

ICCL submission on the General Scheme of a Mother and Baby Institutions Payment Scheme Bill

13 May 2022

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Introduction¹

1. The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to provide input into the General Scheme of a Mother and Baby Institutions Payment Scheme (“the Scheme”).² However, ICCL regrets the fact that this call for submissions was not communicated directly to survivors or relevant civil society organisations as this limited the opportunity for public participation in the process.
2. ICCL reiterates the substance of our submission dated 31st of March 2021 “ICCL’s Submission on a Restorative Recognition Scheme for the Former Residents of the Mother and Baby Homes and County Homes”.³ This submission outlines the standards that must be met to comply with the right to remedy under Irish, European and international law and identifies where the current Scheme falls short of meeting these standards. The Heads with serious human rights concerns are then laid out followed by a summary of recommendations. It compares the proposals in the Scheme to similar redress schemes offered by the State and identifies significant and unexplained discrepancies. Our main concerns are: the Scheme is based on a flawed report, identified as such by the High Court; the eligibility criteria is overly narrow, the rates of pay are inadequate; and the legal waiver is unjust and inappropriate.
3. ICCL considers that the planned compensation is inadequate in terms of the proposed financial sums and that the State must go further to ensure that appropriate and adequate forms of restitution,⁴ rehabilitation,⁵ satisfaction⁶ and guarantees of non-repetition⁷ are in place for all survivors.

¹ This submission was written by Seán Beatty BL, Sarah O’Malley BL and Cheryl Mellett.

² Department of Children, Equality, Disability, Integration and Youth, [Mother and Baby Homes Institutions Payment Scheme: Government Proposals](#), accessed 26 March 2022.

³ ICCL, “[ICCL’s Submission on a Restorative Recognition Scheme for the Former Residents of the Mother and Baby Homes and County Homes](#)”, 31 March 2021.

⁴ As per the definition adopted by the UN General Assembly, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), 16 December 2005, para. 19.

⁵ Ibid, para. 21.

⁶ Ibid, para. 22.

⁷ Ibid, para. 23, in particular subsections b, c, e, f, g and h. These are particularly important in terms of education and codes of ethics for members of religious institutions.

The right to an effective remedy

4. The right to an effective remedy is protected under the Irish constitution and via Ireland's European and international legal obligations.
5. Notwithstanding the absence of an express or freestanding right to an effective remedy in the Irish Constitution, it is unquestionable that the right exists in practice: it comes from the operation of various interlocking constitutional provisions.⁸
6. The European Convention on Human Rights ("ECHR") defines the right to an effective remedy as:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."⁹

7. If redress is to amount to an effective remedy under the ECHR it must be adequate, efficient, and "available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success."¹⁰ Under the ECHR, compensation for the pecuniary and non-pecuniary damage flowing from the breach should be made available as part of the range of redress.¹¹
8. In the Annual Report of the Special Rapporteur on Child Protection 2021,¹² it was pointed out that the Commission's Final Report is indicative of violations of provisions of the ECHR¹³. The UN Human Rights Committee ("HRC") will be reviewing Ireland's implementation of the International Covenant on Civil and Political Rights ("ICCPR") this July as part of the fifth periodic review. One of the key issues raised in advance of this review by the UN is accountability for past human rights violations which fall under Article 2 (effective remedy), Article 6 (right to life), Article 7 (torture or cruel, inhuman

⁸ S (A Minor) v Minister for Justice, Equality and Law Reform [2011] IEHC 31, paras. 10–18.

⁹ European Convention on Human Rights, Article 13.

¹⁰ ECHR, [Akdivar and others v. Turkey](#), [GC], 16 September 1996 para. 68.

¹¹ ECHR, [T.P. and K.M. v. the United Kingdom](#) [GC], 10 May 2001, para. 107.

¹² Conor O'Mahony, [Annual Report of the Special Rapporteur on Child Protection 2021](#), June 2021.

¹³ Ibid 129.

or degrading treatment or punishment), and Article 14 (equality before the courts).¹⁴ The HRC has stated that Article 2(3) of the International Covenant on Civil and Political Rights (“ICCPR”) requires that State Parties:

“... make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that *the Covenant generally entails appropriate compensation.* The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”¹⁵ (Emphasis added)

9. This was reflected in the HRC’s last recommendations to Ireland where, in relation to survivors of the Mother and Baby Homes, it called on the State to “ensure that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction”.¹⁶ ICCL considers that the state has failed to properly adhere to this recommendation and has failed to properly investigate and provide adequate remedies for all of those affected by forced family separation in Ireland, in violation of Article 2(3) and 9 (5) of the Covenant.¹⁷
10. The International Commission of Jurists considers that “an independent assessment constitutes the first step in obtaining reparation.”¹⁸ The independent assessment undertaken in this context was that of the Commission of Investigation into Mother and Baby Homes and certain related matters (“the Commission”). However, this report has

¹⁴ Human Rights Committee, [List of issues in relation to the fifth periodic report of Ireland](#), CCPR/C/IRL/Q/5, 14 January 2021, paras 4-5.

¹⁵ UN Human Rights Committee, [General Comment No. 31](#), 26 May 2004, para. 16.

¹⁶ UN Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#), CCPR/C/IRL/CO/4, 19 August 2014, para. 10.

¹⁷ See e.g. McGettrick, O’Rourke, O’Nolan, Birth Information and Tracing Bill 2022, [A Briefing Note and Amendments](#), February 2022. See also UN Human Rights Committee, [General Comment No. 31](#), 26 May 2004, para. 16.

¹⁸ International Commission of Jurists, [The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide](#), (Revised Edition, 2018) p. 52.

been criticised by numerous stakeholders, including survivors, civil society organisations, independent human rights experts and academics.¹⁹ In fact, following judicial review proceedings, the State agreed that: “[a] number of survivors do not accept the accounts given in the Final Report of the Commission of Investigation as a true and full reflection of the oral and documentary evidence they gave”.²⁰

11. Yet the Mother and Baby Homes Redress Scheme is, according to the Government, a part of the measures being used in “responding to the report”.²¹ As the Final Report of the Commission of Investigation in Mother and Baby Homes and certain related matters (“the Final Report”) is flawed, the “first step” for survivors in obtaining reparation of a competent independent assessment has not been satisfied. Moreover, as stated by the Clann Project:

“The impugned parts of the Commission’s Final Report include findings and recommendations upon which the Government is relying to limit its proposed redress scheme. For example, the Commission concluded that redress should not be granted for forced or illegal adoption, forced labour in Mother and Baby Homes generally, vaccine trials in Mother and Baby Homes, or the abuse of ‘boarded out’ or adopted people as children.”²²

12. Applying paragraph 16 of the HRC’s General Comment 31 quoted above, the fact that the Redress Scheme does not provide reparation for all categories of survivors means that the obligation to provide an effective remedy has not been discharged. This is most obvious for the categories of children who were boarded out and children who spent less than six months in an institution.

