**Submission to the Oireachtas Committee on Health and Children on Protection of Life During Pregnancy (Heads of) Bill 2013**

**Wednesday 8th of May 2013**

## Introduction

Founded in 1973, the National Women's Council of Ireland is the leading national women's membership organisation. We seek full equality between men and women. We represent and derive our mandate from our membership, which includes 165 member groups from a diversity of backgrounds, sectors and locations. Our mission is to lead, and to be a catalyst for change in the achievement of equality between women and men. Our mandate is to articulate the views and experiences of our members and make sure their voices are heard wherever decisions are made which affect the lives of women in all their diversity. Our vision is of an Ireland, and of a world, where there is full equality between women and men.

The NWCI has worked on the issue of abortion for over thirty years and our position on abortion has developed over time in recognition of the diversity of views and perspectives which women have on the issue. We have been mandated by our membership to adopt a pro-choice position on abortion. This position is rooted in an analysis of gender equality, women's human rights and social inclusion. The NWCI is well placed to make a considered contribution to the draft legislation.

In 2013, the NWCI produced a position paper on abortion. Most recently the NWCI has led an online campaign to legislate for the X case where over 76,000 emails were sent from more than 17,000 women and men, representing every constituency in the country, calling on TDs and Senators to bring forward legislation as a matter of urgency to give effect to the X case. This demand is reflected in recent opinion polls which reveal that 84% of the population support abortion where the mother's life is threatened, including by suicide.[1] Our role is to give voice to the experiences of women in Ireland who remain largely voiceless in this debate due to the stigma that surrounds abortion in Ireland and to support women's access to reproductive health.

[1] See Irish Times / Ipsos MRBI opinion poll February 2013

**NWCI Concerns and Recommendations**
NWCI welcome the fact that after 21 years of government inaction the General Scheme of the Protection of Life during Pregnancy Bill 2013 has been published to give effect to the X Case judgement. This is an important step towards ensuring that women's lives during pregnancy will be protected.

We welcome its clarity that it is not necessary for medical practitioners to be of the opinion that the risk to the woman's life is immediate or inevitable as this approach insufficiently vindicates the pregnant woman's right to life. We further welcome that in the case of emergency, one doctor is sufficient to assess the danger to a woman's life.

However we have grave concerns in relation to other aspects of the Heads of Bill. In our analysis of the Bill we have focused on the Bill's capacity to ensure that there are accessible and practicable procedures in place to allow a woman to realise her constitutional right to an abortion in life-threatening circumstances, including the risk of suicide. We will discuss this on a 'Head by Head' basis as requested:

**Head 1: Interpretation**
The NWCI would share the concerns of one of our member organisations, the Irish Family Planning Association, in relation to the definition of the unborn as contained in Head 1.This new definition gives equal protection to a non-viable foetus and to a woman and limits the government's ability to introduce measures in the future to allow terminations in cases of fatal foetal abnormalities where there is incompatible with life. In D v Ireland (2006) ECHR the State argued that where there is no prospect of life outside the womb a foetus may not be considered 'unborn' for the purposes of Article 40.3.3.

The Irish Council for Civil Liberties in January 2012 also expressed concern that that while the ECHR has not yet made a finding that Ireland is in violation of Article 3 in relation to our stance on fatal foetal abnormality, it is strongly arguable that we are in breach. The NWCI would support the ICCL in their view that the government should include provision for termination in the case of fatal foetal abnormalities.

***The NWCI recommends revision of the definition of the unborn to include a provision regarding incompatibility with life which is consistent with our Constitution and Ireland does not run the risk of falling foul of Article 3 of the European Convention on Human Rights in the future.***

**Head 2: Risk of Loss of life from physical illness, not being a risk of self-destruction**
The NWCI has three concerns in relation to this Head of Bill. Firstly, in the case of a woman at risk of loss of life from physical illness, not being at risk of self-destruction, the Heads of Bill makes no provision for referral protocols, timeframes for assessment, determination or time limits in which a woman can expect her pregnancy to be terminated. Pregnant women need to be confident that they will have timely access to termination services in the case of life threatening pregnancies and that there are clear protocols and procedures in place about how to invoke the assessment process once she has made a request for termination. Women need to have comprehensive information set out in legislation and regulations so that they can be clear about their rights in accessing abortion services at all stages of the

procedure. The legislation and/or subsequent regulations must also provide the possibility of advocacy support to a woman to help her with the initial and review stages of the assessment and determination procedures.

