



**RCNI Submission to the Joint Oireachtas
Committee on Justice
on the Domestic, Sexual and Gender-Based
Violence Bill 2023 General Scheme**

15th March 2023

Introduction – Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

Introduction – This Submission

RCNI welcomes very much this opportunity to make a submission on this important General Scheme of the Domestic, Sexual and Gender-Based Violence Bill 2023 which will shape the future of our collective response to sexual violence (among other forms of violence). We submit here our reflection on the proposed Bill and remain at your disposal in your deliberations and debate on the issues arising.

We are encouraged to see the priority this issue continues to have in government and across the members of the Oireachtas and indeed in wider society. RCNI is enthusiastic about a dedicated DSGBV Agency and the potentially transformative impact this can have on our collective capacity to prevent Sexual and other gender-based violence. We are mindful of the legislation for this agency giving it both the scope and specificity to meet expectations. We are conscious of the importance of developing a clear understanding of its parameters in the debate that will ensue with this legislation, so as to ensure gaps do not open up in any misalignment of expectations, purpose and capacity.

We welcome that this general scheme recognises the need for the Minister for Justice and the whole of government to remain responsible and active for policy and progress in the area of DSGBV in a coherent and coordinated manner with the new Agency.

We recognise the presence of civil society, its role and the need to engage in consultation and collaboration with us in this GS but would make a number of recommendations that more explicitly recognise, supports and protects the specialist sector's unique deliverables to survivors, communities, evidence and policy development. It is vital under this new Agency that we continue to centre survivors, protect their autonomy, voice and access, listen and adapt to and uphold their rights at all stages.

Reflecting on the GS we remain of the view that this Agency and government oversight of the issue and the national strategy currently lacks an essential independent monitoring mechanism. Such a mechanism would do much to support the work of the Agency and government. We believe an appropriate independent 'champion' would also benefit from strong legislative basis.

Structure of this Submission

This submission will set RCNI's commentary on each one of a number of selected Heads of the General Scheme in the order in which they are set out in that document. Any recommendations by RCNI will be set out underneath our commentary under the relevant Head.

RCNI will list any recommendations for additional Heads at the end of the submission.

Part 1: Preliminary and General

Head 2 - Interpretation

RCNI Commentary:

- This Head, and therefore the whole General Scheme, would be easier to read and understand if some definitions were set out in full in it instead of using the formula: "has the meaning assigned to it by Head X," and similar expressions, particularly when the definition refers to something either new or unusual, such as "performance framework" or "statement of priorities". While this is a common practice now, it could be abandoned in this case to make both the definitions and the General Scheme as a whole more accessible;
- The definition of "service provider" 14(1) (a) ..'any other enactment, the Agency shall –
- (a) plan, commission and fund the provision of support services for victims of domestic, sexual or gender-based violence and persons who may be at risk of any such form of violence;' makes no mention of the vital role played by rape crisis centres in the improvement of policy, not only at local but also at national level. Their knowledge of the experiences of survivors should inform national policy directly, fully, and regularly. This is in fact a service to those who may be at risk of sexual violence in the future;
- Neither does it mention the contribution made by rape crisis centres to awareness raising and education in their local community. This too is a service to those who may be at risk of sexual violence.
- Our concern is that the expression "service provider" as defined under Head 14(1)(a) might be interpreted narrowly as encompassing protective functions, exclude the significant prevention functions of the sector and thus risk siloing and silencing the considerable resources of the sector in its evidence, advocacy and solution generation.

RCNI Recommendations:

- Set out every definition in full under this Head, even it is repeated later in the General Scheme;
- Put it beyond doubt that the expression "service provider" is to be understood to mean, not only direct services to sexual violence victims and those who may be at risk of violence, but also more broadly, services to those supporting survivors, providing awareness and educational initiatives and specialist and supports to professionals and communities, and services collating, evidencing and analysing the realities of sexual violence.

Head 3 – Designation of Public Service Bodies

RCNI Commentary

- We think it is a very good idea to leave the list of designated public service bodies open in order to accommodate future changes in public administrative structures. RCNI does not have any comment on the inclusion of any of the Bodies on the current list under Head 2. However, we are surprised to see that both the Office of the DPP and the Legal Aid Board have been excluded. Both have a direct role in the protection and support of victims of sexual violence when it comes before the criminal courts.

RCNI Recommendation

- RCNI recommends that due consideration be given to the inclusion of both the Office of the DPP and the Legal Aid Board in the list of designated public service bodies, in the Bill itself.