¹⁹ See for example, eds. Mairead Enright, Aoife O’Donoghue, “[Rights and the Mother and Baby Homes Report: Reaching Different Findings](#)”, July 2021 [ICCL Briefing on Mother and Baby Homes Commission Report](#), March 2021.

²⁰ Department of Children, Equality, Disability, Integration and Youth, [Commission of Investigation into Mother and Baby Homes and Certain Related Matters](#), 16 November 2021.

²¹ Department of Children, Equality, Disability, Integration and Youth, [Government approves proposals for Mother and Baby Institutions Payment Scheme and publishes An Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions](#), 16 November 2021.

²² Clann Project, [Irish High Court Declares that Mother and Baby Homes Commission of Investigation Treated Survivors Unlawfully](#), 17 December 2021.

13. Rights violations occurred in the Mother and Baby Homes before and after Ireland ratified the ICCPR and the ECHR.²³ While the general rule is that the ICCPR cannot be applied retroactively:²⁴

“the [HRC] becomes competent if the acts in question continue to have effects after the entry into force of the Protocol and continue to violate the Covenant or have effects that in themselves constitute a violation of the Covenant.”²⁵

14. The same exception of the "continuing violation" applies to the ECHR.²⁶

15. Many of these violations continue to have effects today. To take one example, the unlawful forced adoptions which took place in the Mother and Baby Homes breached the Article 17 ICCPR prohibition on arbitrary or unlawful interference with family and failed to respect the Article 23 ICCPR recognition of the family as the “natural and fundamental group unit of society”. The family rights of present survivors clearly continue to be impacted by this unlawful practice.

16. Women and children were the primary victims of the Mother and Baby Homes. In interpreting an effective remedy under the ICCPR in this context, regard should be had to the views of the Committee on the Elimination of Discrimination against Women, which the HRC has done on several occasions.²⁷ The Committee has recommended that women “have access to all available judicial and non-judicial remedies”, and that these remedies “are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered”. The Committee stated that remedies should include compensation and that an adequate remedy requires women “to receive from

²³ Ireland ratified the ICCPR in 1989 and the ECHR in 1953.

²⁴ *SE v Argentina*, Communication No. 275/1988, UN Doc CCPR/C/38/D/275/1988, 26 March 1990, para. 5.2.

²⁵ *Martinez and Ors v Algeria*, Communication No. 1922/2009, UN Doc CCPR/C/109/D/1922/2009, 2 December 2013, para. 3.7.

²⁶ The Court has accepted the extension of its jurisdiction *ratione temporis* to situations involving a continuing violation which originated before the entry into force of the Convention but persists after that date, see European Commission of Human Rights, *De Becker v Belgium*, 9 June 1958.

²⁷ See, *MT v Uzbekistan*, Communication No. 2234/2013, UN Doc CCPR/C/114/D/2234/2013, 23 July 2015, Individual Opinion of Committee Members Sarah Cleveland and Olivier de Frouville (concurring), para. 3; *Poplavny v Belarus*, Communication No. 2019/2010, UN Doc CCPR/C/115/D/2019/2010, 5 November 2015, Individual Opinion of Committee Member Sarah Cleveland (concurring), para. 14, fn n; *Sudalenko v Belarus*, Communication No. 2016/2020, UN Doc CCPR/C/115/D/2016/2010, 5 November 2015, Individual Opinion of Committee Member Sarah Cleveland (concurring), para. 15, fn n.

justice systems viable protection and meaningful redress for any harm that they may suffer”.²⁸ Second, the HRC has stated that remedies “should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children”.²⁹ It is unclear how the Redress Scheme has taken these requirements into account or how it proposes to achieve the aim of fostering “a process of truth telling, reconciliation and learning.”³⁰

17. The Scheme should provide for free legal aid for the purposes of litigation and for full access to personal information and records, in accordance with data protection rights. The UN Committee Against Torture has stated that:

“States parties should provide *adequate legal aid* to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress. States parties shall also make readily available to the victims *all evidence concerning acts of torture or ill-treatment* upon the request of victims, their legal counsel, or a judge. A State party’s *failure to provide evidence and information, such as records of medical evaluations or treatment, can unduly impair victims’ ability to lodge complaints and to seek redress, compensation, and rehabilitation.*”³¹ (Emphasis added)

18. It is very likely that the State’s failure to vindicate survivors’ right to an effective remedy continues to violate the ICCPR and ECHR.

Head 2 – Interpretation

19. Head 2 states that “Commercial work without pay” means “work undertaken in Tuam, in a County Home or outside of a relevant institution in which a person was resident, by a person, to whom part (b) of the definition of a ‘relevant person’ applies, for which the person was not remunerated.”

²⁸ Committee on the Elimination of Discrimination against Women, [General recommendations on women’s access to justice](#), 21 July 2015, UN Doc CEDAW/C/GC/33, paras. 14 and 19.

²⁹ UN Human Rights Committee, [General Comment No. 31](#), 26 May 2004, para. 15.

³⁰ See for example the UN Human Rights Committee’s questions in its [List of issues in relation to the fifth periodic report of Ireland](#), UN Doc CCPR/C/IRL/Q/5, 14 January 2021., para. 4.

³¹ UN Committee Against Torture, [General comment No. 3](#), UN Doc CAT/C/GC/3, 19 November 2012, para. 20.

20. This definition excludes women who carried out work in Mother and Baby Homes and is based on the Final Report. In the “Recommendations” section, the Final Report pointed out that, whereas the “women who were resident in the Magdalen laundries received redress because they were considered to be incarcerated and because they did commercial work for no pay”, “[t]he women who were in mother and baby homes were not in quite the same situation”.³² It stated that these women “were not ‘incarcerated’ in the strict meaning of the word”,³³ and went on to point out that:

“Most women in mother and baby homes were not required to do commercial work. They were expected to work but this was generally work which they would have had to do if they were living at home... It is probably the case that more intensive and more frequent cleaning was required in the institutions than would be required in a normal home. Some mother and baby homes had farms attached and the women worked on the farms. This work was no different from that carried out by women on farms all over the country. There is some evidence of women being required to carry out work that would be considered unsuitable for women, for example, there is evidence that women in Castlepollard may have been required to chop wood and a witness has said that he saw women in Sean Ross chopping wood.”³⁴

21. This passage dismisses the fact that women working on farms in Ireland were at minimum receiving the financial or other benefits of that work through their ordinary family life. The Final Report’s conflation of forced institutional labour with ordinary labour at a family farm or in a family home enforces the very patriarchal stereotypes and culture which led to the formation of these Institutions. Its reasoning should not be followed in legislation.

