



*Transcript of the Meeting
of the Citizens' Assembly*

Eighth Amendment of the Constitution

22 and 23 April 2017

STRICTLY PRIVATE AND CONFIDENTIAL

THE CITIZENS ASSEMBLY

TRANSCRIPT OF MEETING RE

THE EIGHTH AMENDMENT OF THE CONSTITUTION

HELD ON SATURDAY, 22ND APRIL 2017

AT

GRAND HOTEL, MALAHIDE

APPEARANCES

**THE CITIZENS ASSEMBLY: MS. JUSTICE LAFFOY, CHAIRPERSON
MS. SHARON FINEGAN, SECRETARY**

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PROFESSOR MADDEN**

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THE MEETING COMMENCED AS FOLLOWS ON SATURDAY, 22ND APRIL 2017:

CHAIRPERSON: Good morning everybody. I haven't still got the gong! In any event I really don't need the gong, thank you very much. I want to welcome you all. First of all I want to welcome the members and I want to welcome the observers and the media who are here today and I also want to welcome all those who are joining us on line and on RTE News now on this, the fifth and final weekend meeting in relation to the Eighth Amendment.

Our Work Programme this weekend will take a very different structure to our previous meetings as we gather to make our recommendations as we see fit on the topic of the Eighth Amendment. Before the Secretariat and I take you through today's work programme, I believe it is appropriate that we take a moment to pause and reflect on our work to date and the task ahead of us this weekend.

When we all came together for the first meeting in November, it was clear to me that within the room there was a wide range of experiences, opinions and ideas on the Eighth Amendment. A topic that has at times convulsed the Nation and I doubt that there were many among us who were not in some daunted by the task ahead of us. I include myself in that, needless to say. This is one of the most complex and contentious subjects in Irish society and we could not but feel the weight on our shoulders and I again include myself in that and yet by participating in the Assembly, we have been afforded a unique opportunity as this exercise in deliberative democracy has allowed us to withdraw from the polarising perspectives and begin first and foremost with the facts.

The process we followed saw us begin with facts and divest ourselves of opinion. Consequently we did not follow the more familiar path on this topic, where equal time is provided to each side of the argument, although as you know we did on the last weekend when we heard the Advocacy Groups. We maintained a balance on that occasion. The process we followed, I believe, has contributed greatly to the standard of information that we have received on this topic. We also listened carefully to your feedback and our work programme evolved with your valuable inputs

and I'm sure you appreciated that. Indeed, since the first weekend I have observed that you listen, engage and challenge some of the most experienced medical, legal and ethical experts and advocates on the subject. I have watched as you have engaged with some of the most complex pieces of legislation, immersed yourselves in medical and ethical discourse and listened with respect to the voices and opinions of others. Your overall commitment to this process has continually provided the Secretariat and me with much encouragement and I say that genuinely. Given the level of commitment you have shown to date, I have no doubt that you will show equal commitment to the task ahead of us this weekend.

Now, what is the task? In absolute terms it is to make recommendations and I want to emphasise that. It is to make recommendations as we see fit to the Oireachtas on the topic of the Eighth Amendment. There are very few people who will have the breadth of knowledge you have on this topic after our previous weekend sessions and you have an opportunity to bring this knowledge and your understanding of it to our elected representatives.

These recommendations will be made primarily through a balloted vote. It is important that when you vote you do so with your own conscience and with competence and conviction. We must all be satisfied that the recommendations once made are a fair representation of the work of the Assembly. Now, I want to say something about the weekend work programme and I'm going to describe it in very broad terms at this stage. At the end of the March meeting of the Assembly you were invited to make comments and preliminary suggestions on the types of issues we thought should be voted upon or included on a ballot paper for the final weekend. Comments and suggestions could refer to legal avenues and/or aspects of the substantive issue.

The Secretariat collated these suggestions and this informed the preparation of the draft ballot paper, which we circulated to you before Easter. This work was led by me, with the assistance of the Secretariat and members of the Steering Group, with whom we met twice for input and most importantly with the assistance of the Expert Advisory Group with whom we conferred weekly actually and we spent a long number of hours. I was tempted, in fact I asked Sharon, how many hours did we spend on

the ballot paper and it was a lot of time. A lot of time, maybe 15 hours perhaps, yes.

As Assembly Members you know well the complexities of the Eighth Amendment as a piece of law and this is reflected in the draft ballot received before Easter. It is complex. Significant time and effort was given to preparing and structuring a ballot that is legally robust, affords you all the opportunity for real input and importantly provides us with enough information to make real and substantial recommendations to the Houses of the Oireachtas. The ballot paper has by necessity more than one question and it is sequential in nature, meaning that later ballots are dependent on the outcome of earlier ballots. Likewise, depending on the votes on earlier questions, not all later questions in the ballot paper may be reached.

Now, what you have before you at the moment is a draft and I emphasise that, a draft ballot paper and it remains a draft ballot paper. As our agenda for the weekend reflects, we have allocated plenty of time for your questions, for discussion and for agreeing on the wording of each individual ballot before we vote. To assist in this regard and indeed to provide you with legal and medical or legal information or legal clarification, we will benefit from the expertise of the Expert Advisory Group who you all know well and whom I'll introduce again later.

Their role, and I want to emphasise this, will be to answer questions on specific issues related to the ballot paper. Now I emphasise that, related to the ballot paper, rather than on a wider range of questions about the content the citizens have heard over the previous four weekends. So bear that in mind. The questions relate to specific issues in relation to the ballot paper. Further to this, if you, the members, wish to raise issues or suggest changes it may be necessary for me to adjourn briefly to reflect on the suggested amendments. Any suggested amendments may be incorporated by agreement following this consideration, though we must remain mindful of the inconsistencies which may be given rise to in other parts of the ballot paper and that is very important. The Secretariat, the Expert Advisory Group and myself, as I say, we have put an awful lot of work into this and we are fully conscious of the risk of inconsistencies and you have to bear that in mind.

Before your discussions on each ballot paper, I will provide you with a detailed

explanation of the format and wording of each. This explanation will also provide detail on how the results of each draft ballot will be presented and what constitutes a majority vote in each case.

Now, voting, I had a private session with the members and they are fully aware and have noted this but as you can see, as everybody can see, we have voting booths in the room this weekend. The voting booth and the secret ballot are fundamental symbols and tenets of democracy and about this I have enlisted the expertise of the retired Returning Officer for County Dublin, John Fitzpatrick and his team who are with us and they are sitting over there, who will provide independent oversight for the process.

I must at this point take the opportunity to thank John and his team for all their assistance to date, which has been invaluable and I mean that. It has been invaluable. Voting will be done in secret. Members will register for and collect the final agreed ballot and will move to cast their vote in the booth. The completed ballot papers will then be placed in ballot boxes. Mr. Fitzpatrick and his team will also be responsible for the counting of the ballot papers and the accurate presentation of the results. So, our whole objective is to produce an accurate result.

Now, in relation to the announcements of the results. It is intended that the results of each ballot will be announced as soon as the votes have been counted and verified. I will announce the result in public session and depending on the outcome there may be a multiple of votes over the weekend. I will, in the interests of absolute openness and transparency, be providing the votes in absolute terms. In other words in numbers as well as in percentage terms.

Now, I just want to speak about something which I have variously been calling miscellaneous recommendations and ancillary recommendations. The votes will form the recommendation that goes to the Houses of the Oireachtas. However, in your feedback at our last meeting, many of you indicated that you would like to see wider policy issues as distinct from just legal challenges, reflected in the recommendations of the Assembly. I am strongly of the view that you have almost uniquely comprehensive understanding of this topic and it is important that we

capture these ancillary recommendations. Therefore, we will circulate a response form for you to fill in and any emerging consensus, themes or issues which emerge from your response to that form will be included as recommendations in the final report.

For those watching the Assembly on line or on RTE now, thank you for your continued engagement with the Assembly. You may be interested to note that a full agenda for the weekend is available to view on line, though it is subject to possible changes and times and all of that, depending on how things pan out. All the background papers, presentations and draft ballots prepared for the Assembly will become available on our website throughout the course of the weekend. Likewise, all material that is given to members, including a synopsis of each of the meetings to date is also available to the public on our website and that's www.citizensassembly.ie.

Now, in the interests of openness and transparency we are conducting as much of this weekend's proceedings, including the voting in public. Each member of course, it is not necessary to say this, each member will of course vote in secrecy and anonymously in the booths.

Now, the next heading I have on this paper is conclusion and I must preface my remarks by advising that you will be hearing an awful lot more from me before the day is out and before the weekend is out. So, that is the context in which I want to talk about conclusion. Finally, and in conclusion, let me thank you for your work to date. You have contributed to raising the level of discourse on this subject and you have shown the inherent value in respect of different views or opinions. Let us continue in this spirit of collegiality for the remainder of the weekend. I would now like to call on Sharon Finnegan, the Secretary to the Assembly, to present the proposed structure of the ballot paper and this will be on screen and this is very, very important. This will give you an understanding of where we're going and I would ask you to really concentrate on this. Thank you very much.

END OF ADDRESS BY CHAIRPERSON

PRESENTATION OF COMPLETE DRAFT BALLOT PAPER BY MS. SHARON FINEGAN, SECRETARY TO THE ASSEMBLY

MS. FINEGAN: Many thanks Justice Laffoy. I just have a couple of things to do here just to get this set up. So, before I begin, just a couple of things to say. The purpose of the presentation that I am about to give is to walk you, the members, and those of you watching at home, walk you through the complete ballot paper. It is important that before casting any vote, members understand the full potential implications of each. To do this they must understand how the draft ballot paper hangs together and how the sequencing will work. As Justice Laffoy has said, the members received this draft ballot paper before Easter. As such, you, the members, are already familiar with it.