Head 4 – Duties of Public Service Bodies and Service Providers

RCNI Commentary

- RCNI welcomes this clear statement of an obligation to co-operate with each other and with the Agency in order to increase awareness and understanding of DSGBV, reduce its incidence and protect and support victims of DSGBV as well as those who may be at risk of it – on both public sector bodies and service providers. co-operation across different agencies A necessary condition for progress on the 3rd National Strategy. .
- RCNI welcomes that that the the Minister will retain lead policy responsibility for DSGBV but feel the accompanying note fails to adequately encompass the Agencies role in supporting policy. The Agency's function is described as ‘will provide the lead in delivering DSGBV services and driving the Third National DSGBV Strategy (and its successors),’ while the Agency will provide the lead in delivering DSGBV services RCNI feels this note does not reflect the significant role of the agency in the formation of policy.
- For example we note in this regard that the Agency itself has a statutory duty under Head 14 (1) (j) to provide advice to the Minister on policy matters as and when requested to do so, and that another of its functions is to undertake, commission, or collaborate with, research and to assist in the development of relevant statistics. For the avoidance of any confusion we feel the note should reflect these functions.

RCNI Recommendations

- Amend the wording of the note to encompass the Agencies functions in policy support and development more broadly
- Fully consider how the Agency itself could be empowered to develop policy, so that policy is continually being informed and influenced by the experiences of survivors and those who support them in rape crisis centres and elsewhere. While we note and applaud the Agency function which includes research and data, we think that more could and should be done to devise structures which

would gather and sift the learning from these experiences and present it in suitable form to those with lead policy responsibility. For instance:

- Consider the agency being given explicit responsibility under the Act to scope and support appropriate and responsive infrastructure of local, regional or issue specific inter-agency committees to meet to discuss and relay concerns and possible solutions to the Agency.

Head 5 – Exchange of Documents and Information including Personal Data

RCNI Commentary

RCNI's respectful but firm view is that there is no need for a specific extra provision enabling sharing of personal data between public sector bodies. The law on data protection and the rights of survivors are well defined and this provision does not serve to bestow powers of data sharing outside of the existing law. It is therefore, on the face of it, superfluous.

However, trust is a highly valued and vulnerable quality in the work of responding to survivors of sexual violence across agencies. Confidentiality matters to survivors of sexual violence. They need reassurance that it is only in rare, defined circumstances (immediate risk of loss of life or serious harm, child protection concerns necessitating a mandated report e.g.) that their confidentiality will be breached by any public service body or service provider.

Survivors and service providers need to be assured that their rights under current Data Protection legislation will be explained to them and respected in all circumstances. This provision risks sowing doubt without actually providing anything additional in terms of information sharing. It may indeed give the impression: that personal data can be shared at will, without any reference to the data protection rights of the person whose personal data is being shared. Indeed, it may risk the functionaries believing that they have some additional protection to act without full regard to the existing law. Our grave concern in this regard is that fears about uncontrolled sharing across agencies of their personal data, including sensitive personal data, might deter survivors of sexual (and indeed other) violence from seeking assistance from any agency, including an independent rape crisis centre. It is also important that any provisions on personal data comply with our obligations under the Istanbul Convention (Article 65) so as not act as a barrier to victims' access to services.

RCNI Recommendations

- The phrase "including personal data" should be deleted from Head 5(1) and Head 5(2) should be deleted altogether.
- If this is not regarded as an acceptable solution, a subsection should be added to the effect that any sharing of personal data will only take place in accordance with a dedicated Code of Conduct which has been approved by the Data Protection Commissioner, and
- There should be a statutory obligation on anyone working with or for a public sector body to advise the person concerned (the data subject) of their data protection rights, before any such personal data is shared.

Part 2: Agency

Head 10 - Chief Executive

RCNI Commentary

We note that the first CEO of the DSGBV Agency may be designated by the Minister for Justice in advance of the establishment day of the Agency, but any future CEO will have to be selected via the Public Appointments Service (PAS) process.

RCNI Recommendation

The Minister should be bound by the same obligations as those binding on the PAS in Head 10(6) to satisfy itself that the person they recommend to the Minister to become CEO of the Agency has “such relevant experience, qualifications or expertise” as is appropriate to the role, if s/he decides to use his/her power to designate the first CEO of the Agency. We also believe the Minister’s appointment of the first Chairperson should follow an open competitive process.

Should a CEO be appointed in advance of the Agency establishment date and without an open competitive process under PAS, that the contract period should be limited and a competitive PAS process undertaken. The designated CEO should not be excluded from that competition.

