Proposed Abortion Law Reform in New Zealand

- The Government has stated that it wants to ensure abortion laws are consistent with treating abortion as “a health issue that is a reproductive choice”.
- To this end, the Law Commission has been asked to provide advice on the possible changes to New Zealand’s law concerning abortion. The Law Commission will conduct a review and report back to the Minister of Justice.
- The two key laws that regulate abortion in New Zealand are the Contraception, Sterilisation, and Abortion Act (1977) (CSAA) and the Crimes Act (1961).
- The CSAA describes the constitution and appointment procedures for the Abortion Supervisory Committee, its functions and powers; outlines the provisions relating to licensing of providers and counselling; and describes the procedure to be followed when a woman seeks an abortion.
- The Crimes Act (1961) outlines the circumstances under which procuring an abortion is unlawful.
- The Law Commission has created a website that explains the current law and the process for receiving abortion services: http://abortionlaw.lawcom.govt.nz/
- The Law Commission is inviting feedback from the public through the website or by email. The link to online feedback is: http://abortionlaw.lawcom.govt.nz/views/ and the email address is: alr@lawcom.govt.nz.
- People do not have to provide their name or contact details and they can provide input until 5pm on 18 May 2018.

The request from the Minister of Justice that the Law Commission review the abortion laws centres on the Government’s stated desire “to make changes to ensure New Zealand’s abortion laws are consistent with treating abortion as a health issue that is a reproductive choice for women, rather than as a criminal issue” (Letter from the Prime Minister, Rt Hon Jacinda Ardern, to Minister of Justice, Hon Andrew Little – not dated).

In response to the question of whether the current legal framework needs to change we offer the following points for consideration.

**Abortion is best treated as both a justice issue and as a health issue.** The starting presumption should always be in favour of human life, no matter the stage of development of that life. Any decision to end a human life should only be granted as an ‘exception’ to the principle that all members of the human family have an inherent dignity. This principle, spelled out in the United Nations Declaration of Human Rights, is meaningless if it is not enshrined in the law. The Contraception Sterilisation and Abortion Act 1977 holds the rights of the child and the rights of the mother in tension, having due regard for both. This should not change.

**In every abortion there are two human lives involved and at least one life is at stake.** Our present laws reflect the fact that human life should not be taken without good reason. Making abortion solely a ‘health issue’ places the fundamental right to life, something that should be a presumption
for all human life, outside of any law and making the rights of the unborn child totally dependent on the choice of the mother. This which would potentially allow for abortion for any reason, including gender selection. We need legislation which clearly specifies the circumstances under which abortion remains unlawful and under which abortion providers will be prosecuted for unlawful abortions.

**Any change in legislation needs to ensure women are free to make informed choices, including the choice to continue their pregnancy.** Abortions have been shown to cause psychological and mental harm to some women, affecting their physical and emotional well-being. What is required are better processes that support women and allow them access to unbiased information and adequate safeguards by way of independent counselling. In the face of evidence which shows that many women choose abortions under duress – whether from a partner or family or because of financial or social reasons – the introduction of mandatory independent counselling will allow them greater control and choice while minimising the risks to health and well-being that often follow.

**The current law does not make criminals of women** – a fact often misrepresented by those proposing change. Any woman in New Zealand who procures an abortion within the current regulatory framework is not committing an illegal act. The law does, however, protect them from unlicensed and unscrupulous abortion providers. “Unlawful” providers can be prosecuted under current legislation but the woman seeking an abortion cannot be prosecuted. Sec 183 of the Crimes Act specifically states that while the person who “procures” the miscarriage is liable for imprisonment, the “woman or girl shall not be charged as a party” to any offence.