For those of you watching on line, the ballot paper that I am about to walk through is now available on the website and I would encourage you to read through it as I go through this presentation. I have to say that this is not, this presentation I am about to give is not designed to be a precise explanation of the wording used or the legal issues underpinning each ballot. Justice Laffoy, as she has said, you will be hearing from her throughout the weekend. She will be providing that detail later as required and if required.

Instead this presentation is aimed at aiding your understanding of the structure and how each draft ballot connects with the next. So, we'll begin. So ballot one asks the members, draft ballot one I should say, asks the members *"do you think Article 40.3.3 should be retained in full or not retained in full?"*

In this ballot you have two options. Option 1. Option 1 is "Article 40.3.3 should be retained in full." So that's the first option on this ballot paper that you are being presented with. In the event that this is where the majority of members cast their vote in, in other words if the majority of members, having collated the votes, decide that they wish to retain Article 40.3.3 in full, that there be no change, the voting process is complete and the work for the day completes. So when the Judge announces the results of that at 12.05, if the results are that Article 40.3.3 is to be retained, that is where our work will essentially conclude.

Option 2 is that Article 40.3.3 should not be retained in full. In the event that the majority of the citizens decide this option, we will then proceed to Ballot 2. So, moving on Ballot 2. Ballot 2 asks the citizens "*do you think Article 40.3.3 should be repealed, i.e. deleted and not replaced or replaced or amended?*" And once again, well the options that are presented here, the citizens have three voting options. There is Option 1 and Option 2 but also what appears here is "*prefer not to state an opinion*" and in private session this morning a citizen has already the question why is "*prefer not to state an opinion*" provided on this ballot paper as an option and I suppose it is there for a very important reason and that reason is that if in Ballot 1, we have gotten to Ballot 2 by virtue of the fact that a majority of the citizens have decided that they do not want to retain Article 40.3.3 in full.

However, it is possible and likely that in that scenario, some citizens would have opted for Option 1, in that they did not want to see Article 40.3.3 changed and therefore it is important that they have an opportunity on the Ballot Paper to continue to express a view and that they are not forced into selecting Option 1 or 2. So it is important that they have a place on the Ballot Paper in which to record their view point. That is of course not to say that somebody who had voted that way on Ballot 1 would not want to express an opinion and that is not to say that they couldn't express an opinion in Option 1 or Option 2 but it is there precisely so that they are not forced into that position.

So, the two options then presented on Ballot 2 are Option 1, that Article 40.3.3 should be repealed, i.e. deleted and not replaced. So, if the majority of citizens select Option 1 here, we then proceed to Ballot 4 (a). So, in other words, the majority of the citizens have decided that Article 40.3.3 should be repealed and in her introductory remarks to Ballot 2, Justice Laffoy will provide full context as to what that decision would mean and so on but if they decide a majority, to vote for appeal, a further ballot is provided to ask some additional information of them about the recommendations that they would like to make to the Oireachtas, about the termination of pregnancy in Ireland and the right to life of the unborn.

So, just to run through the structure of this ballot paper, there are, as you'll see, eight reasons listed in columns on the left hand side, sorry, rows on the left hand side and

then there are five separate columns then provided. So I'll talk you through each of those in turn now.

So, in relation to the reasons, the first two, one and two, one is the *"real and substantial physical risk to the life of the woman"* and number two is *"the real and substantial risk to the life of the woman by suicide."* So, in other words, these are reasons that the citizens may decide to see termination of pregnancy permitted in Ireland.

The reason why I highlight these two in particular, firstly is that these are the two provisions currently provided for in the 2013 Act. On the remainder of the reasons listed in the Ballot Paper, reasons 3 to 8, you will see that they are provided for individually.

- The serious risk to the physical health of the woman;
- The serious risk to the mental health of the woman;
- Pregnancy as a result of rape;
- The unborn child has a foetal abnormality that is likely to result in death before or shortly after birth.
- The unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth or
- Available on request, i.e. no restriction as to reasons.

So there are eight options or reasons provided and in each case the citizens are able to select, express their opinion in a number of different ways. So, in each case they can say never for this reason. So in other words, it gives the citizens an opportunity to say that in no circumstances do they want to see that particular reason provided for in legislation or through the law.

In respect of B1, B2 and B3, we have three options there which relate to gestational limits or no gestational limits. So, B1 is up to 12 weeks, gestation only. B2 is up to 22 weeks, gestation only and B3 is with no restriction as to gestational age and you'll note that the letters across the top. So A is a category on its own. So never for this reason. So just to go back to that. B's then are collectively provided there on the ballot paper. So that gives you an indication that they are going to be grouped and again the Chair will go through this in some detail in the event that we arrive at this ballot but I suppose the important thing to note here is that Option A and you'll see across the top, Option A, B1, B2 and B3 are collectively referred to as recommendations. So, these four columns will be added up to present the opinions expressed by the citizens as to recommendations. So, for the purposes of determining a majority, all of B1, B2 and B3 will be added together to provide the totality of citizens who have voted in favour of abortion or the termination of pregnancy in some circumstances with gestational limits or none.

Then moving on to C, again it is prefer not to state an opinion and again for the same reasons I outlined previously, that's important to include there and I suppose not least to reflect the fact that there may be somebody who has voted in Ballot 1 that they didn't want change but also somebody who did vote for change may actually just not want to state an opinion. So that's provided for there.

So, going back to Ballot 2, so I've just talked you through what happens if the citizens select Option 1 in Ballot 2. I am now going to talk you through what happens if the citizens select Option 2 in Ballot 2 and just to recall Option 2 in Ballot 2 is that Article 40.3.3 should be replaced or amended. So if the majority of citizens select this option we then proceed to Ballot 3. So Ballot 3 is, asks the following question, how do you think Article 40.3.3 should be changed and Option 1 here, again just to be clear, there are three voting options provided for the citizens. Option 1 which I'll describe in a moment. Option 2, which I'll also describe and again the prefer not to state an opinion reason is provided there for the same reasons that I've outlined earlier.

So looking at Option 1. Option 1 is that Article 40.3.3 should be replaced with a Constitutional provision that explicitly authorises the Oireachtas to legislate to

address both termination of pregnancy and any rights of the unborn. So, essentially what this means is that the citizens will vote that a new -- that Article 40.3.3 would be deleted. That a new Constitutional provision would be put in which explicitly places the power, if I can use that term, fully in the hands of the Oireachtas.

In the event that the majority selects that option we will move to Ballot 4B in that circumstance and the table that I'm going to put here, Draft Ballot 4B, looks exactly the same as Ballot 4A but it is described differently because it is doing a slightly different thing, because in Ballot 3, if you have selected Option 2, Option 1, you have, apologies, if you have selected Option 1 you have explicitly said that you want the Oireachtas to have control and so therefore, and that the Constitution will provide for that and therefore Ballot 4B is then providing additional information to the Oireachtas about how you think they should exercise that control. So, it does a slightly different thing to Ballot 4A. It looks the same but it does a slightly different thing. So I don't propose to go through it in detail in the way that I did previously except to say that it is the same text. The eight reasons that are listed in the rows on the left hand side are the same. The columns across the top are again also the same and the manner in which they'll be reported and Justice Laffoy will explain this in the event that we come to this Ballot, she'll explain how the reporting and so on, will take place but just to say that it does look the same.

To go back then to Ballot 3. So what we've just talked through is in Ballot 3, if you pick option 1, you move on Ballot 4C. If in Ballot 3 you select Option 2. Let us look at what Option 2 says. It says that "*Article 40.3.3 should be replaced or amended with a new Constitutional provision that directly addresses both termination of pregnancy and any rights of the unborn.*"

So, in other words you are taking, you've decided that you want to delete or amend Article 40.3.3 and to continue to have some level of constitutional -- that the Constitution continue to say something about the termination of pregnancy and any rights of the unborn. So in the event that you select Option 2 here on Ballot 3, we then move to Ballot 4C.

Now, Ballot 4C has two parts and again, part one looks the same as Ballot 4A and 4B.

It's the same thing. It is doing essentially the same thing that it did in Ballot 4A, Ballot 4B, in that you are -- again it is giving the recommendations of the Assembly as to the reasons, if any, which the citizens or the members of the Citizens Assembly consider that the termination of pregnancy should be lawful in Ireland.

So, again I won't go through that in detail. I will, however, go through Part 2. So Part 2 is included here because just thinking back to how we got here. So, Ballot 3, we've opted for Option 2 and in Option 2 if you select this, the majority have decided that they still want the Constitution to have some level of say in relation to these matters. So what this ballot attempts to do is to capture which aspects you want to see regulated by the Constitution and which elements you're satisfied should just be in legislation. So, again the format and the structure of this part of the ballot looks a lot like 4A, 4B and 4C in that, and the first part of 4C, in that it has the same reasons listed on the left hand side. The same eight reasons. However, it has three different columns here.

Firstly, I'll refer to (iii) which is prefer not to state an opinion and once again that's provided here for the reasons that I outlined previously and (i) is that the citizens would be deciding that each of these reasons would be implemented primarily by a provision in the Constitution with the Oireachtas passing legislation to fill in the details. In other words that the Constitution would specifically deal with the reasons as listed on the left hand side.