22. The paragraphs of the “Recommendations” section of the Final Report from which the above information was gathered, paragraphs 26, 27 and 30, are all among the impugned paragraphs resulting from High Court proceedings in late 2021. As acknowledged by the state:

³² Department of Children, Equality, Disability, Integration and Youth, [Final Report of the Commission of Investigation into Mother and Baby Homes](#) (“the Final Report”), 12 January 2021, Recommendations, para. 26.

³³ Ibid, para. 27.

³⁴ Ibid, para. 30.

“A number of survivors do not accept the accounts given in the Final Report of the Commission of Investigation as a true and full reflection of the oral and documentary evidence they gave to the Confidential Committee or the Commission of Investigation. In particular, the accuracy of the following paragraphs is not accepted by survivors who believe the paragraphs in question relate to them or the evidence they gave...”³⁵

23. There are also highly questionable conclusions in the Final Report. First, the Commission states that the women in the Mother and Baby Homes were not “incarcerated” in the “strict meaning” of the word. It is unclear what is meant by “strict meaning” but, in any event, survivor testimony indicates that women were both admitted to and kept in these institutions against their will and some that tried to escape were brought back with the aid of state law enforcement. As per survivor testimony: “some girls ‘ran away’ but were ‘brought back by the Garda’”.³⁶ Being forced back to an institution with the aid of law enforcement is clearly a form of incarceration.

24. Second, the Final Report distinguishes between commercial and non-commercial work. Survivor testimony indicates that, at minimum in Sean Ross, the women’s “working day was approximately 8:30am until 4pm” for a “six-day week”, wherein women would engage in:

“heavy work scrubbing clothes and bedding on boards, washing and ironing all with our bare hands.”³⁷

25. While the survivor herself stated that “As far as I could see we were only washing the Abbey’s own laundry and [...] this was not a commercial operation.”³⁸ women were subjected to a “pretty severe”³⁹ work schedule and were *required* to undertake it. This permitted the institutions to avoid outsourcing the said work to a commercial operation. The extent of the work required to keep an institution running is unlikely to constitute merely the equivalent of normal domestic work.

³⁵ Department of Children, Equality, Disability, Integration and Youth, [Commission of Investigation into Mother and Baby Homes and Certain Related Matters](#), 12 April 2022.

³⁶ [Final Report](#), Chapter 19: Sean Ross, para. 19.197.

³⁷ *Ibid*, para. 19.196.

³⁸ *Ibid*, para. 19.196.

³⁹ *Ibid*, para. 19.197.

26. Third, the use of the term “commercial work without pay” in the Bill serves to minimise the lived experiences and reality of what ensued in the Mother and Baby Homes. The concept of commercial and non-commercial work, and the exclusion of survivors of Mother and Baby Homes from the definition in Head 2 is derived directly from the Final Report.⁴⁰ However, the Committee on Economic, Social and Cultural Rights, in their concluding observations on Ireland in 2015, referred to what took place as “institutionalised forced labour”.⁴¹ These practices are recognised as an international crime⁴² in the ILO Forced Labour Convention 1930 (No. 29), which Ireland ratified on March 2, 1931.⁴³

27. By way of comparison regarding proper compensation for forced labour, in a determination upheld by the Supreme Court,⁴⁴ a person who worked 70 hours per week for ‘pocket money’ was awarded over €90,000 by the Rights Commissioner which included a sum of *circa* €86,000 in backpay.⁴⁵

28. The compensation rates in the Scheme should have a minimum level for all survivors as well as a scale linked to the average industrial wage for those who spent longer durations engaged in forced labour. Based on the figures from the Central Statistics Office (“CSO”) regarding the average industrial wage in Ireland in real terms,⁴⁶ someone who entered an Institution in 1970 and remained for 3 years would have earned around €49,283.52⁴⁷ but under the Scheme would just receive €18,000. If they entered in 1970 and remained for 7 years they would have earned €114,994.88 but will only receive €42,000. See the attached Annex 1 for more information.

⁴⁰ See, Final Report, Recommendations, paras. 26-31.

⁴¹ UN Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#), E/C.12/IRL/CO/3, 8 July 2015, para. 18.

⁴² Forced or compulsory labour has been defined, for the purposes of international law, as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’. (Article. 2 (1) [ILO Forced Labour Convention](#) 1930 (No. 29)). The notion is thus characterized by two basic elements, i.e. the lack of consent to work and the menace of a penalty.

⁴³ International Labour Organization, [Ratifications for Ireland](#), accessed 10 May 2022.

⁴⁴ *Hussein v Labour Court* [2015] IESC 57; [2016] 1 IR 180.

⁴⁵ [Court upholds chef’s award of €91,000](#), the Irish Times, 26 June 2015.

⁴⁶ Central Statistics Office, [Historical Earnings 1938 – 2015: The Average Industrial Wage and the Irish Economy](#), accessed 11 May 2022.

⁴⁷ Taking account a 15% deduction to equate to today’s permissible deduction for board and lodgings, see Annex 1.

29. ICCL recommends removing the term “commercial work without pay” and replacing it with forced labour. The amounts of compensation for those subjected to forced labour should at a minimum, correspond to the wages they should have earned at the time.

Head 4 – Establishment of a Mother and Baby Institutions Payment Scheme

30. Subhead 2 provides for an enhanced medical card for those who fit the eligibility criteria. The requirement under Head 19(1) that an individual must have been resident for six months or more is too narrow and excludes a substantial number of survivors. The OAK report detailing outcomes of public consultations on the redress scheme stated that 40% of the people who they consulted that gave details on duration of stay were resident in a Home for less than 6 months.⁴⁸ The amount of people excluded from this Scheme is unfair, contrary to the right to a remedy and has no rationale basis in law. An enhanced medical card should be provided to all survivors.

