsible for implementation of those guidelines and should do so in line with those guidelines as well as the four guiding principles mentioned above in the New Part of Act.

- HIQA believes proper planning and coordination around the status of an unaccompanied child is vital. This would help ensure the needs of the

child are met and should be considered in the context of this review of the Act. The UN Guidelines for the Alternative Care of Children encourages states to appoint a guardian or representative of the organisation responsible for the child's care 'to accompany the child throughout the status determination and decision-making process'. While Section 15(5) of the International Protection Act, 2015 provides that the Tusla shall appoint an employee (or other person) to make an application for international protection on behalf of the child, applications for international protection may often only submitted as the minor approaches 18 when they will age-out of voluntary care. In the absence of an immigration status, unaccompanied minors who age out of the voluntary care system at 18 are placed in direct provision centres, which can limit what can be provided with in terms of support with accommodation, education and employment.

Accommodation for homeless children

2.11 HIQA has concerns that the proposals put forward in the consultation paper do not comprehensively address a number of issues relating to children who are without a home, many of whom are the most vulnerable children in the State.

2.12 HIQA believes that protection for children must extend beyond the court system to other decision-making areas. The processes and procedures in place must ensure the four guiding principles discussed above in the 'New Part of Act' are adopted when decisions are being made by local authorities relating to the provision of emergency accommodation or housing for families that are homeless. HIQA also believes that the shortage of emergency accommodation for children and their families means that those children who may want to remain with their family are forced into statutory care which may not be in their best interests. A holistic State response is therefore required to address the needs of each child in this vulnerable group.

2.13 HIQA recommends that the following is considered in any reform of this part of the Act:

- The four guiding principles recommended above in the 'New Part of Act' should be considered when making any changes to this part of the Act.

- The introduction of a statutory obligation to take preventative measures and early intervention should aim to adequately and comprehensively deal with the needs of children who are without a home.

- Children who are without a home and deemed to be 'homeless' have none of the safeguards that children 'in care' have and this should be addressed in the Act in a comprehensive way.

- National guidance in relation to the use of Section 5 in the Act should be introduced by way of ministerial guidelines or an independent party. The guidance should identify that repeat occurrences require a robust child protection response.

- Accommodation for a child without a home should be for a minimum period only, defined in the Act, after which the child should be afforded the same care and protection as other children who require care.

- HIQA queries why a homeless child would not be afforded the statutory protection of a care order or to provide adequate supports to be cared for and prepared for adulthood in the same way as the previous section is recommending this for an unaccompanied child. It is HIQA's view that all children should be afforded the same statutory protection.

- While mediation may not be always appropriate, HIQA believes there should be expansion of the mediation services in place for homeless children and their families and mediation as an early intervention tool should be identified in the Act as an option for parties in this context. Other jurisdictions provide mediation supports in schools and community groups, meaning that families have access to the services before problems escalate. HIQA believes there may be lessons to be learned from adopting this approach.

Part III - Protection of Children in Emergencies

Emergency Care Orders

3.1 HIQA recognises the challenges that arise within the statutory time limits of the Act to make an application for an emergency care order following the invocation of Section 12 by An Garda Síochana. While HIQA welcomes the proposals in the consultation paper to extend the period of time before which an application for an emergency care order shall be made, HIQA believes that this proposal will not effectively deal with emergencies which may occur on the Friday evening of a bank holiday weekend. In practice, this can mean that a special sitting of the court may need to be convened on a bank holiday weekend when there may be barriers for parents to access the necessary support services to support their attendance in court. This may include, for example, access to legal representation, public transport or advocacy services, etc. To address this shortcoming, HIQA believes that the proposal to allow Tusla to retain care of the child should instead be for a period of four days.

3.2 HIQA recognises that, in practice, it may not always be possible for Tusla to conduct an assessment of the child's health and welfare within the current statutory time frame provided for an emergency care order in the Act. HIQA supports the proposal that the Act should be amended to extend the period of time for which a judge can make an emergency care order from eight to 14 days. HIQA believes, however, that judicial discretion to make an emergency care order for a shorter duration than 14 days should be retained where it is appropriate to do so.