(ii) is that the reasons would be dealt with by legislation only. So, in other words this ballot allows you to express. You've said in the event that the citizens arrive at this ballot, you've said that you want the Constitution to have some control and this is essentially allowing you to express where you want the Constitution to have that control. That's sort of a very layman's own view of how that hangs together in that particular part of the ballot.

So, as I say, Justice Laffoy will bring us through each of the ballots, beginning with Ballot 1, providing a detailed explanation as to the wording, what each means and so on but it was just very important for you to be able to see sequentially how each of those ballots hang together. That is, of course, visible from the markers on the ballot

paper. We have instructions, you know if the majority votes this way where you go. So, I think it should be fairly clear but it is just useful I think to see it all hang together there. So you can begin to see how your vote might take shape depending on what the outcome of ballot one is.

So, I hope you found that useful. It is available on line. This presentation is available on line for anybody at home who is interested in reading through it again. Just to say thank you for your attention.

END OF PRESENTATION

EXPLANATION OF WORDING ON DRAFT BALLOT 1 BY THE CHAIRPERSON

CHAIRPERSON: Now, as you probably noticed from the Agenda, we're not going to have round table discussion in relation to Ballot 1, which I'm about to explain to you and we formed the view that it is relatively straightforward and it doesn't need a round table discussion. So, when I'm finished with the explanation we'll go straight into a Q&A session and the text of Ballot 1 is on the screen. I'm not doing this business, Sharon is doing it. First of all the ballot paper provides a brief explanatory text which contextualises our work. It explains that the role as laid down for us by the Oireachtas is to consider the Eighth Amendment.

Now, the Eighth Amendment was inserted into the Constitution, Article 40, subsection 3, sorry, Article 40, section 3, subsection 3, which like Sharon, I will call Article 40.3.3 from now on and the 13th and the 14th amendments added additional clauses to that Article and we've come to the conclusion that it is more accurate to discuss Article 40.3.3 rather than the Eighth Amendment and that is the terminology we have used throughout the Ballot Papers. So, as I say, when discussing your task, we will be talking about Article 40.3.3.

Now, Ballot 1 is our basic starting point. Does the Assembly want to retain Article 40.3.3 in full or not. Here the word 'retain' is used to demonstrate that we are starting from the status quo, what the law is. The purpose of this ballot is to establish whether you, the members of the Citizens Assembly, wish to change the status quo in

some shape or form and you have two options. In this ballot there are only two options. Unlike the other options.

option 1 is to retain Article 40.3.3. If the members decide they wish to do that, if they wish that Article 40.3.3 is retained in full, there will be no further ballots of voting. It will be the end of the process effectively except for a reflective -- what I called the ancillary reflections I referred to earlier. So that would be the end of the process.

Option 2 is that Article 40.3.3 should not be retained in full and if you the members vote for Option 2, by majority, you will have indicated that you wish to change the current Constitutional position in some way. Therefore, if you decide that you do not wish that Article 40.3.3 is retained in full, we will proceed at that stage to the second draft ballot paper and I want you to be clear that if the Oireachtas was to act on this option, a Constitutional Referendum would be required. Once the members have voted on this ballot, the results will be reported on. The agenda provides, as you will have seen, that this would take place around five minutes past 12.

Now, I want to say something about the presentation of results. The members have been provided with a note on the voting procedures to be used over the course of the weekend and this has been put up on the website for the wider public. There are two specific aspects of this document, which I would now like to draw to your attention.

The first is in relation to how the results will be presented. A sample results sheet for this ballot is provided on the screen behind me. You see that Reporting of Results, Ballot 1. You will see that the count and the result, the voting, will provide some key information. First, it will specify the number of citizens eligible to vote. That's in the first line. Then, it will specify the number of citizens who actually voted. In theory, this figure should be the same as the first but there may be reasons why a discrepancy might arise. For example, if a citizen decides not to cast his or her figure. Those two figures aren't necessarily going to be the same.

Thirdly, you will see the results of the ballot presented in both absolute terms in numbers and in percentage terms. Both figures are provided for transparency and clarity. Where there is more than one option on the ballot this will obviously be

represented here too.

Now, I want to say something. Make some general observations about spoiled votes. The note you have also specifies how we will deal with spoiled votes. In formulating our rules in relation to voting, we've had regard to the principles applied in National elections. There a vote which does not express a clear preference or which expresses multiple preferences, where only one is sought, is a spoiled vote. For the purposes of voting at the Citizens Assembly, for the purpose of voting here today these rules apply and a spoiled vote arises in the following circumstances and I'm going to mention two circumstances.

The first is where the vote does not mark any option for -- sorry, where the voter does not mark any option for one or more questions. For the avoidance of doubt, a voter who has specifically marked "*(b) prefer not to state an opinion*" box will not fall into this category because in such a case the intention of the voter is clear. The voter has decided not to express an opinion. However, if a voter does not mark any option for one or more questions, it is not clear whether the voter did not wish to express a preference or whether they simply overlooked that particular question. Therefore, a ballot or part of a ballot which does not contain one mark should be counted as a spoiled vote for that particular question. That would not effect the validity of other questions on the same ballot paper. So, you want to be careful when you are exercising your right to vote.

Now, the second circumstance is this. A ballot will also be considered as spoiled if the voter marks more than one option in a single question. So, that's the second circumstance. In this case, that I've just outlined, again it is not possible to determine the intention of the voter so the vote should be treated as invalid.

Now, that completes my description of this ballot which, as I said at the outset, we consider to be fairly simple and the arrangements for voting. You will have learned something from the explanation in relation to presentation of the results, which I hope has been helpful to you and also to the issue of spoiled votes. So, as I have said at the outset, we're not having a round table discussion on this. So, we're going to move straight into the questions and answers session and I am going to be joined by

the lawyers on the Expert Advisory Group. Dr. Oran Doyle from Trinity College; Professor Deirdre Madden from University College Cork and Dr. Rachael Walsh from Trinity College Dublin and they will assist in responding to your questions and comments concerning the wording of the draft Ballot 1 and just to remind you what I said in the private session earlier, what they are going to address are specific issues in relation to the ballot paper. They are not going to address issues in relation to the wider context. For example, the content of presentations we had over the earlier weeks. So, also bear in mind that there are mics available and also bear in mind what I said earlier about speaking slowly and clearly so that the Stenographer can capture everything that is said. Thank you very much.

END OF EXPLANATION OF WORDING ON DRAFT BALLOT 1

FEEDBACK FROM MEMBERS AND Q&A

Q. TABLE 6 - DAVE: In the event of a spoiled count, what is the procedure if there was spoiled votes that brought the numbers down to an equal number of both options, what is the procedure there?

CHAIRPERSON: I can answer that question and I will be dealing with that later. Apparently it might have been wise to deal with it on this explanation. You have been given the resolution of the Oireachtas in the material you were given this morning, isn't that right, and you will see that it provides that if there is equality of votes the Chairperson has the casting vote. So that really answers that. I will explain that more fully later but that's the position. So if on the first ballot there was 40 and 40 the Chairperson would have a casting vote and incidentally, I mean I've done my homework on this particular issue, and it sort of reflects the position of the Ceann Comhairle in the Dáil. If there isn't a majority in the sense that there's equality of votes, the Ceann Comhairle has the casting vote and the wording used in the resolution is very similar to the wording in Article 15, section 11 of the Constitution. So that answers that question.

Q. TABLE 12 - CITIZEN: Good morning, I'm a citizen on Table 12. My question relates to Ballot 2 and 3. It says if a majority votes for Option 1, you do one thing but if a majority votes for Option 2 (CHECK 10.46.01) we do something else. What happens if the majority just for stating their opinion in either of those votes?

CHAIRPERSON: We're only dealing with Ballot 1 at the moment. Obviously we will have to cross that bridge if we come to it. I haven't given it a lot of consideration.

MS. FINEGAN: I'll just, to be clear, because in fairness it was the Judge who twiggled this more than anybody. So in the event that the majority votes for -- so for the purposes of determining a majority and this is provided for in the note that the Judge referred to about the voting procedures. So for the purposes of determining a majority, you'll see on your note, that note, on page two of that note it says "in Ballot 1 a majority be determined by a reference to the total votes cast in favour of Option 1 and Option 2" but in relation to Ballot 2 and 3 that you've just asked about, the majority in those cases will be determined by a reference to the total votes cast in favour of both Option 1 and Option 2. So in other words the results will count the fact -- you know in absolute it will say. So for arguments sake it is 33, 33, 33, across the three options but for the purposes of majority only the votes cast in respect of Option 1 and Option 2 will be counted and then used to determine the majority.

CHAIRPERSON: In fact I would be reiterating that in relation to every ballot paper for the avoidance of doubt. So, do you follow that?

TABLE 12 - CITIZEN: Yes.

CHAIRPERSON: Sorry, for causing the confusion at the start. Any other questions?

Q. **Table 5 - SPEAKER:** Sorry, my question is in relation to the Ballot Paper 4C, part 1 and 2. I don't know how to ask this question, so I'll give you an example because I'm not too sure of the implications for the second part.

MS. FINEGAN: Sorry, could I just interrupt you. We are focusing only on Ballot 1 for the purpose of this Question and Answer session.

Q. **TABLE 5 - SPEAKER:** So is there an opportunity to ask questions later on?

MS. FINEGAN: Absolutely. In every case, in the event that we arrive at those ballots, it will be exactly the same format as this for questions.