Secondly, the requirement of a General Practitioner (GP) to be consulted to certify that a risk to life exists is another unduly onerous layer on an already complex procedure. This amounts to a third doctor in the decision making in relation to physical risk to life and four doctors in the case of a risk to life by suicide. The NWCI share the concern of our member organisation, the Irish Family Planning Association (IFPA) in relation to the fact that there is no requirement to ascertain the consent of the woman to her GP being consulted on this matter and the fact that there is no precedent for such a consultation in medical practice.

Thirdly, the NWCI recommend that the legislation should clearly assign a duty of care on the Health Service Executive and the treating institution to ensure that women receive appropriate information and care, including post abortion care. In the draft legislation we are concerned that there is a strong emphasis on the duties of women and their doctors and does not specify the duty of care of the Health Service Executive and the healthcare providing institution in ensuring that women have access to appropriate care in accessing abortion in life threatening situations. This anomaly needs to be addressed.

***The NWCI would recommend that clear protocols and procedures are set out in the legislation of how a woman can set in motion the assessment procedures once her request for termination has been made and the supports available for her to do so; to remove from the legislation the requirement to consult with GPs and for the legislation to clearly assign a duty of care on health service providers to ensure that women receive appropriate information and care including post abortion care.***

**Head 4: Risk of loss of life from self-destruction**

In the case of risk of loss of life from self-destruction, the draft legislation requires the unanimous decision of three doctors to determine real and substantial risk to a woman's life and for one of these doctors to consult with the woman's GP where practicable. In the case of appeal three further psychiatrists are required to make an assessment with the requirement for unanimity. The European Court of Human Rights in their judgement in the A, B & C case require that measures and systems to give effect to their judgement must be accessible and effective. The NWCI is of the opinion that the procedures provided for in the Heads of Bill to determine suicidal ideation would not satisfy this requirement. The provision for unanimity does not satisfy the accessibility test of the European Court of Human Rights. Further it is totally unworkable and unduly onerous for women in these vulnerable situations.

Appropriate procedures, such as those suggested by the expert group report[2], must be put in place whereby competent and qualified mental health specialists can assess the risk of suicide. These procedures should not be stigmatised with additional barriers but be subjected to standard clinical practice whereby the opinion of two doctors are sufficient to determine risk. NWCI agree with Doctors for Choice that a psychiatric emergency is not

[2] Report of the Expert Group on the Judgement in A, B and C v Ireland (November 2012) p.35.

considered to be any different to any other medical emergency in the practice of medicine. The requirement of four doctors has no basis in clinical practice and two doctors are sufficient. The requirement in the Heads of Bill to consult with the woman's GP is not standard practice in psychiatric cases and should be removed. The requirement to involve an obstetrician in making a decision about mental health which is outside his or her area of competence is also not justified or relevant.

The NWCI questions the practical application of the procedures in the context of the current health system where it is considerably difficult for people with psychiatric difficulties to see a psychiatrist in the first place. Any procedures that are likely to be unworkable do not pass the accessibility test and should be removed.

Pregnant women must be trusted. Women's lives must not be endangered by unduly onerous procedural requirements. The legislation must follow normal clinical practice to ensure that women at risk of self-destruction are not further stigmatised by overly restrictive guidelines. It is important to remember that the test in the X case does not require immediacy or inevitability. It requires on the balance of probabilities that there is a real and substantial risk to the life of the mother. A requirement of two doctors is sufficient to meet this test.

***The NWCI recommends that this section be amended to provide for the unanimous opinion of two psychiatrists to determine that there is a real and substantial risk to the life of the woman in cases of risk of loss of life from self-destruction.***

**Heads 6-9: Formal Medical Review Procedures**

The NWCI believes that the review framework is not sufficiently accessible to women with life threatening pregnancies. The review process must not be of such procedural complexity as to be rendered ineffective in practice. In our opinion the review process of up to 14 days may lead to excessive delay and should be a maximum of three days to be timely and effective and to meet the accessibility requirement of the A, B and C judgement.
There should be a provision for assistance to the woman to support her with the review process taking into account that these are life threatening cases and it is highly likely that a woman will be in need of advocacy support. This would ensure that the review mechanism would adequately examine and resolve differences of opinion between a woman and her doctor or doctors.

The NWCI also has concern regarding the composition of the independent review panel. The appeal procedure can only be independent and impartial if persons with a conscientious objection to abortion are prohibited from participating in such an appeal and this needs to be expressly stated in the legislation.