3.3 Current provisions in the Act provide that when an emergency care order is granted, a judge may, for the purpose of executing that order, issue a warrant to a member of An Garda Síochana to enter any house or place specified on the warrant where the child is or where there are reasonable grounds for believing they are. This means that an address is required to be placed on the warrant, and if the child is not located at the specific address, a further application for a warrant for an alternative address may be required. HIQA accepts that that this can delay delivery of the child into the care of Tusla and can place children at further avoidable risk. While HIQA supports the proposal that a child may be removed from 'any place where they are reasonably believed to be located', HIQA believes that further consideration is required to ensure such any applications are proportionate, are made in exceptional circumstances only and are accompanied by adequate and appropriate safeguards .

3.4 HIQA recommends that the following should also be considered in any reform of this part of the Act:

- The four guiding principles recommended above in the 'New Part of Act' should be considered when introducing any new provisions in this part of the Act.

- While mediation may not be possible in the context of emergency care planning, a provision in the Act which requires consideration and provision for family mediation should be considered.

- Introduction of provision to allow Tusla to consider a voluntary care agreement under Part II of the Act on expiry of an emergency care order. Currently, the Act provides that where a child is delivered into the care of Tusla by An Garda Síochana, Tusla must either return the child to his/her parent(s) or care giver or make an application for an emergency care order. There is no option for a child to be received into voluntary care under Part II of the Act. This may be an appropriate option in certain circumstances. It is recommended that the Department consider amending the legislation to include this option in any reform of the Act.

- The circumstances which give rise to serious and immediate risk to a child can be traumatic, as is the urgent separation of a child from their parent(s) or care giver. While the Act provides that certain judicial directions may be made under this Part with respect to the identification of the location of a child; access arrangements; and medical or psychiatric examination, treatment or assessment of the child, HIQA believes that there should be a positive obligation to make enquiries into the child's health and welfare at this stage. There should also be provision for judicial discretion to make any other directions as are appropriate (and in line with the four guiding principles recommended in the New Part of Act above). This would ensure child safety and wellbeing is at the core of child protection proceedings and is a fundamental feature in emergency care planning for children.

- HIQA welcomes the proposal to require Tusla to publish annual data on the numbers of children in interim care, the duration of the numbers that have moved out of interim care and where they have gone. However, no similar proposal is recommended in relation to emergency

care orders — HIQA believes that similar reporting requirements should also apply here. HIQA also considers that the following factors merit review by the Department should it determine that reporting requirements shall apply to any revisions of Sections 13 of the Act:

- the number of children subject to an emergency care order
- whether the emergency care order was granted following execution of Section 12 of the Act
- the duration of the emergency care order made
- the number of cases where directions were made under Section 13 (7)
- the outcome for the child, following the emergency care order.

Part IV - Care Proceedings

Interim Care Orders

4.1 HIQA supports the Department's proposal to extend subsequent interim care orders for a maximum period of three months. In practice, HIQA recognises that it may not be possible to finalise all of the assessments required in relation to a child before an interim care order of 29 days expires. HIQA is aware of the frequency with which interim care orders are often extended pending the hearing of a care order application and notes that such proceedings are often adversarial in nature and can create anxiety for the parent or care giver and the child. Continuous extensions to interim care orders can have a negative impact on children. HIQA agrees that the existing provisions which allow the parties to agree to an interim care order of a longer duration should remain pending the determination of a care order application.

4.2 HIQA accepts that the requirement by Tusla to demonstrate that an application for a care order has been or is about to be made may be premature and can lead to inefficient case management and use of resources. While HIQA agrees with the proposal in this regard, we believe that it should only apply for the first and subsequent interim care order application. Thereafter, any application to extend an interim care order should be dependent on proof that a care order is being seriously contemplated. This will help ensure that children do not 'drift' in the context of care planning and encourage permanency planning for children in interim care.