AGREEMENT ON WORDING OF BALLOT 1 AND EXPLANATION OF ANY AGREED AMENDMENTS

CHAIRPERSON: In fact having followed a round table discussion, as I've said, this is the only ballot in relation to which we're not having a round table discussion because it was just the two options and they were phrased in plain language, we thought it wasn't necessary. So the members seem to be happy that they understand what is asked of them in Ballot 1. Well then we will move on to Ballot 1 and the voting.

MS. FINEGAN: Okay, can I just have your attention please in relation to the voting. The first thing to say is just as previously discussed, the facilitators and notetakers will leave the room during this portion while the votes are being cast. The voting will continue to happen in public. Just I'll call on my colleagues from the Secretariat. Grainne, you might begin to set up the desks there for the voting. So what is going to happen, you'll see at each of the Voting Booths there are tables. So you will go up to each of the tables and you'll see each of them have been marked. There are three individual booths and they indicate which table. So, according to which table you're on, you go to each individual table to collect your ballot paper. So a member of the Secretariat will be there with a list of the names and just for the purposes of counting the number of citizens who have collected their ballot papers, we will be marking who has collected them but that is in no way to suggest that your ballot paper is individualised or anything, it is entirely anonymous. Then you will proceed to the Voting Booths to cast your ballot and you will place them in the ballot boxes. There is a ballot box for each individual ballot paper.

CHAIRPERSON: We want to convert the draft ballot paper into the ballot paper and I presume that there is agreement on that. So could I have a show on hands in relation to whether there is agreement in relation to the form of the ballot paper?

MS. FINEGAN: Can I just have everybody's attention for that. Just the Chair is seeking a formal agreement on the ballot paper. If you could raise your hands?

CHAIRPERSON: Very good, thank you.

MS. FINEGAN: So, if you want to proceed therefore up to each of the desks to collect your ballot paper and I'd just ask for your patience obviously because it will take a couple of minutes to disperse the ballots. Once you have finished your vote you can go ahead and have your coffee. We will essentially have a break now between voting and counting of the ballot.

VOTING ON BALLOT 1

COFFEE BREAK

THE MEETING RESUMED AS FOLLOWS AT 12.05:

ANNOUNCEMENT OF RESULTS OF BALLOT 1

CHAIRPERSON: Good afternoon everybody. We have now passed mid-day, so I can wish you good afternoon and I'm going to announce the result of Ballot 1 but just before I do so, I just want to say that it was agreed this morning that two members of the Steering Group would observe the count and that has happened and everything is satisfactory from that point of view. The result will go up on the screen behind me and I will read it out. This is the result of Ballot 1, the number of eligible voters 91. Number of votes cast 91. Invalid votes nil, zero and total valid poll 91 and the voting for Option 1, Article 40.3.3 should be retained in full, that was 12 votes or 13% and Option 2, Article 40.3.3 should not be retained in full, 79 votes, equivalent to 87%.

So, just by way of explanation I'll explain the number of eligible votes as being 91. That is explained, currently there are 95 members of the Assembly and all of that information is on the website and four of those were unable to attend this morning and that explains the figure of 91. I just wanted to give an explanation of that. Now, as you see the majority voted in favour of Option 2. Namely that Article 40.3.3 should not be retained in full and a consequence of that we are moving on to Ballot 2 now and I'm going to explain Ballot 2.

EXPLANATION OF WORDING ON DRAFT BALLOT 2 BY THE CHAIRPERSON:

CHAIRPERSON: The voting on Ballot 2 which we've just seen, sorry, the voting on Ballot 1 which we've just seen, represents a clear decision that the members seek to change the status quo and to be clear, if the Oireachtas was to act on this initial recommendation a Constitutional Referendum would be required. I want to make that clear but the result is a mandate for the Assembly to move forward with the formation of our recommendations for the Houses of the Oireachtas. Ballot 2, which I'm discussing

now, will look at the legal nature of the desired change.

The proposed text of Draft Ballot 2 as prepared by myself and the Secretariat, again with the assistance of the expert advisory group and the input of the Steering Group is on the screen behind me. You'll see it now. The proposed wording on the question on this ballot reads:

"Do you think Article 40.3.3 should be repealed, i.e, deleted and not replaced or replaced or amended?"

The members have three voting options before them and these are now presented on the screen. Option 1 is that Article 40.3.3 should be repealed.

BRIEF ADJOURNMENT DUE TO POWER CUT

CHAIRPERSON: We're back in business thankfully and you'll recollect that when we stopped I was dealing with Draft Ballot Paper 2 and I was going through the options on the Ballot Paper and Option 1 is Article 40.3.3 should be repealed, i.e. delete it and not replaced. Option 2 is Article 40.3.3 should be replaced or amended and then the third option is "prefer not to state an opinion" and I'm going to deal with each of those options in turn, starting with Option 1.

Option 1, repeal would involve the deletion of Article 40.3.3 from the Constitution. The text would be deleted in full from the Constitution and at our last meeting, at the last weekend meeting, Brian Murray, Senior Counsel, outlined the potential consequences of repeal and in advance of this meeting, we encouraged the members to re-read Brian's paper and a copy of it has been included in the briefing packs and you now have the correct paper, but in any event the important point is that it cannot be said with certainty which consequence would prevail if Article 40.3.3 was simply repealed and Brian identified three possible consequences and indeed, I think it is fair to say there could be more and they were first, that the form of abortion legislation would exclusively be a matter for the Oireachtas.

The second, that pre 1983 Constitutional, the pre 1983 Constitutional position would revive, including any implied rights of the unborn under the Constitution before 1983 and

thirdly, that the rights of a pregnant woman to privacy, to bodily integrity and to autonomy would prevail over many countervailing circumstances, including any rights of the unborn. They are three possible consequences that were identified and Brian indicated that in his opinion a consequence which would be most likely to prevail was the first consequence. That legislation would be exclusively a matter for the Oireachtas but what we feel should be brought to your attention is that the position is not absolutely certain. So there would be implications of a recommendation from the Assembly for a simple repeal of Article 40.3.3 would be uncertain.

If Option 1 is selected, the citizens would then go on to vote on Ballot 4A. Ballot 4A would provide recommendations of the Assembly to the Oireachtas about the reasons, if any, for which termination of pregnancy should be lawful in Ireland as well as any gestational limits that should apply. So, the Assembly would be giving their views to the Oireachtas. It's as simple as that. The information would be supplied under Article or sorry, under 5.4A.

Now, going on to Option 2 and that's to replace or amend. It would be open the potential for the Constitution to continue to address the right to life of the unborn and/or termination of pregnancy, either exclusively or in conjunction with legislation. This type of change could be done in a number of different ways. For example, an entirely new provision could replace what is already there. That is Article 40.3.3 or alternatively, an amendment could change the wording of the existing text. The text of a replacement provision or amendment could be drafted in a multitude of ways to provide for a range of circumstances and issues. The citizens must recall that it is not the role of the Assembly to draft or suggest replacement provision but rather to provide recommendations.

At this point we are considering the substance or text of a replacement, sorry, at this point we are not considering the substance or text of a replacement provision or amendment. A replacement provision or amendment to the Constitution could only be subsequently amended, that is to say altered or changed, by the people in a Referendum. It is important to note that voting for either Option 1 or Option 2 in Draft Ballot 2 may result in an outcome that allows for either liberalisation of the current legal regulation of termination of pregnancies in Ireland or alternatively, an outcome which

results in the rights of the unborn being given greater protection. So, both scenarios are possible and this is because both legislation enacted in consequence of repeal or, and I want to stress this, depending on its terms, a provision replacing or amending Article 40.3.3 in the Constitution could have either effect.

Now, the third option, the final voting option, that's "*prefer not to state an opinion*". This is on the Draft Ballot Paper, as it is important that those who voted in favour of retention of Article 40.3.3 in Ballot 1 are not forced by the Ballot Paper into specifying how the change will be implemented. They are, of course, free to do so regardless of how they voted in Ballot 1 but they are not required to do so nor to abstain from to avoid doing so. Instead they can select the option "*prefer not to state an opinion*". This option might also be selected for a variety of reasons by citizens who voted against the retention of Article 40.3.3 in its current form in Ballot 1.

Now, I'm just going to briefly refer to the presentation of the results. A sample results sheet for this Ballot is provided on the screen behind me. Once again it will specify the number of citizens eligible to vote and the number of citizens who voted. The results will provide details of the number of votes cast in respect of Option 1, Option 2 and Prefer not to State an Option. However, for the avoidance of doubt, a majority would be determined by reference to the total votes cast in favour of both Option 1 and Option 2.

Before we go on to the next step, I just want to mention one thing arising from the results of Ballot 1. You will recollect that the members present who voted numbered 91 and I'm told that another member will be here in the afternoon and will want to vote on the remaining ballots and what I propose at this stage is asking the members whether they have any objection to that and if they have no objection I would like to -- in other words no objection to the member who is not here at the moment joining in. If they have no objection I'd like them to put up their hands now. So you have no objection. Very good, very good.

All right, we're now going to go into private session and this will last for 20 minutes, until ten past one and then we'll have the feedback. So bear in mind what I said this morning in the private session about the round table discussion and all of that and if you have questions write them down and make them available to the Secretariat as soon as

possible. Very good. Ten past one we'll resume.

PRIVATE SESSION

FEEDBACK AND Q&A FROM MEMBER DISCUSSION

CHAIRPERSON: As you can see, the stage is occupied. We have our three lawyers once again to assist you in the questions you have and we have Dr. Liz Dunn who is coming up now and I'm going to take the questions. Put up your hands if you have a question. I'll take the question from Table 5 and I presume a copy of it has been given already.

