

THE RETENTION OF RECORDS BILL

Historian of Child Welfare and Institutional Histories, Dr Sarah-Anne Buckley (National University of Ireland Galway)

Dear Committee Members,

I would firstly like to thank you for your decision to consult further on the Retention of Record Bill (2019) and for providing me with the opportunity to make a submission regarding same.

I am a Lecturer in History at the National University of Ireland Galway, the President of the Women's History Association of Ireland (WHAI) and the Chair of the Irish History Student's Association (IHSA). I am currently also the co-PI of the *Tuam 'Home' Oral History Project*, which is currently collecting and archiving life stories from survivors of the Tuam Children's 'Home'.

As an academic, I have been writing and researching the history of child welfare and institutionalisation in Ireland for over 15 years and am a recognised international authority on the subject. In this brief submission, I will speak to the draft bill as a historian with an understanding of international best practice regarding archival preservation, the role of historians in State commissions and investigations and the opportunities we have to instil the principles of transitional justice, historical justice and historical accountability in regard to the history of residential care in Ireland. I will also speak as a teacher and supervisor, who has struggled with gaining access to bodies of records for my entire career, particularly those from religious orders and at times, due to lack of resources, those in State hands. As a result, I can see the detrimental effect this has on the historical record and on the trust which survivors, academics and the public place in the Irish State and State bodies. I am therefore arguing strongly not for this bill, but for a stronger National Archives, one that is fully resourced and has the independence and support needed for such a pivotal State institution. We are not alone in dealing with these types of histories, we should view it as an opportunity as opposed to a contentious process. Sealing records and denying survivors access to personal records is not an approach that has proven successful elsewhere, we must learn from international best practice and to trust the expertise of academics in Ireland.

My submission will address the following heads of the draft bill throughout:

1. Disposal of certain records
2. Transfer of records
3. The 1986 National Archives Act

I will argue the following:

- 1) That there are appropriate and ethical ways to preserve and give access to different 'types' of records (administrative records, survivor testimonies, 'private' records from religious/other bodies and State/semi-State bodies)

- 2) Survivors should be granted immediate access to their personal information if they so wish. They should be assisted, not resisted in this regard. The remaining records should be subjected to the rules in the National Archives legislation.
- 3) The 1986 National Archives Act is suitable and appropriate as a legislative basis to deal with the records of Ireland's institutional past. Resources are an issue for the National Archives presently, and this needs to be addressed at a governmental level.
- 4) Processes of anonymisation, redaction and ethically informed archival practices are sufficient to address concerns regarding uncontested allegations contained in records.
- 5) We need to look at international best practice regarding archival access, being guided also by the principles of transitional justice and historical justice.
- 6) I fully support the National Archives Child Care-Related Records Advisory Board and would advocate for the involvement of national and international historical expertise as part of this.

Points 1 and 2: Preservation of records and access to survivor records

In April 2019, Joe McHugh stated the following in regard to the Retention of Records Bill: “On the one hand, it requires weighing in the balance the original assurances of confidentiality, the associated provision for the destruction of the records and the sensitive and personal nature of the records. On the other hand, due consideration must be given to the wider public interest in ensuring that the history of child abuse in the residential institutions is preserved.” While this is a balanced view of one aspect of the records, it neglects the fact that these records are a window into many histories, not all contested. For the religious orders, they could shine a light into the specifics in which they were operating many of the institutions. For Irish society, as with, for example, the records of the Bureau of Military History, these personal recollections become an illuminating source for other histories – the history of poverty, of gender, of social work. The history of food, recreation, work, the history of religious life. We have had contentious bodies of records before and contentious histories and we have had fruitful and invigorating debates that have enriched the public's understanding. As a society, and as a historical community, we can address these types of histories, but we need a full range of records – including those of the religious orders and of course of the State.

I fully support the establishment of a *National Archives Child Care-Related Records Advisory Board*. The process of historical accountability must have the active involvement of survivors. However, I also believe that an independent expert group should be formed to advise the Government and the Director of the National Archives on the treatment of these records from an academic and archival point of view in conjunction with the NAAC. This should comprise academics from a range of disciplines with specific expertise in the history of institutions and child welfare, as well as involvement from international experts (for example academics in Switzerland and Canada). The records related to other historical abuse inquiries such as clerical abuse inquiries, the Inter-Departmental Committee to establish the facts of State involvement with the Magdalene Laundries (McAleese Committee) and the ongoing Mother and Baby Homes Commission of Inquiry will present similar concerns to those being addressed in this bill. A more comprehensive approach that has active engagement from survivors, international

academics and experts in Ireland needs to be put in place and could lead to exciting and important developments in our history.

Points 3 and 4: Why the National Archives Act 1986 can be amended and is appropriate

It is my submission that the National Archives Act remains the appropriate system for retaining the records of relevant institutions. It provides an openness and transparency that is critical. Under the current draft bill, questions remain surrounding what is contained in the various archives. For example, in reference to administrative records, what original documents will be kept? Will they be released after 20/30 years? How can we be assured of transfers to the National Archives? What is meant by disposal? These questions and the ‘sealing’ of records will only result in a mistrust of the processes surrounding the historical record. It will also shutdown the investigation of these histories at a time when Irish society is coming to terms with this past.

The question for me is how we can further support the National Archives of Ireland and create an open and honest repository that protects the rights of all involved. Should there be perhaps a dedicated repository for records relating to the residential school system and access for survivors to their personal records? As previously suggested, an expert group on research ethics and archival practice to look at redaction, sensitive records, best practice internationally? The existing legislation allows the above and will ensure the trust and openness necessary to deal with these histories.

Points 5 and 6: International best practice and expertise

In England and Wales, the Independent Inquiry into Child Abuse offers survivors the opportunity to access their file and to exercise ordinary and full data rights under the UK Data Protection Act. The detailed redaction protocol adopted by this Inquiry demonstrates that a much more nuanced position can be adopted, governed by sub-statutory regulation.¹

In Australia, while records of private sessions of the Royal Commission into Responses to Institutional Child Abuse recommended: “Individuals’ existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.”² While the Commission’s own files will not be opened for 99 years to general public access, it has actively published transcripts, testimony and evidence and enabled survivors to access transcripts and audio recordings of their own testimony.

In Canada, the records of the Truth and Reconciliation Commission, which concern the abuse of indigenous children at residential schools will be preserved at the National Center for Truth and Reconciliation. An individual has the right, on request and without charge, to examine and receive a copy of a Centre record or information contained in a record if he or she provided the record or information to the Truth Commission. Family members are entitled to access the

¹ <https://www.iicsa.org.uk/key-documents/322/view/2018-07-25-inquiry-protocol-redaction-documents-version-3.pdf>

² Royal Commission Final Report – Volume 8 Recordkeeping and Information Sharing, pp. 108-9

same information if the individual consents or the individual is deceased and the director believes that disclosing the record or information to the family member would not unreasonably invade the privacy of the deceased individual or another individual referred to in the record.

Conclusion

As a historian working in this area, I believe that this bill will result in shutting down areas of the historical record that are not contentious, but which will greatly challenge the history of twentieth-century Ireland in unprecedented ways. I urge you to consider all the above as a committee and to consider how important these records are to the future historians of twentieth-century Ireland, to the current survivors and to their families.