4.3 The Act does not impose a maximum number of extensions for which an interim care order can be granted. The Department refers to what it calls the guiding principle that 'decisions should be taken as quickly as circumstances will allow'. While this is not a guiding principle per se, it does indicate that such decisions should be made in line with the guiding principle of accountability and there should be effective outcome planning for the child. Furthermore, the effect of any action to achieve these outcomes should be reviewed in a timely way so that the child's short, medium and long-term needs are met. HIQA believes that the proposal put forward in the consultation paper would allow too much discretion in this regard and leave it open to misuse.

HIQA recommends that the Department should consider limiting the number of extensions that can be made to an interim care order. This will encourage active progression of a long-term assessment and care planning for a child, ensure that a child is not maintained on an interim care order for longer than

is necessary and that parental rights are transferred within an appropriate time frame under a care order. Such measures will also ensure that the guiding principle of a rights-based approach is adopted when making such decisions.

4.4 HIQA notes the challenges identified by the Department in relation to the perception that interim care orders should not be granted before a voluntary care agreement or supervision order has been explored. The 31st amendment to the Irish Constitution states that where parents fail in their duty towards their child, "the State, as guardian of the common good, shall, by proportionate means as provided by law, endeavor to supply the place of the parents". Any intervention by the State into family life must be proportionate and it is essential that adequate supports are provided to families to support them to stay together. HIQA believes that it may not be necessary to amend Part IV of the Act as suggested and recommends that the principle of proportionality must instead be applied when adopting the guiding principle of a rights-based approach under the Act.

4.5 HIQA acknowledges there may be challenges with regard to the failure of Section 17 to transfer parental rights to Tusla when a child is received into care, however, HIQA does not agree with the proposal in the consultation paper. In the absence of a full assessment in relation to the child's health, development and welfare and in circumstances where a lower threshold for the making of an interim care order is applied, a transfer of parental rights to Tusla at such an early stage in the care planning process is premature, is not appropriate and is unlikely to be in a child's best interests.

HIQA considers that directions under Section 47 of the Act, which has been interpreted as an all-embracing and wide-ranging provision on the welfare needs of children in care, provides a suitable alternative to that proposed in the consultation paper. This merits further consideration by the Department.

4.6 HIQA supports the proposal to require Tusla to publish annual data on the numbers of children in interim care — the duration of the interim care order, the numbers that have moved from interim care and where they have gone (for example the outcomes for the child). This is consistent with HIQA's recommendation in the 'New Part of Act', that accountability should be included as a guiding principle in the Act.

4.7. HIQA recommends that the following should also be considered in any reform of this part of the Act:

- The four guiding principles recommended above in the 'New Part of Act' should be considered when introducing any new provisions in this part of the Act.
- Inclusion in the Act of a robust provision that facilitates and provides for family mediation with a view to reunification of the child with his her parent(s).
- HIQA considers that supervision orders can be a valuable and proportionate enforcement tool that can support a child to be maintained within their family unit while also offering protection and promoting a child's health and welfare. HIQA recommends the introduction of a similar provision to that included in Section 18(5) of the Act. This would allow the court to make a supervision order where it determines that an interim care order is neither necessary or appropriate. This would provide the court with a fall-back position when it deems an interim care order is disproportionate but where a child may require the protection of a supervision order.

Care Orders

4.8 The Act does not expressly provide that Tusla may apply for a care order of shorter duration than 18 years in relation to a child; however, there is judicial discretion to make a shorter order. In practice, however, HIQA recognises that different approaches have developed nationwide in relation to the use of Section 18, with shorter orders being sought and granted in certain instances where reunification remains under consideration. HIQA considers that the introduction of the Family Court, with specialised training on childcare proceedings for judges and its own district court rules, will assist with these differing approaches. In addition, the inclusion of proportionality as a guiding principle in adopting a rights-based approach in the Act (as discussed above in the New Part of Act) will mean that this is central to judicial decision-making under the Act and in particular in relation to the duration of a Section 18 care order.