***The NWCI recommends that it is provided in legislation that women will receive advocacy support in taking a case to the review stage and that the review process be a maximum of three days to ensure a timely and effective remedy. The legislation must stipulate that no person who consciously objects to performing an abortion can be a part of the review panel.***

**Head 12: Conscientious Objection**

The NWCI welcome the limits that have been placed on the refusal of care in Head 12. However, the NWCI would share the concerns of our member organisation, IFPA, regarding lack of adequate safeguards for women the case that they are refused care on the basis of conscientious objection. The NWCI is concerned that conscientious objection will be used to delay or refuse access to lawful abortion. We feel that there is insufficient duty placed on a doctor who refuses to perform a lawful termination to save a woman's life to ensure that the termination is carried out by another doctor in a timely manner.

Doctors invoking conscientious objection must have a duty to refer a patient to another doctor and to give all relevant information in a timely manner. Conscientious objection cannot be invoked where there is no other doctor available to carry out the lifesaving procedure. Ultimately the obligation must be jointly placed on the HSE and the treating institution to ensure that a woman is treated appropriately.

**Head 19: Offence**

The NWCI welcome Head 18 that repeals the relevant sections of the Offences Against the Person Act 1861 but is extremely concerned at Head 19 that creates an offence of a 14 year prison sentence for any woman obtaining an abortion in Ireland due to the 'gravity of the crime'. The Bill does not fully decriminalise abortion and still provides for the potential imprisonment of a woman who has an abortion or self-aborts outside of the very restrictive boundaries of the Bill. This Head does not take into account the reality for many women every day in Ireland who have a crisis pregnancy and make the difficult decision to have an abortion outside of these guidelines, having to travel abroad if they can afford it and have the ability to travel or to self-abort if not.

It is our considered opinion that the continued criminalisation of abortion with the severe penalties provided for in the Heads of Bill will deepen the significant chilling effect on both women and doctors. Criminal laws can impede access to lawful sexual and reproductive health services and information, including family planning due to the chilling effect such laws have on women and medical practitioners who are worried about possible prosecution. This was highlighted in the A, B and C case. Because criminal laws are based on and perpetuate stigma women face discrimination and prejudice when accessing lawful healthcare. Our members have reported that women coming in to get counselling on their options in a crisis pregnancy situation are terrified of the possibility of going to jail and feel like a criminal in accessing lawful information services. It is absolutely unacceptable that women are made feel like this and the Head 19 offence does nothing to change this perception and situation.

As the UN Special Rapporteur on the Right to Health stated on his visit to Ireland in December 2012 "criminal laws and other legal restrictions disempower women who may be deterred from taking steps to protect their health, in order to avoid liability and out of fear of stigmatization."[3] The criminalization of abortion increases this stigma and discourages women from taking steps to protect their health due to fear of prosecution and

[3] UN Special Rapporteur on the Right to Health Mr. Anand Grover speaking at the Women's Human Rights Alliance conference "Realising a Women's Right to Health" December 2012. See also his report to the UN Human Rights Council (2011)

stigmatization. Doctors and women need to be absolutely certain that they will not be incarcerated for providing for or accessing a life saving procedure. The continued criminalisation of abortion takes away that ability.

Abortion must be taken out of the criminal law. Canada decriminalized abortion in 1988 and is the first country to manage abortion as part of standard health care rather than within the civil or criminal law. After 25 years with no legal restrictions on abortion, abortion rates are low and have declined since 1997. Prohibition of abortion should be placed within medical ethics, not criminal law. The effect that criminalization has women is detrimental to their physical and mental health and the real danger that they will not access reproductive services that is an integral part of the right to health. These criminal provisions are bad for women and must be removed. There is no requirement by our constitution that we enact criminal provisions to complement Article 40.3.3.

***The NWCI recommends that the legislation provide for the full decriminalisation of abortion and to remove Head 19 from the draft legislation.***

**Concluding Remarks**

While the NWCI welcome the publication of the Heads of Bill as an important first step we consider that many of the procedures being proposed are too complex and laden with obstacles which may have the effect of discouraging women and their doctors from availing of them. We feel that the chilling effect of criminal liability will continue to persist resulting in women not accessing lifesaving healthcare services for fear of prosecution. The legislation needs to have timely and clear systems and procedures in place that responds to the needs of all women living in Ireland. It is important that all services provided for under this legislation are physically and financially accessible to all women in Ireland without any discrimination. The Irish government has an obligation to ensure that this legislation is accessible, practical and effective to protect the rights and dignity of women.

This legislation will only deal with a very small number of cases and will not change anything for the majority of women in this country. Ireland will still have one of the most restrictive abortion regimes in the world. It will provide no solution to women who are pregnant as a result of rape or incest, in the case of fatal foetal abnormalities or where there is a risk to the health of the woman. Women in crisis pregnancies will still be forced to travel abroad for abortions due to the lack of access to full reproductive rights in Ireland.

**Further information**

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