Q. **TABLE 5 - SPEAKER:** So our question is, it's going to sound long but we'll get to the point as quickly as possible. What is the specific difference in the outcome, if anybody chooses Option 1, that leads to Ballot 4A, which will lead to recommendations?

CHAIRPERSON: Yes.

Q. **TABLE 5 - SPEAKER:** That's the outcome. If we chose Option 2, that leads to Ballot 3, and then if we chose Option 1 leads to 4B, which leads to recommendations. Our question is, what is essentially the difference between that, Option 1 and Option 2. In other words what grey areas within Option 1 which would lead to Ballot 4A, what grey area does that leave us in or does it leave us in a grey area?

A. **DR. DOYLE:** So on everything you say is correct, your understanding of it up until the question and obviously it is a question but just to clarify that yes, you understand the structure correctly. The difference between 4A and 4B is that you get to 4A if the Citizens Assembly votes for repeal but because it is uncertain what the consequences of repeal might be, it's not clear that the Oireachtas would be able to legislate to give effect to all of those options on 4A. However, if you move on to Ballot 3 and vote for Option 1 there, then it is clear that the Oireachtas has the power to legislate and the options that you're voting for within 4B are things that the Oireachtas will be able to legislate for. Does that make sense?

Q. **TABLE 5 - SPEAKER:** Very good, yes.

CHAIRPERSON: And other questions. I see Table 13, yes?

Q. **TABLE 13 - FACILITATOR:** I'm the Facilitator for Table 13 and the citizens on this

table have one question for the legal panel. If Article 43.3.3 is repealed and not replaced, what then is the position regarding the 2013 Act?

- A. **DR. WALSH:** So, the position in the first instance is that repeal wouldn't effect the validity or continued effect of the 2013 Act. It would continue without further action to be the law but following from a decision for repeal, either the retention or the repeal of the 2013 Act could potentially if it was challenged in the courts, be found to be unconstitutional depending on the judicial view that was taken as to the consequences of repeal and that then brings us back to the points that the Judge made about the potential consequences of repeal. So, the position is the Act will stay in place but what the Oireachtas could do in relation to changing the Act might potentially be effected by the consequences of repeal as interpreted by the courts.

CHAIRPERSON: Yes, Table 1 please?

- Q. **TABLE 1 - FACILITATOR:** Thank you, Judge. I'm the Facilitator for Table 1 and it's a question addressed to the panel on behalf of citizens at this table. What happens to the Constitution if Article 40.3.3 is repealed?

- A. **DR. DOYLE:** So, repeal basically means deleted and not replaced. So at the moment there is an Article 40.3.2. There's 40.3.3 and then you move on to 40.4 and just 40.3.3 would disappear. It would not longer be there. I won't go over the discussions about what the consequences of that might be but in terms of the narrow question of what happens to the Constitution, just all of those provisions would effectively be deleted.

- A. **CHAIRPERSON:** You may remember that at the very first weekend you were given just a summary of Article 40 which contains the fundamental rights and if you look at that, it will be among your papers, you will see the various parts of Article 40 and all that would happen is Article 40.3.3 would come out. It just wouldn't be there anymore. It wouldn't be part of our Constitutional Law.

CHAIRPERSON: Table 14?

- Q. **TABLE 14 - CITIZEN:** I'm a Citizen from Table 14. I just had a query with relation to Option 1. According to Brian Murray's paper in paragraph 13, he suggested that a potential consequence of a repeal would be that the Constitution would not protect any right to choose on the part of women and I just was wondering how that -- because it is

not particularly referenced in Article 40.3.3, how does repealing that Article impact on a woman's right to choose in that instance?

A. **DR. DOYLE:** So thanks for the question. So, what Mr. Murray was saying was setting out the three possible consequences of repeal and the first consequence being one in which the Oireachtas would have a wide latitude to make laws in relation to the termination of pregnancy and what he was setting out at paragraphs 30 and 31 was explaining how that might come about and he was saying that on the one hand the explicit protection of the right to life of the unborn would be taken away and on the other hand, the Constitution doesn't anywhere else protect a right to choose. So, given that there would now be no right to life of the unborn protected explicitly in 40.3.3 and no right to choose protected explicitly anywhere else, there wouldn't be any rights constraining what the Oireachtas could do. So, he wasn't saying directly that the removal, repeal of 40.3.3 was taking away any right to choose. It's taking away the right to life of the unborn explicitly from the Constitution on the fact that there isn't an explicit right to choose anywhere else. The net effect of both of those factors would leave the Oireachtas free to legislate. Does that answer the question?

Q. **TABLE 14 - CITIZEN:** Very good.

CHAIRPERSON: Yes, we're on Table 4 now, yes.

Q. **TABLE 4 - FACILITATOR:** I am the Facilitator for Table 4. A question arises from one of the members. I should say that the question was handed up but was subsequently reworded but the substance of the question remains the same. Are replace and amend the same thing. If not, why are they conflated on the ballot paper?

A. **DR. DOYLE:** Yes, so they are effectively the same thing. So it is not replace or amend. It is trying to say there is two alternatives here. It is one conceptual category where you'd change the Constitutional text in some way, either by amending the language that is already there or taking the provision out and putting a new one but structurally they'd be the same thing. They need text in the Constitution addressing these issues but the text that is in the Constitution would be in some way different from what's currently in the Constitution. So that's why we've dealt with them as one category.

A. **CHAIRPERSON:** If I may put it much more succinctly. Replace, you would take out the whole thing. Amend, take a few words here and there.

A. **DR. DOYLE:** Except that replace wouldn't just take out the whole thing. It would then put back in --

A. **CHAIRPERSON:** Oh yes, yes.

Q. **TABLE 11 - FACILITATOR:** Facilitator for Table 11. The citizens at this table have just one question. Just to clarify. Would Option 1 result in the removal also of the right to information and to travel as inserted by the 13th and 14th amendments?

A. **DR. DOYLE:** Yes. The way that Article 40.3.3 is amended or is worded, is that the two later provisions about information on travel both refer back to the earlier parts of 40.3.3. So even if you left them in they would become meaningless because the thing that they are relating to has been taken out and that was one of the reasons the Judge referred to earlier, that we decided to deal with 40.3.3 as a whole.

A. **CHAIRPERSON:** And I have no doubt that that really is what the Oireachtas intended. They intended us to deal with 40.3.3 as a whole, not just the Eighth Amendment and not to ignore the 13th and 14th Amendments. That has to be the case.

A. **DR. WALSH:** Just for your information, in addition outside of Article 40.3.3, generally there is a recognised Constitutional right to travel for all people in all instances and there would, in connection to freedom of expression, be rights in relation to information and not just information outside the context of Article 40.3.3

CHAIRPERSON: Any other questions?

Q. **TABLE 8 - FACILITATOR:** Thank you, Judge. I'm the Facilitator for Table 8 and a question arose from one of our members as to the struggle between the Constitution and the Oireachtas and the member was wondering if the legal panel could briefly comment on other countries in terms of how many other countries deal with this issue in their Constitution?

A. **CHAIRPERSON:** Yes. That question I think came from Table 3 as well did it?

TABLE 3 - SPEAKER: Yes.

A. **CHAIRPERSON:** Well to be honest, none of us know the answer to that and I'm not even sure that it's that answerable because we have a written Constitution. The United Kingdom doesn't have a written Constitution. There are various forms of regulation in various countries. So, I don't know whether it is possible to ascertain that but we don't have that information. I think it would be very, very difficult to ascertain it. Do you agree

I wonder?

- A. **DR. WALSH:** Yes. And I'm just looking at your questions as they were handed up and I would agree with the Judge, to give a full account of how this was dealt with in other countries, beyond what you've already received, wouldn't be within our expertise and remit today and I think the other two questions that you pose about whether the Constitution is the place for this kind of personal medical issue to be dealt with and whether it should be in the hands of the Oireachtas to be dealt with politically rather than in the Constitution, I think those are very much matters of substance about the issue that we've been thinking about over the last number of weekends, rather than strictly legal questions that we can answer for you because it's a judgement ultimately, so in essence what you're voting on.
- A. **CHAIRPERSON:** Exactly, it is, yes.
- Q. **TABLE 7 - FACILITATOR:** Judge, I'm the Facilitator at Table 7 and one of the citizens would like to ask the following question from the legal team. If a court case was taken to the Supreme Court regarding the Constitutionality of any abortion legislation by the Oireachtas, would the Supreme Court be forced to consider the woman's rights alongside the implied rights of the unborn, as this has been the approach in other jurisdictions?
- A. **DR. DOYLE:** We need some clarification on that. Do you mean under the current law as things stand or if the Assembly were to vote for one of the options that's before you for Ballot 2?
- Q. **TABLE 7 - FACILITATOR:** No, it would be after a Referendum to repeal?
- A. **CHAIRPERSON:** But it would depend on the terms of the Constitution. I mean that question isn't answerable.
- A. **DR. WALSH:** Are you suggesting if there's repeal, if there was a Referendum that voted for repeal what would the scenario be?
- Q. **TABLE 7 - FACILITATOR:** Correct, yes.
- A. **DR. DOYLE:** So again I have to refer you back to Brian Murray's paper. So, it depends on what the courts ultimately think the consequences of the repeal are and there is legal uncertainty on this as the Judge has referred to, that on one view the Oireachtas would have a wide power to make laws in respect of termination of pregnancy and if the courts take that view, the Supreme Court takes that view, it is likely to say well there either aren't Constitutional rights here or there is sort of weak

Constitutional rights and we're going to defer to the judgement made by the Oireachtas. We're going to be very slow to get involved. If the courts take the second view canvassed by Mr Murray, which is that the pre 1983 position revives. So you'll remember that there were judicial statements but no binding decisions before 1983, which said that the right to life of the unborn wasn't visibly protected, if the court takes that view and therefore that implicit right to life of the unborn is sort of resurrected after the repeal of the Eighth Amendment, then the courts would have to have regard to that implicit Constitutional right, perhaps alongside rights on behalf of the Mother and then the third view as to what the consequences of repeal might be is that the courts could come to the conclusion that all protection for the unborn had been removed from the Constitution but that there was a sort of autonomy or freedom of choice right for people in general but women in particular that was implicit in other parts of the Constitution and they might consider that right which would lead to terminations of pregnancy being more easily available if a woman were to choose that but it does and there is this level of uncertainty and it is just an unfortunate state of affairs that that uncertainty is there but we cannot be sure what the consequences of repeal might be. So it depends on which the view the court ultimately takes and unfortunately we can't give any more guidance than that.