Head 5 – Duration of the Scheme

31. Head 5(1) provides that the Scheme will last for, at most, five years. Further, Head 14(2) requires applications to be made “at least one year before the date prescribed under Head 5 subhead (1)”, which effectively reduces the time limit to four years. The explanatory note explains that by way of regulation the Minister could end the Scheme at any time they deem appropriate which *should* be prior to the scheduled end date of five years. This gives rise to the possibility of difficulty if the Scheme becomes the subject of lengthy litigation. ICCL recommends that Head 5(1) be amended to permit the Minister to extend the duration of the Scheme in such circumstances or for other unforeseeable circumstances which might interfere with a survivor’s right to an effective remedy. The explanatory note states that “most applications to the Scheme would be made in the first year or two of the Scheme’s operation”, but ICCL considers this may be incorrect. Many of the children adopted from the Mother and Baby Homes were adopted outside of Ireland and despite the global coverage of the Commission’s Final Report, there may be a number of survivors who have yet to become aware of the Scheme, or indeed the fact they were adopted from one of these institutions. The

⁴⁸ 40% of the two thirds of the 561 participants who partook in these consultations. See OAK report, [Report Of the findings of the Consultation with Survivors of Mother and Baby Homes and County Homes. March - April 2021](#), 17 May 2021.

window of opportunity must remain open for a longer period to allow for as many as possible to access the Scheme.

Head 6 – Office of the Chief Deciding Officer of the Mother and Baby Institutions Payment Scheme

32. Subsection (2) states that “[t]he Chief Deciding Officer shall be a person appointed by the Minister from among his or her officers to that office as and when a vacancy arises”. However, there is no mention of any kind of qualifications which the Chief Deciding Officer may be required to have. ICCL call for this to be provided for in some level of detail given the significant level of power the Deciding Officer will have to determine eligibility. Under Head 7(1)(b)–(c), the Chief Deciding Officer will “determine entitlement to payments” and “determine eligibility for access to health services without charge”. ICCL recommends that the Chief Deciding Officer should, at a minimum be qualified for the position and subject to ongoing training in international human rights law and trauma informed responses to gross human rights violations. ICCL also recommends that this Head be amended so that the Minister can appoint a panel of Chief Deciding Officers to ensure the adequate and objective exercise of decision making powers.

Head 7 – Functions of Chief Deciding Officer

33. ICCL, and a number of survivors of Mother and Baby Institutions, take issue with the decision of the government not to directly inform known survivor representatives and interested community groups of the call for submissions in respect of the drafting of the Scheme.⁴⁹ This is unsatisfactory in its own right, but it also raises questions as to whether Head 7(1)(e) of the Scheme will be complied with. This provides that the Chief Deciding Officer must:

⁴⁹ It is understood by ICCL that a call for submissions on the draft legislation for the scheme was published online and through the Government Department’s social media channels on 12 April 2022, with an extended deadline for submissions being given as 6th May, giving survivors and interested groups 17 working days to analyse a 73 page Bill. No group advocating on behalf of survivors nor any survivors themselves were alerted to this call for submissions.

“make all reasonable efforts, through public advertisement in Ireland and abroad, and otherwise, to ensure that persons who were residents of an institution are made aware of the Scheme”.

34. To ICCL’s knowledge, no publication of this call for submissions was made abroad where many survivors are resident after being illegally adopted and brought overseas. The failure to notify survivors and their representatives of the public consultation on this Bill entirely undermines the spirit of inclusion and broad communication suggested by Head 7. ICCL recommends that genuine efforts are made to ensure that the Scheme is communicated to all known survivors in Ireland and abroad and that extensive efforts are made to ensure participation from survivors and their advocates in the continuing legislative process of this Bill, including at the pre-legislative scrutiny stage.

Head 10 – Annual Report

35. Increased transparency is needed for all stages of a reparation process. ICCL recommends that these annual reports should be put on the public record to increase transparency.

Head 11 – Payment Rates

36. Head 11(1) refers to payments as per the rates laid out in Schedule 3. Schedule 3 provides for payment rates graduated according to the length of time mothers and children spent in Mother and Baby Homes. The money provided by the state to cover this Scheme has been provisionally set at €800,000 which is estimated to cover payments to just 34,000 of the estimated 58,000 survivors of Mother and Baby Homes, thereby excluding 24,000 survivors.⁵⁰

37. The new revised Personal Injuries Guidelines are instructive given the extent of the trauma many survivors experienced and the continuing trauma that many are experiencing today.. For "Moderate PTSD", which relates to the injured person having

⁵⁰ Senan Molony, [Minister reveals 24,000 Mother and Baby Homes survivors excluded from redress scheme](#), Irish Independent, 18 November 2021.

"largely recovered, and any continuing effects will not be grossly disabling", the range has been set as €10,000-€35,000.⁵¹

38. "Serious PTSD", which is distinct from "Severe PTSD" on the basis that there is "a prognosis projecting some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future", is awarded a range of €35,000-€80,000.⁵²
39. ICCL recommends increasing the amount of money available for the Scheme to remedy the failure to offer payments to all survivors and to adequately compensate those who receive payments in line with, *inter alia*, the current Personal Injuries Guidelines.

Discrepancies between the Scheme and the other redress schemes

40. The Magdalen Restorative Justice *Ex-Gratia* Scheme provided a for a minimum payment of €11,500 and a maximum payment of €100,000, including to those who spent less than three months in the institutions.⁵³ This Scheme provides for zero compensation for children who were in the institutions for less than three months and a minimum payment of €5,000 for mothers who were there for less than three months. In both cases, the figure falls significantly short of the Magdalen Laundries minimum amount with no explanation for the discrepancy. This significant difference in compensation raises concerns regarding both consistency and fairness.
41. Furthermore, under the Magdalen Laundries *ex gratia* payment scheme, survivors were entitled to a State Pension (Contributory).⁵⁴ No pension payment has been proposed in the Scheme, with no explanation as to why not.
42. In terms of resources available to the State, it is worth noting that the potential sum being considered under the mica redress scheme is estimated to be €2.2 billion and is capped at a maximum €420,000 per home.⁵⁵
43. Finally, ICCL notes that the State has not received agreement for any financial support from religious orders who operated these institutions as a means of increasing the

⁵¹ The Judicial Council, [Personal Injuries Guidelines](#), adopted by The Judicial Council on the 6th of March 2021, p.15.

⁵² Ibid.

⁵³ Department of Children, Equality, Disability, Integration and Youth, [The Magdalen Restorative Justice Ex-Gratia Scheme](#), 7 February 2022.

⁵⁴ JFM Research, [Survivor Guide to the Magdalene Restorative Justice Scheme](#), accessed 10 May 2022.