Head 13 - Staff of the Agency

RCNI Commentary

- Our understanding is that this is the provision which will enable the transfer of staff from Tusla to the new Agency. If the Minister Children, Equality, Disability, Integration and Youth decides to do so, he can transfer any number of staff from one to the other. We think it is important that wherever the staff of the new Agency come from, there is a wide spread of relevant experience, qualifications and expertise among them, so that all the functions of the Agency are administered and overseen by specialists in their field, as far as possible.
- RCNI would query whether this provision should be confined to the Minister for DCEDIY’s designation as there are civil servants in other locations across government whom it may also be appropriate to consider transferring. **RCNI Recommendation:** Whatever decisions are made with regard to the staffing of the new Agency, ensure that the spread of experience, qualifications and expertise among them covers all functions of the Agency as they are all important.
- Consider if the provision should be broader than the Minister for DCEDIY.

Head 14 - Functions of the Agency

RCNI Commentary

- Head 14 (1) (c) if this provision included ‘in consultation with service providers’ after the word ‘prepare’, - prepare [in consultation with service providers] and publish standards for service provision and governance in respect of the services and accommodation referenced at (a) and (b)

respectively. While this addition confers no additional duty on the agency than is provided in (f) we think it worthwhile including here for the avoidance of doubt.

- Heads 14(1)(f): “engage and consult with the DSGBV sector and other relevant stakeholders” and 14(2)(a): “consult as appropriate....and consider recommendations from public sector bodies, international bodies, civil society organisations, ...other persons with relevant expertise, service users and the public”....are very welcome in that they envisage the involvement of specialist organisations including RCNI and rape crisis centres in the development of both policy and services, however
- There is little detail on the subject areas for consultation, or on the topics where consultation with specialists in DSGBV is important both for policy and for the development of the best possible services for survivors. The creation of best practice standards, supporting research projects, awareness-raising activities (whether for the general public, or “sector-specific”) are all areas in which input from specialist organisations is essential in order to ensure the best possible outcomes;
- There is no detail at all on the possible mechanisms for consultation with specialist organisations and others. RCNI’s view is that a framework for regular consultation, including obligations on all public sector bodies and funded service providers to participate at least to a minimum level in any relevant to their own area of knowledge and expertise, should be put in place at this early stage so that a culture of effective inter-agency consultation and collaboration is allowed to develop as early as possible in the lifetime of the Agency.
- We also note that among the functions of the Agency are duties to provide assistance, advice and support on DSGBV related matters including policy as and when needed in effect to other public sector bodies, to the Minister for Justice, to civil society organisations. It seems to us that this is much to ask from the Agency in the absence of a formal structure which would allow the Agency to call on its colleagues in public sector bodies and civil society organisations (at the very least service providers and providers of supplemental services) to provide relevant advice based on their individual areas of experience and expertise.

RCNI Recommendations

- RCNI recommends that an obligation is placed on the agency to provide a minimum level of opportunities and structures for consultations under 14 (1)(f) and 14(2)(a).
- Such that the Agency has responsibility for ensuring that mandatory consultation takes place with relevant public sector bodies, service providers, and civil society organisations, and others as relevant, are invited to participate in targeted consultations as appropriate;
- RCNI further suggests that there should be an open list of topics on which the Agency should always consult with relevant public sector bodies, civil society organisations and others;
- RCNI recommends that there should be a duty imposed on public sector bodies and service providers funded by the Agency to collaborate with any consultation initiated by the Agency, as far as is reasonable in the circumstances;
- RCNI recommends that there should be an obligation on the Agency to ensure that any recommendations, reports, or other outputs of any of these consultation structures, are shared with the Minister and his or her officials, as it is they who have responsibility for deciding policy; finally

- RCNI recommends that Agency is given an obligation to operate from the principle of transparency such that resources and evidence should be made publicly available, where no impediment applies, in a timely, complete and accessible manner.

Head 15 - Power of Minister to give Direction etc

RCNI Commentary

- This Head underlines the nature of the Agency vis a vis the Government and the central role of the Minister for Justice and his/her officials in generating policy on DSGBV. It allows the Minister to give specific directions on any matter, to give general directions on policy, and to issue guidance on prioritisation of policy commitments, codes of practice relating to governance and related matters, to all of which the Agency must have regard. This underlines the close oversight which the Minister and his officials will have over the running of the Agency and the control which they will have over policy direction.
- RCNI wonders if some reference to an assessment of capacity and resourcing might be possible here in terms of the Minister's regard for potential additional capacity necessary when directing new policy or priorities. Particularly when such changes necessitate resource considerations between budgets and the annual vote.