CHAIRPERSON: Any other questions? Very good. Did you get any other questions in writing. So there are no more questions. So what we've to do now is we have to come to an agreement hopefully on Ballot 2. There is a draft and are you happy with it as a Ballot and if you are would you indicate by putting up your hands. So, everybody is happy with that. You're not looking for any change or anything to it. Very good. Well then I'm noting that there is agreement to the draft. So that is Ballot 2 and we can vote. It is 1.30. Yes, hopefully we might be able to start again at 2.30.

MS. FINEGAN: If you carry out your votes now and this will be done in public as before until all of the votes have been cast and then the counting as before will happen in private.

VOTING ON BALLOT 2

LUNCHEON ADJOURNMENT

ANNOUNCEMENT OF RESULTS OF BALLOT 2

CHAIRPERSON: Now, I'm going to announce the result of Ballot 2 and it will go up on screen behind me. The number of eligible voters 91. The number of votes cast 91, invalid votes, again this time zero. Total valid poll 91. Then the manner in which the votes were cast.

Option 1, Article 40.3.3 should be repealed, i.e. deleted and not replaced. 39 voted for Option 1. That's equivalent to 44%.

Option 2, Article 40.3.3 should be replaced or amended. 50 votes for Option 2. Equivalent 56% of the vote.

So, then the third voting option, "prefer not to state an opinion", the number who voted for that is two. So, the majority has voted in favour of Option 2, Article 40.3.3 should be replaced or amended. So that means that we now move on to Ballot 3. Yes, and I think I made this clear in the explanation. In relation to Ballot 2 the majority is in favour of Option 2 because the majority is determined by reference to the total votes cast on both Option 1 and Option 2.

EXPLANATION OF WORDING ON DRAFT BALLOT 3

CHAIRPERSON: Now, we'll move on to Ballot 3. So, as I've just announced, in Ballot 2, the members of the Assembly voted by a majority that Article 40.3.3 should be replaced or amended.

Moving on to Ballot 3 now. This will allow the citizens to formulate recommendations on how Article 40.3.3 should be replaced or amended. Again, this draft ballot has been prepared by myself, the Secretariat, with the assistance of the Expert Advisory Group and with the input of the Steering Group. The text is displayed now on the screen. The top of the paper outlines how we have reached this ballot.

In Ballot 1, the Citizens Assembly voted by a majority that Article 40.3.3 should not be retained in full. In Ballot 2, which the results have just been announced, the Assembly voted that Article 40.3.3 should be replaced or amended. The proposed wording of the

question on this ballot is and you can see it there

"How do you think Article 40.3.3 should be changed?"

On the premise that Article 40.3.3 should be replaced or amended we have identified two possible types of change and thus the ballot provides for two options.

Option 1 is that Article 40.3.3 should be replaced by a new Constitutional provision that explicitly authorises the Oireachtas to legislate, to address both termination of pregnancy and any rights of the unborn. This Constitutional provision will grant the Oireachtas the exclusive power to make the law on these issues and I want to repeat that. This Constitutional provision would grant the Oireachtas the exclusive power to make law on these issues.

In other words, the Constitutional amendment here would serve to clarify that it is the will of the people that the Oireachtas has full control over these matters. It will then be a matter for the Oireachtas to decide how to regulate these issues.

Going on to Option 2. Option 2 is that Article 40.3.3 should be replaced or amended with a new Constitutional provision that directly addresses both termination of pregnancy and any rights of the unborn. This Constitutional provision as interpreted by the courts, would limit the law making powers of the Oireachtas. So, that is the difference between the two options. The first option is that the Oireachtas has exclusive power to make law. The Option 2 is that the provision would be in the Constitution. It would be a Constitutional provision and it would limit the law making power of the Oireachtas.

This would, sorry, this could be implemented primarily, this is Option 2 now, by a Constitutional provision whether by way of replacement or amendment of Article 40.3.3 in conjunction with legislation or in certain circumstances via legislation only.

You will also see there is a third voting option, as there was on the last ballot, that can be selected. *"Prefer not to state an opinion."* Once again this is included on the ballot paper to accommodate members who may not wish to express a view on how change should be effected.

Now, in relation to the presentation of the results. I just want to again briefly refer to that. A sample result sheet is now on the screen. Once again it will specify the number of citizens eligible to vote and the number of citizens who voted. The results will provide details of the number of votes cast in respect of Option 1, Option 2 and the third voting option, prefer not to state an option. However -- that should be "prefer not to state an opinion". Sorry about that.

However, for the avoidance of doubt, the majority would be determined by reference to the total votes cast in favour of Option 1 and Option 2. Now, the next steps basically are that we would go into private session to allow the members to discuss the draft ballot amongst themselves and then do the discussion in round table format and we will resume at 3.30, at which point we will have a questions and answers session. Thank you very much.

FEEDBACK FROM MEMBERS AND Q&A

CHAIRPERSON: Would every one please take a seat please. Just before we go on to the Q&A Session, it was suggested to me by the Expert Advisory Group that it would be no harm if I read into this ballot what I stated in relation to Ballot 2 because it also applies in relation to Ballot 3 and this is just to remind you.

It is important to note that voting for either Option 1 or Option 3 in Draft Ballot 3 may result in an outcome that allows for the liberalisation of the current legal regulation of termination of pregnancies or alternatively, an outcome which results in the rights of the unborn being given greater protection. This is because both the legislation enacted in consequence of a repeal or in consequence in Option 1 of the Constitution allowing the Oireachtas to legislate, giving it free rein in relation to legislation or, and again I am going to emphasise, depending on its terms, a provision replacing or amending Article 40.3.3 in the Constitution could have either effect.

So, in either scenario the effect, the outcome could be either, depending on the legislation or the amendment made, the outcome could be either liberalisation or greater protection for the unborn. So just to remind you of that. Now, we'll start with the

questions.

Q. **TABLE 6 - DAVE:** In relation to Option 2 if it was selected, could you just clarify maybe how the law making powers of the Oireachtas would be limited. It says, like you know the actual wording and the introduction to it says "as interpreted by the courts" but could you specify exactly how that would work, how it is limited please?

A. **PROFESSOR MADDEN:** So I'll take that question. So if Option 2 is selected which indicates that there will be a new Constitutional provision addressing the issue, so the question is how would the power of the Oireachtas be limited in that context. So I suppose this depends on how you decide to vote in Ballot 4C and the extent to which the Oireachtas adopts those recommendations and the extent to which that's subsequently passed by a Referendum of the people. So, you are given various options in Ballot 4C to indicate your preference. So, for example, if the Assembly were to vote in favour of Option 2, as you've suggested and later in favour of recommending, for example, to look at one of the examples in 4C, if you voted in favour of recommending that termination of pregnancy should be allowed in cases where there's a serious risk to the health of the woman, then if this was subsequently put to the people in a Referendum and passed by the people in a Referendum, then the Oireachtas would be constrained by that and they couldn't pass legislation contrary to that new Constitutional provision. Does that answer your question?

CHAIRPERSON: Yes. Table 1, sorry, there's a mic over here on Table 4.

Q. **TABLE 4 - FIONNUALA:** Good afternoon, Fionnuala from Table 4. Just first of all on behalf of my table we'd like to make a proposal that the ballot paper is amended to say Option 1 would be "*Article 43.3.3 should be replaced with a Constitutional provision that explicitly authorises the Oireachtas to legislate, to address the termination of pregnancy, any rights of the unborn and any rights of the Mother.*" Option 2 would be amended to say "*Article 40.3.3 should be replaced or amended with a new Constitutional provision that directly addresses termination of pregnancy, any rights of the unborn and the rights of the Mother.*" We feel that it's a bit worrying that the rights of the Mother weren't included?

A. **CHAIRPERSON:** So you're taking out both?

Q. **TABLE 4 - FIONNUALA:** Taking out both and including the rights of the Mother.

A. **CHAIRPERSON:** Including the rights of the Mother.

Q. **TABLE 4 - FIONNUALA:** Then not representing my table but representing myself, I just wanted to say that it is important to note that the options presented on this ballot funnel us into voting on abortion and the rights of the unborn only. Article 40.3.3 does not mention termination or abortion and crucially it does have effects outside of this area. This is disappointing.

A. **CHAIRPERSON:** Sorry, would you remind repeating that. I didn't quite get it?

Q. **TABLE 4 - FIONNUALA:** It is important to note that the options presented in this ballot funnel us into voting on abortion and the rights of the unborn only. Article 40.3.3 does not mention termination of pregnancy or abortion and crucially it does have effects outside of this area. This is a disappointment. I just want this on the record?