While HIQA supports the proposal in the consultation paper that Tusla may apply for an order of shorter duration, HIQA has concerns that it may lead to a lack of permancy planning for children with successive care orders being made. HIQA believes that a shorter care order should be accompanied by a

requirement to provide a written document/care plan which sets outs the reunification plan, the supports that will be provided for the parent(s) and child and the progress that is proposed to be made to achieve reunification. Consideration should also be given to a re-entry before the court in circumstances where there is non-compliance with the reunification plan.

4.9 HIQA strongly supports the proposal that written reasons should be given where an order shorter than that applied for is granted by a judge. This will support and enhance transparency and accountability in relation to care orders. HIQA considers, however, that for this provision to be meaningful, the judiciary and indeed the court services must be adequately resourced to write up and publish these decisions on the court services website in a timely manner.

4.10 HIQA notes the challenge raised by the Department that certain actions, for example repeat non-attendance of a party to the proceedings, can obstruct the holding of a care order hearing. The proposed solution is to allow hearings to be held on an ex-parte basis 'at the court's discretion'. Further clarity is required on the nature of this proposal. HIQA recommends that the following observations be taken into account in the context of this review:

- Parents should be put on notice of any application made under Section 18 of the Act unless a judge is satisfied that this would place a child at risk and the circumstances of the evidence support it.

- While a parent or care giver might be put on notice of an application for a care order, the application may be adjourned from time to time until the hearing of the application. In practice, this may make it difficult for a parent or care giver to ensure that they are aware of the correct date of the hearing, especially where there are multiple court dates. If the proposal is that the hearing can go ahead in the absence of the parent(s), then HIQA believes that this is a matter which should be reserved for judicial discretion, taking into account evidence of notice of the application, communication to the parent(s) of the reserved hearing date, any reasons given for failure to attend and the circumstances of the case.

4.11 The Department proposes that a foster carer shall be able to apply for extended rights after six months of the making of a care order. Existing provisions require that this application can only be made where the foster carer has taken care of the child for five years. Further clarity is required as to whether this application may be made where a care order of shorter duration than an order to 18 years is in place. HIQA believes that a foster carer should only be entitled to apply for extended rights if the child in their care is subject to a care order until they reach 18 years and in circumstances where the

foster carer has been caring for the child for at least two years from the date on which the care placement commenced.

4.12 HIQA notes the challenges identified by the Department in relation to the perception that care orders should not be granted before a voluntary care agreement, supervision order or interim care order has been explored. HIQA believes that any intervention by the State into family life must be proportionate and it is essential that adequate supports are provided to families to support them to stay together. HIQA believes that it may not be necessary to amend Part IV of the Act as suggested and recommends that instead the principle of proportionality must be applied when adopting the guiding principle of a rights-based approach under the Act. Appropriate training for the judiciary on the guiding principles in the Act will ensure consistency of approach when making decisions in relation to children's welfare.

4.13 HIQA recommends that the following should also be considered in any reform of this part of the Act:

- The four guiding principles recommended above in the 'New Part of Act' should be considered when introducing any new provisions in this part of the Act.
- Inclusion in the Act of a robust provision that facilitates and provides for family mediation with a view to the reunification of the child with his/her parent(s).
- HIQA's recommendations in Part II relating to interagency cooperation and data sharing in the Act should also be considered in this context.

Supervision Orders

4.14 HIQA believes that supervision orders represent a valuable child protection tool, which, if used effectively, may avoid the requirement for children to be received into State care. HIQA agrees with all of the challenges identified by the Department in respect of their use.

It is well established since the High Court judgment in FH v. Staunton[1] that Section 19 does not authorise the courts to make positive directions against parents under a supervision order. Mr Justice Hogan held that Section 19 (1)

[1] [2013] IEHC 533

of the Act 'does not envisage that parents can be the subject of positive obligations of the kind' and that 'this is perhaps especially true in respect of any requirement that one of the parents receive a particular form of therapy such as psychotherapy'.