⁵⁵ [Government agrees to €2.2bn mica redress scheme](#), the Irish Times, 30 November 2021.

amount of money available under the Scheme.⁵⁶ ICCL recommends that the Government request all institutions responsible for the operation of these Homes, and who financially gained from their operation to contribute to the Scheme, as a matter of urgency. As stated in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation:

“...the establishment, strengthening and *expansion of national funds* for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,...”⁵⁷ (Emphasis added)

44. ICCL considers that the extent of the past and ongoing violations of the human rights of survivors of Mother and Baby Institutions warrants much higher levels of compensation, in particular in light of other compensation schemes being considered by the State, as outlined above.

Head 12 – Health Support Payment

45. The explanatory note for Head 12(1), which refers to a Health Support Payment of €3,000, states that this is to be “provided to applicants living abroad in lieu of a form of enhanced medical card where it is established that they meet the eligibility criteria”. The explanatory note to Head 21 confirms that this will be a “once-off €3000 payment instead of the card”. The hard cap of €3,000 is difficult to reconcile with the broad range of services it is intended to substitute under Head 20(1)(a)–(h), which have the capacity to far exceed that figure:

- (a) a general practitioner and surgical service,
- (b) drugs, medicines and medical and surgical appliances for the time being on the Reimbursement List within the meaning of the Health (Pricing and Supply of Medical Goods) Act 2013,
- (c) the nursing service specified in section 60 of the Act of 1970,

⁵⁶ [No agreement on religious orders' redress contribution in mother-and-baby home scheme](#), RTE, 10 May 2022.

⁵⁷ UN General Assembly, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), 16 December 2005, Preamble.

- (d) the home help service specified in section 61 of the Act of 1970, following an assessment of needs made by a registered medical practitioner or a registered nurse that the service is so required,
- (e) the dental, ophthalmic and aural services specified in section 67 of the Act of 1970,
- (f) a counselling service, following a referral made in that regard by a registered medical practitioner, relative to a relevant participant's residency in any of the institutions specified in the Schedule,
- (g) a chiropody service, following a referral made in that regard by a registered medical practitioner or registered nurse, and
- (h) a physiotherapy service, following a referral made in that regard by a registered medical practitioner.

46. Moreover, the explanatory note to Head 20 states that “the intention is that the form of enhanced medical card which will be provided under this Scheme will *provide the same services* as the card available to survivors of Magdalen institutions under the RWRCI Act”. (Emphasis added). The enhanced medical card available to survivors of Magdalen institutions, in turn, was designed⁵⁸ to be similar to the HAA card (Health Amendment Act card) for persons who had contracted Hepatitis C through fault of the state. In fact, the only difference between those two schemes was in the area of “complementary therapies”.⁵⁹

47. Under this Scheme, however, applicants living abroad will receive a once-off payment of €3,000 instead of the enhanced medical card, whereas the “[t]he average cost of a HAA Card is €5,100 per annum”.⁶⁰ Over the course of 10 years, a survivor under the Scheme who lives abroad would lose out on services to the value of approximately €48,000. Over 20 years that figure rises to €99,000.

⁵⁸ Mr Justice John Quirke, [The Magdalen Commission Report: Report of Mr Justice John Quirke on the establishment of an ex gratia Scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen Laundries](#), May 2013, p. 7.

⁵⁹ Dáil Éireann Debate, [Redress for Women Resident in Certain Institutions Bill 2014: Report Stage](#), 10 February 2015, per the Minister for Justice and Equality, Frances Fitzgerald, TD.

⁶⁰ Dáil Éireann Debate, [Medical Card Data](#), 17 November 2015, per the Minister for Health, Leo Varadkar, TD.

48. This figure should also reflect the fact that survivors likely would have accessed services such as counselling over the decades had that been available. ICCL recommends amending the language in Head 21 so the payment to former residents abroad is not capped as a once off payment, or is at least equivalent to the figure that equates to the services they would be entitled to with an enhanced medical card.

Head 13 – Regulations

49. The legislation as proposed is of concern as it fails to provide survivors with free legal advice and aid should they wish to challenge decisions made under the Scheme. Rather, the explanatory note to Head 13 comments that “reasonable costs and expenses” will be capped at €500. The South Kerry CAMHS Redress Scheme offers a €5,000 initial payment to cover the initial expenses of eligible applicants and the level of compensation will be agreed upon in a mediation process. Further, applicants to that scheme will be reimbursed “reasonable costs” for legal representation and a panel of expert psychiatrists has been established for the scheme from whom applicants can seek an expert report for the purposes of mediation.⁶¹

50. ICCL recommends removing this cap so it can cover genuine legal costs and to extend it to appeals under Head 29.

Head 15 – Assessment of Applications

51. The explanatory note states the intention is that the Scheme will be non-adversarial. ICCL expresses its concern that this may be a justification for declining to provide survivors with any or any adequate funding for legal assistance, and for the short duration of the Scheme under Head 5. ICCL recommends that the waiver contained in Head 22 be removed to provide for access to an adversarial action.

Head 18 – Determination of entitlement to payment

⁶¹ Coleman Legal LLP, [CAMHS Kerry Compensation Scheme Latest News](#), 21 April 2022.,

52. While the explanatory note for subhead 1 “recognises time spent in a relevant institution, harsh conditions, emotional abuse and other forms of mistreatment, stigma and trauma experienced”, this is the only reference to trauma in the Bill. A trauma informed approach should be taken at all stages of a redress scheme, in particular with to the addition of trauma informed psychotherapy in lieu of basic counselling in Head 20(1)(f).

53. The Scheme appears to omit over 40% of survivors.⁶² In particular, the Scheme omits children who spent less than six months in an institution and children who were boarded out. As stated by the Clann Project:

“The impugned parts of the Commission’s Final Report include findings and recommendations upon which the Government is relying to limit its proposed redress scheme. For example, the Commission concluded that redress should not be granted for forced or illegal adoption, forced labour in Mother and Baby Homes generally, vaccine trials in Mother and Baby Homes, or the abuse of ‘boarded out’ or adopted people as children.”⁶³

54. It is unclear on what basis the decision to exclude so many survivors of Mother and Baby Institutions was made. Comments by the Minister suggest that if these exclusions were not made then the cost of the Scheme could rise to more than €1 billion.⁶⁴ However, the decision to remove tens of thousands of survivors from the Scheme is a denial of the right to an effective remedy to persons who have suffered human rights abuses at the hands of the State.

Children Resident for Less than Three Months

55. The range of persons who will receive a payment and the level of such payment are cast too narrowly. Head 2 defines a “Relevant person” as “a person who is one or more than one of the following:

⁶² Elaine Loughlin, [Mother and baby home survivors wants redress scheme scrapped after High Court victory](#), the Irish Examiner, 18 December 2021.