A. **CHAIRPERSON:** Oh yes, I understand what you're saying, yes. We'll deal with that suggestion variation.

A. **DR. DOYLE:** I see no problem with it, difficulty in terms of how it would effect other votes. So, I've no difficulty with it being put to the floor. Presumably, there's logistical difficulties but that's not a reason not to change it all.

A. **CHAIRPERSON:** Yes, yes.

A. **MS. FINEGAN:** Maybe put it to the vote. I think probably the thing to do is if that's a recommendation, I suppose it is conceivable that there are other proposed amendments. So maybe we'll hold off on voting on any amendments to the wording until the end of the session.

A. **CHAIRPERSON:** I just have one question and that is whether "and any rights of the woman" would be more appropriate than the Mother because of the terminology in the 2013 Act and all of that.

SPEAKER: Sorry, we took the Mother from the original Article 40.3.3

CHAIRPERSON: All right, very good. We'll come back to that and don't let me forget it please.

MS. FINEGAN: Table 10?

Q. **TABLE 10 - SPEAKER:** Good afternoon. Just a small question regarding Option 2. In the case of Article 40.3.3 being replaced with a Constitutional provision that addresses the rights of the unborn, who would be the author or authors of that provision and would they be expected to fully consider the recommendations and findings of the

Citizens Assembly also in drafting that provision?

- A. **DR. WALSH:** So, it's suggested in the first instance this would be a recommendation in your report which then goes to the Oireachtas Committee as I understand it. So the first question would be where it would go from there but if it got to the stage of drafting, then my understanding is that drafting would be done through the Departments and facilities in Government that are responsible for drafting Constitutional Referenda. So what you would be giving in your 4 Ballot would be an indication as to the reasons and circumstances in which you think the Constitution should be amended in the various ways but it would then be a matter of drawing up wording for a proposed Referendum, a matter for the drafters attached to working with your office committee and the public generally. I don't know if the Chair has any other thoughts on that?
- A. **CHAIRPERSON:** No, no, I mean that is the case. We are putting this in very general terms. We'll look at it in more depth in Ballot 4, whichever Ballot 4 we go to.
- Q. **TABLE 1 - FACILITATOR:** Thank you, Judge. I'm the Facilitator for Table 1 and the citizens at this table have two questions for the panel. The first question is if Option 1 is carried, does this create an explicit mandate for the Oireachtas to create legislation and if so, is there an explicit timeframe between passing a Referendum and devising the legislation and the second question is if Option 2 is carried does this mean that the specific reasons for termination would go into the Constitution. Thank you?
- A. **DR. DOYLE:** Okay. So I'll take those questions. First of all, obviously what comes out of here is recommendations to the Oireachtas for the Oireachtas to consider, okay but if we take the question as if Option 1 is carried, in terms of if there were to be a Referendum carried in terms of Option 1, that wouldn't create any obligation on the Oireachtas to create new legislation. The existing legislation for the 2013 Act would continue in force but the Oireachtas would be free to change that legislation at any time it wanted, in any way that it wanted because the Oireachtas would have full power to regulate issues around termination of pregnancy and so on and I think it follows on from that that there's no question of a timeframe between the Referendum having to pass legislation. In response to question 2, as if Option 2 was carried. Again, does this mean that the specific reasons for termination go into the Constitution, yes.
- Q. **TABLE 14 - JORDAN:** Jordan from Table 14. I just wanted to ask a question of clarification I suppose on the wording of Option 1 and 2. Clarification regarding the

distinction between the termination of pregnancy versus the word abortion because on a number of occasions the Assembly received information from both advocates and professionals drawing distinctions between either phrase, most memorably Dr Angelo Libertino, a staunch anti-abortion advocate, said that he had no issue with termination of pregnancy because the unborn might survive outside of the womb. I suppose termination of pregnancy also allows for the 2013 Protection of Life during Pregnancy Act, so it is not unconstitutional because it's a termination of pregnancy and not an abortion. So, I was wondering could there be some, I suppose, legal clarification on the difference between the words and/or medical clarification or input. Thank you?

A. **DR. WALSH:** Thanks very much. I'll take that question for you. I suppose just to give you a sense of where we arrived at the choice of terminology for the draft wording. We were influenced by the fact that the 2013 Act uses the phrase Termination of Pregnancy and also in consultation with our medical colleagues on the panel, that in medical practice the word abortion is generally not used and in terms of your question about the constitutionality of the 2013 Act, I suppose it's important to note that neither the 2013 Act itself nor the case on which it's based, the X case, expressly deals with the issue of gestational limits. So it's not to say that there isn't the possibility that those might be implicit but it has never been expressly dealt with, either on the face of the legislation or in the case but as you'll see when you move on to looking at the next draft ballots, there is scope for differentiation in terms of gestational limits on the different grounds that are being put to you. So, I think we definitely see the point that's being made about the potential for confusion in terms of the use of terminology. So, what I'd be suggesting if it was something that would be satisfactory for that table and anyone else in the room who shares the view, would be that we on the group would have a look at that wording overnight and before we would come to ballot 4, be able to come back to you with some discussion on whether that wording works appropriately or not. For the purposes of Ballot 3, we're using the word 'Termination of Pregnancies, that phrase in quite general terms to cover the issue more broadly. So, I don't think it is of crucial importance at this stage but certainly I think we do need to look at it before Stage 4. I think it's an important point that has been raised. Liz, do you want to add anything on that?

A. **DR. DUNN:** No.

Q. **TABLE 7 - FACILITATOR:** Judge, I'm the Facilitator for Table 7 and I have two

questions from two of the members of the table. The first one is if Option 1 is chosen by the majority, would this mean Article 40.3.3 could be taken out of the Constitution and the second question is, in Option 1 it states "addresses termination". Does this mean that the Oireachtas could choose retain the status quo and not liberalise it any further?

A. **DR. WALSH:** Could you just repeat the first part of the question please?

Q. **TABLE 7 - FACILITATOR:** The first question or the second question?

A. **DR. WALSH:** The first question?

Q. **TABLE 7 - FACILITATOR:** If Option 1 is chosen by the majority would this mean Article 40.3.3 could be taken out of the Constitution?

A. **DR. WALSH:** So, the answer is yes. Okay, so what Option 1 does is to propose the replacement of Article 40.3.3 with an entirely new Constitutional provision. So, the current text comes out and a new provision goes in to the effect as you see there set out in the ballot, that the Oireachtas is expressly authorised to legislate to address termination of pregnancy and rights of the unborn and subject to a possible amendment that is being proposed, the rights of the woman as well. So you would have heard and remember probably from Brian Murray's paper and presentation, that canvassed as one of the options that could be used to address some of the uncertainties around the consequences of repeal, that one way around that would be to insert this kind of provision expressly into the constitution but yes, the short answer is this would result in 40.3.3 as is coming out of the Constitution.

A. **PROFESSOR MADDEN:** And I'll answer your second question which was looking at the word addresses in Ballot 1, in Option 1, sorry. So in Option 1 where it says "*it authorises the Oireachtas to legislate to address termination of pregnancy and any rights of the unborn*", I think your question was does this mean the Oireachtas could choose to retain the status quo and not to liberalise it any further and the answer is yes, because you're giving the Oireachtas the power. So they could either retain the status quo as is in, for example, the 2013 Act or they could change the status quo by changing the 2013 Act or repealing the 2013 Act. The Oireachtas may be guided by or influenced by the recommendations that you make in answer to question 4B but that would be a matter to go into your final report and the extent to which the Oireachtas would be influenced by those recommendations in drawing up any subsequent legislation.

Q. **TABLE 5 - FACILITATOR:** I'm the Facilitator for Table 5 and there's two questions here from the table. The first one is can a Referendum Ballot Paper have numerous

options in relation to one topic. The second question and point of clarification will be asked by a member, by a citizen but I would like to state that during the round table discussions there was mixed views expressed.

A. **CHAIRPERSON:** There was what?

Q. **TABLE 5 - FACILITATOR:** There was mixed views expressed by all the members but one member would like to ask a question and get some clarification?

A. **CHAIRPERSON:** Well let us perhaps deal with the first question first about the content of a Referendum.

A. **DR. WALSH:** So just to clarify what you're asking. It's the position that you could have a number of distinct issues on one ballot paper but not a breakdown of multiple options within one issue. Does that answer your question?

Q. **TABLE 5 - FACILITATOR:** Yes.

Q. **TABLE 5 - CITIZEN:** Hello there, I'm a citizen from Table 5. A comment on Option 2 and a query on Option 1. Now, most of the people here at the table agreed Option 2 is fine as it is as it provides an option for those of us who wish to retain Article 40.3.3 and the Constitution and retain in somewhat or to provide small changes in a few circumstances while still giving rights to the unborn. So, we've no problem with Option 2. However, some of us have a query on Option 1, is that what we should recommending is a Constitutional change should be very straightforward in its wording but it should be formed to give total power to the Oireachtas to legislate in all circumstances on the matter of terminations. Now, some of us fear that putting in too much wording will bring us back to 40.3.3 or maybe back to Option 2. So, the question is, is it necessary to have in Option 1, to have the words "*and any rights to the unborn*" included in this option. Now, so I'm just asking why were they put in, so as to differentiate it from Option 2, why were these words put in. Should these words be retained. Why should they be retained and if the Assembly so wishes can they be removed?