HIQA recognises the current limitations of Section 19 in this regard and agrees with the proposals to amend Section 19. HIQA believes that these recommendations will enhance the use of supervision orders for the benefit of children. The purpose of a supervision order also requires further clarity and HIQA agrees with the proposal to include Tusla's authority to inspect the family home, speak to the child privately, visit the child outside of the family home and to consult with other family members.

4.15 HIQA agrees with the proposal that supervision orders are accompanied by a written document that provides details of the purpose of the order and the plans and supports that will be provided to reach each specified goal. HIQA also believes that it might be useful to consider including in this written document the specific positive actions that must be undertaken by parents/care givers in order to avoid any confusion that may arise between what is required in the supervision order and this written document.

4.16 HIQA is aware of the challenges facing Tusla in relation to the recruitment and retention of social workers. These challenges were highlighted by HIQA in its 'Report of the investigation into the management of allegations of child sexual abuse against adults of concern by the Child and Family Agency (Tusla)'.[2] HIQA considers that in order for supervision orders to be truly effective, such orders must be appropriately monitored, supported and kept under regular review by Tusla. Any child who is the subject of a supervision order should have access to an allocated social worker who is available to support the family under the terms of the supervision order. These families should also have adequate and timely access to family support services.

4.17 HIQA supports the proposal that a supervision order may be extended for a period of three months if it is in the child's best interests but queries whether this is too short in duration and whether a period of up to 12 months may be more appropriate, depending on the circumstances. HIQA also queries the proposed threshold for this extension, and why an independent assessment, rather than an assessment by the allocated social worker is required.

[2] https://www.hiqa.ie/reports-and-publications/key-reports-and-investigations/report-investigation-management-allegations

4.18 The Act provides that failure to comply with a supervision order shall be a criminal offence. This section also criminalises obstruction or prevention of a social worker's statutory authority under a supervision order to visit a child. While this provision provides a useful deterrent, HIQA recognises that more often than not, its use may not be appropriate. HIQA welcomes the Department's proposal to allow for re-entry of a supervision order before the court where there is non-compliance. We believe that further consideration is required in relation to the purpose of the re-entry and powers of the court in this instance. The proposals place responsibilities on both Tusla and the parent(s)/care giver to take certain positive actions under a supervision order. The provision of re-entry should be available to both parties and indeed a child who is joined to the proceedings under Section 25 or a Guardian ad Litem appointed under Section 26 where there is a failure to comply with any of the commitments under which the supervision order has been made.

4.19 Similar to recommendations made in other parts of this response, HIQA suggests that the following should also be considered in any reform of this part of the Act:

- The four guiding principles recommended above in the 'New Part in the Act' should be considered when introducing any new provisions.

- Inclusion in the Act of a robust provision that facilitates and provides for family mediation with a view to reunification of the child with his or her parent(s).

- HIQA's recommendations in Part II in relation to provisions for interagency cooperation and data sharing should be considered in any review of Section 19 of the Act.

Part IVB - Private Foster Care

Private Foster Care

HIQA acknowledges that where child protection and welfare concerns exist, Tusla must take positive steps under the Act to promote and protect the welfare of children.

HIQA recognises that this part of the Act has been rarely used in practice and agrees with the proposal to remove Part IVB.

Part V - Jurisdiction and Procedure

Jurisdiction — operation of the courts and hearing of proceedings

5.1 HIQA agrees with the views expressed by the Department that the establishment of a dedicated Family Court Division will help to address the current difficulties regarding the hearing of childcare proceedings in the District Court. We also support the proposal that there should be concurrent jurisdiction between the district court and the circuit court so that complex cases can be transferred to the latter. HIQA welcomes the publication of the Report on the Reform of the Family Law System by the Joint Committee on Justice and Equality in October 2019[3] (the Report on Reform of the Family Law System) and the Government's commitment in the Programme for Government to establish a specialist family court structure. HIQA looks forward to the publication of the general scheme to establish a Family Court Division.