Part 3: Board of Agency

- **Head 18 - Membership of the Board**

RCNI Commentary

- RCNI notes that under this Head, the Minister may designate a person to be the first Chair of this Board without any PAS process before this Agency is established, and may appoint an officer of his/her own as an ordinary member of the Board under Head 18(2) at any time. This means that the influence of the Minister on the composition of the Board will be strong, at least initially.
- RCNI also notes that on this Board which will have 8 members in addition to the Chair, there are two seats reserved for members with experience and expertise relating to the functions of the Agency. This is important, but it is not quite the same thing as having experience and expertise relating to DSGBV. The notes are more specific in this regard. We think that this experience and expertise should also be represented on the Board.
- Under 18(7) the Minister has the responsibility to appoint a chairperson of the board. The board's own autonomy in selecting its own chair or submitting a preference to the Minister for appointment is absent.

RCNI Recommendation

- The Board should include at least three members with significant experience and expertise in policy and services, and not simply knowledge on, some area of DSGBV.
- The board should be tasked with submitting a chairperson of their selection to the Minister for approval. With the exception of Head 18(8), where a chair that can be appointed in advance of the formation of the full board and the commencement of the Agency.

Head 19 Appointments as members of the Board

Head 19 (1) appears to have a typo citing head 18(13) where no such subsection exists.

Head 19 - 26 – Matters regarding the Board

RCNI Commentary

RCNI is in agreement with the provisions set out in Head 19 – 26 and have no recommendations to vary same at this point.

Part 4: Governance and Accountability of Agency

Head 27 – Performance Framework

RCNI Commentary

- This Head sets out the Minister’s role in providing policy guidance, direction and prioritisation parameters in the form of a multi-annual Performance Framework to the Agency for the preparation of its Corporate Plan through which all will be implemented. It also sets out a structure on this process of Ministerial direction in order to allow for the effective running of the Agency. This Head enables due regard to be given to the democratic political process through the Minister and ensures the Agency can be directed in being responsive to same. However, while we may expect this in practice, there is no mention of the Minister and/or his or her officials having regard to any policy advice, proposals or recommendations from the Agency or indeed from civil society generally, when devising the performance framework.

RCNI Recommendation

Add 27(4) The Minister may seek the assistance of the Agency and any other stakeholder in developing the Performance Framework.

Head 28 – Corporate plan

RCNI Commentary

- Our understanding is that the Agency’s responsibility is to devise a Corporate Plan, each one to last three years, in response to the Minister’s Performance Framework which will set out how the Agency will deliver and be measured on its purpose. .
- We welcome very much the duty on the Agency to consult with interested parties and have regard to the views of those parties, before it finalises each Corporate Plan.
- We note that the Minister may intervene to amend the Corporate Plan at any time after it has been approved by him/her. This has the advantage of providing a mechanism through which necessary changes may be made if it transpires that a particular policy or practice is not working out as well

as anticipated in reality or is giving rise to unintended consequences as well as ensuring a responsive Agency activity to matters arising.

Head 29 – Statement of priorities

RCNI Commentary:

- This is the Head which gives the Minister the duty to state his or her priorities for any single year of the life of a Corporate Plan “with specific policy guidance, direction, prioritisation and resource parameters” in line with the Government’s Estimates for Public Services. This is what will inform the creation by the Agency of an Annual Business Plan under Head 30.
- This duty underlines the clear and direct line of responsibility and control back from the Agency to the Minister and ultimately to the Government of the day and the Oireachtas.

Head 30 – Annual business plan

RCNI Commentary

This Head sets out the corresponding duty of the Agency to create an Annual Business Plan which accords with the Statement of Priorities given to it by the Minister. The Agency must produce an Annual Business Plan in accordance with the Minister’s Statement of Priorities and stated policy objectives.

Heads 31 – 35 RCNI is in agreement with the provisions set out in Head 31- 35 and have no recommendations to vary same at this point