⁶³ Clann Project, [Irish High Court Declares that Mother and Baby Homes Commission of Investigation Treated Survivors Unlawfully](#), 17 December 2021.

⁶⁴ [Minister reveals 24,000 Mother and Baby Homes survivors excluded from redress scheme](#), Irish Independent, 18 November 2021.

- (a) a person who was, or has reasonable grounds for suspecting he or she was, resident as a child under the age of 18 years of age, in an institution specified in Schedule 1
- (b) a person, which includes a person under the age of 18 years of age, who was resident in a relevant institution for reasons relating to pregnancy, birth or care of her child.

56. The major omission apparent from this definition is that the Scheme provides for no redress whatsoever in respect of children who spent less than six months in an institution. Mothers who spent less than three months in an institution are entitled to €5,000, whereas mothers who spent more than three but less than six months in an institution are entitled to €10,000 plus a work payment of €1,500 for qualifying individuals. As such, the State has valued the trauma experienced by adults in institutions for a short term at a rate of €10,000, but has taken the view that trauma experienced by children in institutions for a short term is of no value whatsoever. As reported in *The Irish Times*, this is based on the idea that children who spent less than six months in the institutions would likely have gone on to live “comfortable and contented lives”.⁶⁵ This is simply an unfounded assertion considering, as stated by Susan Lohan of the Adoption Rights Alliance, that “not a single government adoption board, adoption authority, has ever undertaken any analysis of the long-term effects of Irish adoption on adopted people”.⁶⁶

57. Further, this position has no clear basis in the scientific literature on the subject of childhood trauma and adulthood trauma. In 2008, Zlotnick *et al.*⁶⁷ pointed out that:

“Trauma experts have proposed that *early PTEs [potentially traumatic events] may be more detrimental than those occurring in later life* because children are less capable of organizing their responses to traumatic experiences coherently and are more vulnerable to adverse brain development that may play a role in psychiatric disorders. Although there have only been a handful of studies, *research suggests*

⁶⁵ Jennifer Bray, [Cost warning on extending mother and baby homes redress](#), the Irish Times, 21 February 2022.

⁶⁶ Mark Hilliard, [Campaigners criticise Government’s “financial” concerns over redress scheme](#), the Irish Times, 21 February 2022.

⁶⁷ Caron Zlotnick *et al.*, ‘Childhood trauma, trauma in adulthood and psychiatric diagnoses’ 49(2) CP 163.

that PTEs experienced in childhood are associated with a greater degree of psychopathology than trauma first experienced in adulthood.”⁶⁸ (References excluded, emphasis added))

58. Their study concluded that:

“panic disorder rather than a range of other psychiatric disorders is related to a PTE that first occurs in childhood as opposed to adulthood. Furthermore, individuals with childhood interpersonal trauma exposure are more likely to suffer from lifetime panic disorder, agoraphobia, or PTSD compared with those who experience interpersonal trauma as an adult.”⁶⁹ (Emphasis added)

59. It has also been said that children who spent less than six months in an institution “wouldn’t remember” their experiences.⁷⁰ Not only is it impossible to justify such a sweeping statement being made as to the memories of children of even the earliest of ages, but this disregards that fact that the proposed legislation refers to “a child under the age of 18 years”. Children of all ages were resident in the institutions and it is again a somewhat bizarre assertion to suggest that a sixteen- or seventeen-year-old child would not recall their experiences in an institution.

60. As noted above, a second reason given for excluding such children from the Scheme was that their inclusion could have “far-reaching policy and financial consequences for the State”.⁷¹ However, this does not take into account the rights of survivors to a remedy. It is not for the State to decide who has rights and who does not. All victims of human right violations have the right to a remedy and must now be compensated accordingly.

61. The selection of a six-month time requirement is arbitrary. As proposed, the Scheme grants €12,500 to a child who spent a full five months and thirty-one days in an institution, but zero to a child who spent five months and 30 days in an institution. The

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Jennifer Bray, [Cost warning on extending mother and baby homes redress](#), the Irish Times, 21 February 2022.

⁷¹ Ibid.

proposed legislation permits no contextual discretion in the making of payments, which could lead to arbitrary decisions

62. Finally, the exclusion of children who spent less than six months in an institution focuses solely on that survivor's experiences *in the institution*. This is stated expressly in the explanatory note to Head 18:

“the general payment recognises time spent in a relevant institution, harsh conditions, emotional abuse and other forms of mistreatment, stigma and trauma *experienced while resident in a Mother and Baby or County Home Institution.*”
(Emphasis added)

63. While the psychological damage such a child may have suffered has been addressed above, it is necessary to acknowledge and compensate the concrete impacts they faced thereafter. To take one example, many such children were subjected to a defective adoption process which has been deemed by the Special Rapporteur on Child Protection⁷² to be a violation of the right to family life under Article 8 of the European Convention on Human Rights.⁷³ This definition also does not recognise the nature of an ongoing rights violation.

64. ICCL considers that the arbitrary exclusion of entire groups by the Scheme is not only in violation of the right to remedy but also constitutes a violation of Article 40, s.1 of the Constitution by being discriminatory, as it creates a situation where all survivors are not “equal before the law”. ICCL recommends that this Head is amended to be extended to children resident for less than six months.

Reference to the Residential Institutions Redress Scheme

65. Head 18(5) excludes those who previously received a financial payment from the Residential Institutions Redress Board. ICCL recommends that this subhead is deleted on the basis that the abuse recognised by that scheme was of a different nature to forced family separations and other human rights violations this Scheme is attempting to deal with.

⁷² Conor O'Mahony, [Annual Report of the Special Rapporteur on Child Protection 2021](#), June 2021.

⁷³ Ibid, p. 122.

66. As stated in the explanatory note, Subhead (5) relates to children who were resident in St Patrick's Institution/Pelletstown to ensure they do not receive double payment "in respect of that same experience". Subhead (6) prevents individuals who have received an award in damages through the courts from applying to the Scheme. In both cases, the Scheme may well provide for a greater level of redress than may have been received by such individuals. Even the present levels of redress contained in the Scheme (which ICCL does not view as appropriate in any event) state that a child who was resident in an institution for 10 years will receive €65,000. Without prejudice to the submission that such a figure of itself is insufficient, circumstances may be reached in which individuals who fall under subheads (5) and (6) have received a lower amount. Provision should be made for the shortfall to be made up via the Scheme.