5.2 HIQA agrees with the proposal to amend the Act to allow the District Court to determine cases where a child is no longer residing in its district court area. Such amendment of existing provisions in the Act will provide clarity in relation to the jurisdiction of the court where, for instance, a child has been taken into care in one district court area and moves to a foster care placement in another district court area. In the event of a dispute between the parties as to which district court area should determine the case, HIQA recommends that the best interests principles should be applied in addition to the other guiding principles recommended above in the 'New Part of Act'.

5.3 While proceedings under the Act can be described as inquisitorial in nature, it is widely accepted that such proceedings can often take on an adversarial nature and can result in further conflict between the parties and increased delays in having the case determined. Contentious litigation can create stress and conflict and have a negative impact on children. It can also make it difficult for both the social worker and the care giver to work together in the aftermath of the proceedings. For these reasons, HIQA agrees with proposals to enhance the inquisitorial nature of childcare hearings and supports the inclusion of proposals for alternative dispute resolution (ADR) in the Act with a view to resolving issues on what the Department describe as 'ancillary matters'. HIQA recommends that mechanisms for increasing mediation and conciliation should consider facilitation of round-table discussions on care

[3] https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf

planning for children, similar to that employed under the Children Act 2001. As part of its review on how ADR can support childcare proceedings, HIQA believes that the Department should consider the commentary and recommendations in the Report on Reform of the Family Law System with regard to awareness/information raising on how mediation can support families, the accessibility and resourcing of mediation services and the implementation of appropriate standards/codes of conduct for professional mediators.

5.4 HIQA acknowledges the challenges that arise in the context of case management. However, a statutory requirement to hold pre-court meetings to identify issues of dispute may not be appropriate in all circumstances and could add a further layer to proceedings. HIQA considers that instead of introducing a statutory requirement to hold pre-court hearings, detailed case management protocols/guidelines should ensure that pre-court hearings are efficient, effective and don't give rise to further stress and tension to a sensitive situation.

5.5 In the context of remote or virtual hearings since the COVID-19 pandemic, HIQA believes that reform of the Act needs to address any additional safeguards that might be required in this context to ensure that the rights of the child are fully protected and the four guiding principles recommended above in the 'New Part of Act' are adhered to throughout the remote or virtual hearing.

5.6 Section 27 of the Act gives the court discretion to direct an expert report on foot of its own enquiries or following an application from any party to the proceedings. HIQA supports the recommendation of the Department to amend Section 27 to align it with the Guardianship of Infants Act 1964[4] (as amended) to ensure that similar factors are considered by a judge when directing a Section 27 report. HIQA recognises that the specialist expertise required in childcare proceedings may differ depending on the circumstances of the case and it may be helpful for the Department to consider, as part of this amendment, the type of expertise required and the required qualifications of the expert, as well as a requirement to provide clear terms of reference for preparation of these reports in advance. HIQA notes the limitations on fees payable to experts in private family law proceedings[5] and believe that for the voice of the child to be represented meaningfully through the mechanism of

[4] S32(3) of the Guardianship of Infants Act 1964 as inserted by S63 of the Children and Family Relationship Act 2015 http://revisedacts.lawreform.ie/eli/1964/act/7/revised/en/html
[5] Guardianship of Infants Act 1964 (Childs Views Expert) Regulations 2018 http://www.irishstatutebook.ie/eli/2018/si/587/made/en/pdf

an expert, the fees payable for such reports must be realistic and, where necessary, adequately resourced. HIQA agrees with the recommendation of the Report on Reform of the Family Law System that the State should establish a panel of experts who are available to the courts to produce a report within a reasonable time frame.

5.7 HIQA acknowledges that the in camera rule may have a negative impact on the ability to disseminate information and provide learning in relation to childcare proceedings. HIQA agrees with the proposals of the Department to amend these provisions to facilitate research and consultation with children. In this instance the relaxation of this rule in will lead to increased understanding and learning on how childcare proceedings operate and will contribute to any improvements that can be made for the future.

Voice of the Child

5.8 The importance of supporting children to participate in their care and support emerged strongly as a key theme in the National Standards for Children's Social Services. By setting out that participation falls under the principle of a rights-based approach, supporting children to participate in decisions about their care and welfare becomes a fundamental part of how services work with children. HIQA believes that this principle, in addition to the guiding principles proposed by HIQA under New Part of Act, is central to the proposed amendments of the Act as a whole, with particular relevance to Part V.