Part 5: Provision of Services

Head 36 – Arrangements with service providers

RCNI Commentary

- With regard to Head 36 (2), cited in full here: “Before entering into an arrangement under subhead (1), the Agency shall determine, in respect of a financial year of the Agency, the maximum amount of funding that it proposes to make available during the course of that year under such an arrangement and the level of service it expects to be provided for that funding”, RCNI’s view is that this provision should make it clear that this does not mean that funding of service providers can **only** be granted on an annual basis;
- Without multi-annual funding, it is extremely difficult for service providers to plan their work and carry it out in a sustainable and cost-effective way. It is hard to recruit, train and retain skilled staff with the necessary experience and qualifications appropriate to their role if it is only possible to offer them a fixed-term contract lasting for 12 months. Annual-only funding also means that every year, significant resources must be set aside to renew funding applications and if necessary, to recruit and train new staff.
- With regard to the wide-ranging obligations on service providers under Heads 36 (8) and (10) to provide any information requested to the Agency or the Minister respectively, on pain of the significant sanctions set out in Head 36 (9), some qualification is needed to make it clear that service providers do not have to provide personal data on anyone (especially service users) in possible contravention of their obligations under data protection legislation, in order to comply with these obligations so that they will not be subjected to the sanctions listed under Head 36(9).

RCNI Recommendations

- Reword Head 36(2) to make it clear that this refers only to the information on annual financing which the Agency must give to the service provider each year, not to any obligation on either Agency or service provider to enter into a service level agreement lasting no longer than a year.
- Reword Heads 36 (8) and (10) to clarify that the duty on service providers to provide information does not include the provision of information in contravention of the service providers' data protection or other obligations under the law.

Head 37 – Persons providing supplemental services

RCNI Commentary

This Head in itself is very welcome as it recognizes the multi-faceted and wide-ranging nature of the fight to eliminate DSGBV. However, just as under Head 36 above, we think that Head 37 (5), (6) and (7) which deal with the provision of information requested by the Agency, should be qualified to make it clear that these obligations and sanctions do not refer to the sharing of any personal data in contravention of data protection and other legislation.

RCNI Recommendation

Reword Heads 37 (5), (6) and (7) to clarify that these obligations and sanctions respectively should not be understood to include the sharing of any personal data in contravention of data protection and other legislation.

Head 38 – Miscellaneous

38(1) amends the Child and Family Agency Act 2013 to remove paragraph b. The Child and Family Agency has retains a broad range of responsibility to responding to and preventing DSGBV over and above the “care and protection for victims of domestic, sexual or gender-based violence, whether in the context of the family or otherwise” which is being transferred to the new DSGBV Agency.

RCNI Recommendation

Consideration be given to not only deleting Section 8(3)(b) but replacing it with a suitably worded paragraph recognising the continued pivotal role the C&F Agency will play in DSGBV responses.

Proposed Additional Head:

Head [39] – Guiding Principles

RCNI Commentary

- This is legislation which is going to address the prevalence of DSGBV from all sides and also ensure that the response of Government and civil society generally to victims of these forms of violence is the best it can be. An effective response entails a common vision and purpose shared across all public sector bodies and civil society generally, who will have to collaborate with each other. RCNI's view is that therefore, a strong statement of its Guiding Principles should be included in this Bill, ideally in Part 1. We suggest that the parallel statement at Section 8 of the Family Courts Bill 2023 is a powerful precedent.

RCNI Recommendation

Include in a separate Head in Part 1 a strong statement of the Guiding Principles which will underpin this ground-breaking new DSGBV Act and all the activities of the new Agency, e.g:

“DSGBV Agency shall do its best to ensure that

- All its activities are underpinned by knowledge and understanding of the nature and impacts of domestic, sexual and gender-based violence;
- Such knowledge and understanding is fostered in all its partner agencies, including but not limited to public sector bodies and service providers and any persons providing supplemental services;
- There is always a strong focus on maintaining and developing measures to further the primary prevention of domestic, sexual and gender-based violence;
- All relevant activities of the Agency are undertaken in partnership with other relevant agencies as far as possible, in a spirit of mutual understanding and co-operation;
- The rights, dignity and well-being of all survivors of domestic, sexual and gender-based violence shall be at the centre of every action taken to implement any direction or plan;
- The best possible communication and information sharing systems will be fostered across agencies in every direction so that not only policy directives from the Minister and obligations under service level agreements are shared with service providers and others, but also so that the experience of service providers embedded in their communities can be passed on to the Agency and the Minister in a timely and appropriate way;
- There is a strong emphasis on providing not only the best possible quality of service through common standards and protocols but also on ensuring that the best possible quality of training and professional supports are made available to all those working with survivors of domestic, sexual and gender-based violence in whatever capacity;
- All activities undertaken are recorded and analysed through the support and development of the best possible evidence-gathering, through the support of data capacity across government and civil society, the development of shared definitions and terminology and the promotion of open data principles.

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Rape Crisis Network Ireland c/o (RCNI)

Carmichael Centre

North Brunswick Street

Dublin D07 RAH8

Email: director@rcni.ie

Website: www.rcni.ie