Head 20 – Provision of health services without charge

67. Head 20(1)(f) refers to "a counselling service". From ICCL's consultations with survivors, the general counselling which has been offered to date has not been sufficient. Survivors of serious human rights violations need trauma informed expert psychotherapy. The explanatory note explains that:

"counselling services have been available to survivors of Mother and Baby and County Home Institutions since before the publication of the Commission of Investigation's Final Report through the HSE National Counselling Service. While the intention is that the counselling service will remain available to *all* survivors and this commitment is included in the *Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions*, even when the Mother and Baby Institutions Payment Scheme is launched, including it in the legislation would give survivors eligible for the form of enhanced medical card a statutory basis to access the service. However, this statutory access would be on the basis of referral from a medical practitioner." (Emphasis in original)

68. ICCL notes that a panel of expert psychiatrists has been established for the CAHMS redress scheme from whom applicants can seek an expert report.⁷⁴ A similar panel of

⁷⁴ Coleman Legal LLP, [CAMHS Kerry Compensation Scheme Latest News](#), 21 April 2022.,

qualified experts ought be introduced in this Bill for the purposes of producing a report and to provide continued trauma-informed expert psychotherapy to all survivors.

69. ICCL considers that the introduction of a requirement for a referral from a medical practitioner means the legislation is creating an additional barrier to accessing counselling for survivors. This requirement should not be introduced, as it means the passing of this legislation will narrow the ability of any and *all* survivors to access counselling.

Head 22 – Award of payment

70. Head 22(5) provides that where an applicant accepts an offer of payment, they “shall agree in writing to waive any right of action which he or she may otherwise have had against a public body and to discontinue any other proceedings instituted by the applicant, against such public body, that arise out of the circumstances of the application before the Chief Deciding Officer.” Head 22(8) precludes applicants who accept payment awards from instituting civil proceedings arising out of the same, or substantially the same, circumstances included in an application in respect of which a public body is a party if such proceedings concern a relevant institution.

71. This can be contrasted to the Symphysiotomy Payment Scheme which, according to the state itself, “did not require or compel any woman to forgo her right to initiate’ legal proceedings.”⁷⁵ The introduction of a waiver into this Scheme is inconsistent with previous schemes and risks violating the right to access justice.

72. The UN Committee Against Torture has found that collective reparation and administrative reparation programmes may not render ineffective the individual right to a remedy and to obtain redress,⁷⁶ including an enforceable right to fair and adequate compensation, and that judicial remedies must always be available to victims, irrespective of what other remedies may be available.⁷⁷ That Committee made findings

⁷⁵ Ibid, para. 87.

⁷⁶ UN Committee Against Torture, [General comment No. 3](#), UN Doc CAT/C/GC/3, 19 November 2012, para. 20.

⁷⁷ Ibid, para. 30.

that the waivers for ex gratia payments to Magdalene laundry survivors were in breach of a victim's right to bring civil actions, even if they had participated in the redress scheme. The UN Committee stressed that the state should ensure that claims concerning historical abuses could continue to be brought in the interests of justice.⁷⁸

73. The Government has stated that while it might look like a failure to accept accountability, that that is not true.⁷⁹ The Government attempt to justify the waiver by explaining that survivors will “benefit from less burdensome procedures than those used in the courts” and that they won't have to run the risk of incurring high legal fees.⁸⁰ As explained above,⁸¹ the state has a legal obligation to provide free legal aid for survivors to vindicate their rights. It is proposed to provide survivors “financially supported” “independent legal advice” only at the point of signing the waiver.⁸² It is not only condescending but legally impermissible to attempt to dissuade survivors with a fear of legal costs from exercising their rights to access justice. These are the very costs the state itself should be covering.

74. ICCL strongly recommends removing this subsection and urges the State to confirm on the record that any financial payment accepted by survivors as part of the Scheme will not preclude victims from exercising their right to pursue further legal action.

Head 24 – Deceased relevant person

75. Head 24(1) precludes applications from dependants where the survivor died prior to the issuing of the official State apology on 13 January 2021. This in ICCL's view arbitrary and discriminatory to those who passed away before 13 January 2021. This provision is devoid of any understanding of the holistic nature of the trauma suffered

⁷⁸ UN Committee against Torture, [Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018](#), UN Doc CAT/C/68/D/879/2018, 14 January 2020, para. 6.7; UN Committee against Torture, [Concluding observations on the second periodic report of Ireland](#), UN Doc CAT/C/IRL/CO/2, 31 August 2017, para. 26.

⁷⁹ Department of Children, Equality, Disability, Integration and Youth, [Mother and Baby Homes Institutions Payment Scheme: Government Proposals](#), accessed 26 March 2022, p. 5-6.

⁸⁰ Ibid, p. 6.

⁸¹ See above, para. 16.

⁸² Department of Children, Equality, Disability, Integration and Youth, [Mother and Baby Homes Institutions Payment Scheme: Government Proposals](#), accessed 26 March 2022, p. 6.

by survivors *and* their families. Such familial trauma, caused by the survivor's time spent in an institution, does not simply disappear upon the death of that person.

76. Moreover, this provision cannot be reconciled with basic national legislative provisions in similar areas. For example, s.48 of the Civil Liability Act 1961, as amended, permits the “personal representative” of a deceased to bring an action for damages against the person responsible for the death of the deceased.

77. ICCL recommends removing this subsection as it is an arbitrary infringement on rights generally, and a patent barrier to the right to an effective remedy.

Head 29 – Legal costs and expenses

78. Head 29 provides that the Scheme “may provide financial support to applicants to-

- (a) seek legal assistance in providing an affidavit to apply to the Scheme, and
- (b) where relevant, avail of independent legal advice at the point of accepting payment under the Scheme in accordance with Head 22.”

79. This is subject to any regulations which may be made by the Minister under Head 13(g) as regards “the payment of reasonable costs and expenses”. This leaves a gap in that if an applicant wishes to appeal a decision under Head 29, they will not receive any financial or legal support. ICCL recommends that “the payment of reasonable costs and expenses” be extended to appeals under Head 29.

80. The explanatory note to Head 13 comments that “reasonable costs and expenses” will be capped at €500. ICCL recommends raising this limited figure so it can cover genuine legal costs and to extend it to appeals under Head 29.

Head 33 – Review of the scheme

81. Reviews of the legislation are required to take into account the views of key stakeholders (Head 33(2)(j)). This is welcome but ICCL would urge government to ensure consultations are meaningful by addressing concerns raised by stakeholders.

We note that many of the recommendations of the existing reports from survivor consultations have not been adequately addressed by the State.⁸³

⁸³ For example, the report from the Mother and Baby Home Collaborative Forum has yet to be published. See Department of Children, Equality, Disability, Integration and Youth, [Mother and Baby Home Collaborative Forum](#), last updated on 21 December 2020.