5.9 The current provisions of Section 24 of the Act require the courts to consider the voice of the child in proceedings under the Act – those being proceedings under Part III and IV in the District Court or special care proceedings before the High Court. HIQA notes the observations of the Department that the views of children should always be ascertained in respect of decisions that concern them. HIQA would strongly support the inclusion in this Part of a statutory duty to consider the child's views in relation to childcare proceedings. However, HIQA believes that for children to be supported in relation to all decisions that affect their care, such a provision should equally apply to decisions taken under Part II of the Act in relation to children out of home, unaccompanied children and children who are the subject of a voluntary care agreements.

5.10 HIQA agrees with the proposal that children should be made aware of the options available to have their voice heard and consider that these options should be communicated by a social worker or trained professional in

language that is child friendly and easy to understand, taking into consideration the age and maturity of the child.

5.11 Section 25 of the Act provides that when deciding to join a child as a party to the proceedings, a judge must consider the age, understanding and wishes of the child and the circumstances of the case. While it's under usage has been reported[6], HIQA believes that Section 25 can offer a valuable tool to the courts in ascertaining the views of the child, especially in cases where the age and maturity of the child are appropriate for its use. The threshold for making an order under this section is that it is necessary in the interests of justice.

HIQA strongly supports the Department's proposal to lower this threshold and in furtherance of ensuring case management is child focused, HIQA recommends that this threshold is replaced by the 'best interests' principle. HIQA notes the observations of Maria Corbett and Dr. Carol Coulter in their report on Child Care Proceedings: A Thematic Review of Irish and International Practice submitted to the Department in June 2019, in relation to Section 25 of the Act. HIQA agrees with the recommendation in the report that a qualitative research study should be commissioned to elicit the views of legal professionals and social workers on why Section 25 is underused and what is needed to increase its use and that education, training, protocols and awareness raising may also be helpful to increase its use.

5.12 HIQA strongly supports the removal of the prohibition on child parties having a Guardian ad Litem as provided in Section 26(1) of the Act.

5.13 The current legislative framework allows for children's views to be heard in a number of ways. HIQA is also aware of a practice which has developed whereby a judge may take a proactive approach and meet with a child directly to canvas their views about decisions which affect them. While HIQA recognises this can be empowering for children and may be appropriate in certain instances, the approach can be inconsistent and it may not always be clear what factors are taken into account in arriving at this decision. HIQA recommends that there should be further exploration by the Department of this practice to assess whether it should be reflected as a discretionary option for the judiciary in the Act. HIQA believes that national guidance should be developed on the range of options available to canvass a child's views, which should address the factors that should be considered in identifying which option suits a child best. HIQA believes that this guidance should be developed to assist the judiciary, together with services and professionals

[6] Childcare Proceedings: A Thematic Review of Irish and International Practice submitted to the Department in June 2019, Maria Corbett and Dr. Carol Coulter

working with children in making decisions about how best to support children to have their voice heard.

5.14 HIQA notes the challenges identified by the Department in relation to the admissibility of evidence of children in childcare proceedings. HIQA strongly supports the introduction of a presumption in favour of admissibility and agrees that there should be judicial discretion on the weight of be attached to such evidence.

Part VI - Children in Care of Child and Family Agency

Corporate Parenting

6.1 HIQA is strongly of the view that the introduction of corporate parenting as a concept (which should give rise to certain responsibilities) should not be delayed in order to allow a cultural shift to occur organically and believes that it should be placed on a statutory footing in the Act, rather than in Better Outcomes, Brighter Futures. Having this concept enshrined in legislation will place a legal obligation on Tusla to adopt the four guiding principles in its policies and procedures and in its delivery of service, in the same way as a parent would. It is also in line with the special protection afforded to the place of the child in Irish society and the rights of the child both under the Irish Constitution and European and international human rights law.

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