Summary of recommendations

1. Appropriate and adequate compensation should be provided to *all* survivors who spent any amount of time resident in these institutions. This requires a radical reform of the current Bill.
2. The Scheme has been based on the flawed Final Report of the Commission of Investigation into Mother and Baby Homes as is apparent from the High Court declaration consented to by the state. The Scheme needs to be revisited to ensure it is not based on inaccuracies or flawed reasoning contained in the Final Report. It should include redress for forced and illegal adoptions, forced labour, vaccine trials, and those who were boarded out.
3. Remove the term “commercial work without pay” and insert “forced labour” in Head 2.
4. The amounts of compensation for those subjected to forced labour should at a minimum, correspond to the wages they should have earned at the time and be linked to average industrial wage.
5. An enhanced medical card should be provided to all survivors under Head 4.
6. Head 5 should be amended to remove the five year time limit. Insert a provision to allow the Minister to extend the duration of the Scheme and remove any ability via regulation to permit the Scheme to be closed before the five-year proposed duration.
7. Head 6 should provide for a panel of Chief Deciding Officers who should, at a minimum be qualified for the position and subject to ongoing training in international human rights law and trauma informed responses to gross human rights violations.
8. Genuine efforts should be made to ensure that the Scheme is communicated to all known survivors in Ireland and abroad and that extensive efforts are made to ensure participation from survivors and their advocates in the continuing legislative process of this Bill, including at the pre-legislative scrutiny stage, in light of Head 7.
9. Transparency of annual reports should be ensured, they should be made public under Head 10.
10. Payment rates under Head 11 should be amended to remedy the failure to offer payments to all survivors and to adequately compensate those who receive

payments in line with, *inter alia*, the current Personal Injuries Guidelines and other comparable schemes.

11. Head 12 should be amended to remove the cap and ICCL recommends amending the language in Head 21 so the payment to former residents abroad is not capped as a once off payment, or is at least equivalent to the figure that equates to the services they would be entitled to with an enhanced medical card.
12. Increase the cap under Head 12 and Head 13 for “reasonable costs and expenses” to reflect genuine legal costs and extend to appeals under Head 29.
13. The waiver contained in Head 22 be removed to provide for access to an adversarial action and any provisions which may preclude victims from exercising their right to access justice and pursue further legal action.
14. The Government should urgently come to an agreement on additional financial support from religious orders.
15. Rehabilitation to include an enhanced medical card for *all* survivors, or the equivalent for those living abroad.
16. Remove the eligibility criteria of six months residence to qualify for an enhanced medical card.
17. Remove the eligibility criteria that excludes children who spent six months or less to qualify for compensation.
18. Increase the entry point on the scale for compensation and increase in increments of the scale.
19. A State Contributory Pension should be included in the Scheme.
20. Payment as set out in schedule 3 should encompass all (estimated) 58,000 survivors.
21. Payment rate should be increased to reflect the Personal Injuries Guidelines for serious PTSD.
22. Provide for free legal aid for survivors lacking the necessary resources to bring complaints in order to bring complaints and to make claims for redress.
23. The Bill should make readily available to the survivors all evidence concerning violations of their rights upon the request of survivors, their legal counsel, or a judge. The Bill should provide an accessible mechanism for survivors to retrieve evidence and information, such as records of medical evaluations or treatment, to assist in their ability to lodge complaints and to seek redress, compensation, and rehabilitation.

24. Ensure ongoing access to trauma-informed psychotherapy instead of basic counselling for all survivors. No additional barriers should be introduced by the legislation to access this service.
25. Remove any provision that precludes applications from dependants of survivors who died prior to the issuing of the official state apology under Head 24.

Annex 1

Estimated work related pay

1. The current minimum wage in Ireland 2022 is €10.50 per hour.⁸⁴ A full-time working week would be 8 hours per day or 40 hours per week, which would give a basic minimum weekly wage as €420. If you receive board/food and lodgings from your employer the allowable deductible rates are 0.94 cents per hour worked, which for a 40-hour work week equates to €37.60, plus a weekly deduction for lodgings of €24.81.⁸⁵ In total, a fulltime worker can have €62.41 deducted from their earnings to cover board/food and lodgings. This equates to just under 15% of their gross earnings.
2. According to the CSO, the average industrial wage in Ireland in real terms are outlined in the table below, in Euro.⁸⁶ While the rate fluctuated annually, for ease of reference the table simply refers to the first year of each decade. Applying today's standard of a 15% deduction to cover board/food and lodgings, the table outlines the rate of pay workers should have received while engaged in labour.

Year	Weekly Pay	Weekly minus 15%	Annual minus 15%
1940	138.50	117.72	6,121.44
1950	171.92	146.13	7,598.76
1960	202.69	172.28	8,928.40
1970	371.67	315.92	16,427.84
1980	444.11	377.49	19,629.48
1990	490.31	416.76	21,671.52

3. The proposed **work payment** is currently less than €6,000 per year capped at 10 plus years to €60,000.

Over 1 year - 6000

⁸⁴ Department of Enterprise, Trade and Employment, [National Minimum Wage will increase 1 January 2022](#), 6 December 2021.

⁸⁵ Citizens Information, [Minimum rates of pay](#), accessed 11 May 2022.

⁸⁶ Central Statistics Office, [Historical Earnings 1938 – 2015: The Average Industrial Wage and the Irish Economy](#), accessed 11 May 2022.

Over 2 years	- 12,000
Over 3 years	- 18,000 increasing in increments of 6,000 per year.

4. On that basis, those who entered in the 1940's and 1950's would not be too far off what their pay entitlements would have been given the average industrial pay during that period. However, residents in subsequent decades would be receiving significantly less than they would have been entitled to be paid for their labour. For example, someone who entered in 1970 and remained for over 3 years, should have earned a minimum of €49,283.52 for 3 years work, but under the Scheme they would only receive €18,000. If they entered in 1970 and remained for over 7 years, they should have earned a minimum of €114,994.88 but will only receive €42,000. It is reasonable to assume that most of the claimants will have entered the institutions from the late 1960's or 1970's onwards as those who entered in the 1940's and 1950's would have surpassed ordinary life expectancy in Ireland so would be in a minority. It is unreasonable to implement a payment scheme which pays significantly less than what ordinary remuneration would have been. When considering compensation figures, decision makers must take into consideration that many of the girls and women who were engaged in manual labour, worked in atrocious conditions, while heavily pregnant, having just given birth and while suffering mental trauma and anguish. The value and nature of their work is being diminished by the proposed Scheme.

About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.