A. **DR. WALSH:** I'll answer your question. I think the first thing to say is that the wording refers to any rights of the unborn. Okay, so our reasoning behind using the word "any" in that space as opposed to the words "the rights of the unborn" was to capture the fact that you're alluding to, which is that legislative change, coming on from that might be to the effect that there would be no rights for the unborn and that might be the intention of citizens in voting for such a provision. So, the use of the word "any" was intended to capture the fact that you're not presupposing that those rights are there and you go on in

Ballot 4 to be able to indicate through your choices in Ballot 4 whether you think those rights should be there at all or in any circumstances. So that was the reasoning behind having the use of the word "any" and certainly as the Judge alluded to, Option 1 can capture legislation, can capture giving authority to the Oireachtas resulting in legislation that would either liberalise or restrict the current abortion regime but it is a conferral of authority on the Oireachtas to deal with those issues.

- Q. **TABLE 5 - CITIZEN:** So can I make a recommendation that we just -- I put it to the Assembly that we drop the wording "*and any rights to the unborn*" from Option 1. Is that possible?
- A. **DR. WALSH:** I would suggest that probably it's related. We need to consider the two proposed amendments in conjunction because I think they may, in terms of how they'd be best giving effect to be linked. So it might be appropriate to consider those together.
- A. **CHAIRPERSON:** Maybe we'll, as they say in the courts, rise for a minute or two. In fact it will be a little bit perhaps longer than a minute or two. When we take all the questions and then we'll rise and we'll discuss it. We'll discuss both of those. Any other question?
- Q. **TABLE 10 - FACILITATOR:** Hi, I'm the Facilitator here for Table 10 and I've been asked to ask the following question. If the majority vote is for Option 2 with a new Constitutional provision that directly addresses both termination of pregnancy and any rights of the unborn with reference to the ballot of 4C, Part 2, are the recommendations 1 and 2 not at odds with each other?
- A. **CHAIRPERSON:** Say that again.
- Q. **TABLE 10 - FACILITATOR:** Are the recommendations 1 and 2 not at odds with each other?
- A. **CHAIRPERSON:** That's (i) and (ii)?
- A. **MS. FINEGAN:** Can I just confirm do you mean the recommendations from Ballot 1 and Ballot 2, is that what you mean?
- A. **CHAIRPERSON:** No, part (ii) of Ballot 4C is what I think he's talking about.
- Q. **TABLE 10 - FACILITATOR:** It's Ballot 4C, part (ii)?
- A. **CHAIRPERSON:** And you think there's an inconsistency between those two, is that your point?
- A. **DR. DOYLE:** I can address this question I think. The question really then is what's the difference between 1 and 2 within part (ii) of Ballot 4C. What it does is the reason it has

been structured like that is to allow the Citizens Assembly in Ballot 4, if it wishes to empower the Oireachtas more in some areas than others. So there's eight things at present that you will be asked to vote on in whichever of the Ballot 4's we get to but let us assume it is Ballot 4C for present purposes and it may be that in some of those citizens want to retain clear provisions in the Constitution and put quite a bit of detail in the Constitution but in respect of others that they might want to give more scope to the Oireachtas to make the rules. So it is a good point to raise now because it is then obviously relevant to your choice in Ballot 3, as to whether you choose between Option 1 and Option 2. In choosing Option 2 you would be allowing yourself in Ballot 4C the possibility on some issues to make a very clear statement in the Constitution and on other issues to give more power to the Oireachtas.

A. **CHAIRPERSON:** To legislate.

A. **DR. DOYLE:** To legislate, yes.

A. **CHAIRPERSON:** Does that answer your question, yes, thank you. Any other questions?

Q. **TABLE 11 - FACILITATOR:** I'm the Facilitator for Table 11. A citizen at this table has asked me to ask the following question. Which option is more likely to result in a more liberalised situation than currently exists?

A. **CHAIRPERSON:** That's a matter of policy, isn't it really.

A. **DR. DOYLE:** I think we can answer it, although it may not be a satisfactory answer. In principle, they are all equally open to either approach and beyond that it's a matter for your own political judgement as to which you think is more likely to happen to give the result that you wanted to give and obviously different members will have different views on that.

CHAIRPERSON: Any other questions. All right, we'll sit again here at ten past four and we'll consider those two questions.

BRIEF ADJOURNMENT

CHAIRPERSON: Very good. We took a little longer than expected but I'm going to ask Oran to deal with the two issues together.

DR. DOYLE: Thanks, Judge. So maybe to explain first again the rationale for Ballot 3

and why it is there. So the purpose of Ballot 3 is to get at the question of where issues of termination of pregnancy, the rights of the unborn and the rights of women in that context should be regulated. Should they be done in the Constitution or should they be left to the Oireachtas and one of the reasons that Ballot 3 is there is the uncertainty over what the consequences of repeal might be because we are aware and from feedback from the members, that many of the reasons why people have advocated for repeal are to do with giving power back to the Oireachtas.

Given that the legal advice to the Assembly has been that it's not clear that repeal would achieve that end, it seemed important to us to come up with a ballot that would give the members of the Assembly the option of voting for something which very clearly would give the power to the Oireachtas to deal with these sorts of issues. So that's why Ballot 3 is there and in choosing the precise wording of Option 1 and by extension Option 2, but I think focus on Option 1 is easier, we wanted to be sure that it was as clear as possible that the Oireachtas would, if it were voted for, have a full power over these sorts of issues. So, we wanted to include things within the grant of power.

So, going back -- well first of all then, addressing the second proposal that was made about removing the phrase "*any rights of the unborn*" we think that that would undermine the clarity of the choice between Option 1 and 2 because if you leave out the phrase "*any rights of the unborn*" from Option 1, what you are saying is that the Oireachtas wouldn't have authority to legislate to address those rights of the unborn and you leave open the possibility that a court might in future decide that rights of the unborn are protected in another provision of the Constitution implicitly and that that might be used to constrain the power of the Oireachtas. So in a sense in response to a question coming from this table, including the phrase "*any rights of the unborn*", is done not to presuppose that there are rights of the unborn that should be protected but to make it clear that if Option 1 is voted for and accepted by the Oireachtas, the Oireachtas would have the power to either restrict or protect the rights of the unborn as it sees fit but it is to make it clear that the Oireachtas has power over that issue.

So, I think the view, having discussed it and I'll hand over to the Judge in a minute or two, is that it's better to leave that within both Option 1 and Option 2. That said, we do think that the options read better and are more balanced and also are clearer about the fact

that the choices between giving a lot of power to the Oireachtas to regulate these issues are not if we were to accept the first proposal that was made to include the phrase "*and any rights of the woman*". So, I think the proposal but as with all issues on the Ballot Paper, it's a matter for the Citizens Assembly to decide whether you're happy with the proposal or not but the proposal is that Option 1 and Option 2 would be amended along the lines suggested from Table 4 I think, so that it would be Article 40.3.3 should be replaced, it's up there now, should be replaced with a Constitutional provision that explicitly authorises the Oireachtas to legislate to address termination of pregnancy, any rights of the unborn and any rights of the woman.

DR. WALSH: And maybe just to add to that in light of the comments from Table 4, a benefit, as we see it of this approach and with effect not taking the proposal from this approach, to take any rights of the unborn out, is that it does keep the wording of the provision broader than simply confined to termination of pregnancy. So, it does have greater breath than an amendment that would simply be focused on the termination issue. So, we think that marrying the two proposals together in this way provides, as Oran said, balance but also keeps greater breath in light of the comment that was raised from over here as well.

CHAIRPERSON: And consistency I think as well, which is very important. I mentioned it earlier. Are members clear about what we've just said. Would anybody like to ask a question?

Q. **TABLE 4 - FACILITATOR:** Hi, I'm the Facilitator from Table 4. There's just a quick question from one of the members. There was a discussion earlier about Mother or Woman, which word would be used, which word was settled on in the end?

A. **CHAIRPERSON:** We're thinking of woman.

Q. **TABLE 14 - SPEAKER:** I just want to clarify, if any rights of the woman is included in that instance, does that mean -- I mean I'm just saying is this just with regards to pregnancy or is this women's rights in general are now in the option, the Oireachtas would have the power to legislate on any aspect of a woman's life and would not have to refer to the Constitution, like other provisions within the Constitution, is that right or no?

A. **DR. DOYLE:** I think that's a good point. Obviously we're not drafting what the constitutional provision might be but I think in terms of guidance to the Oireachtas as to what we're thinking, perhaps the words in this context.

Q. **TABLE 14 - SPEAKER:** Sorry, one of my fellow members here has said that maybe changing it to "*the rights of the woman*" maybe would just kind of --

A. **CHAIRPERSON:** Sorry, would you repeat that again please?

Q. **TABLE 14 - SPEAKER:** Just that if it was changed to the rights of the woman maybe that would resolve that. If that's an issue, I don't know?

A. **DR. WALSH:** I suppose again that would probably have a generality. I think the problem that you're raising about generality here is an important one given the breath of other rights outside of this context that are dealt with in the Constitution. So, I think you're right. We probably need to come up with some wording to contextualise what we're talking about here in terms of the rights of the woman. So we can do that.

A. **CHAIRPERSON:** I would have assumed that it would be interpreted as the words, the rights of the woman would be interpreted in the context of termination of pregnancy and any rights of the unborn but we could put in the words "in the context". That would be my feeling about it but there could be a different view on it of course.

Q. **TABLE 4 - CITIZEN:** That's why I think it's the difference between the words "rights of the woman" and as in the Constitution the rights of the Mother because if we're taking it purely under the Article 40.3.3 what it says is "*the unborn and the rights of the Mother*". So when you change it to woman it could be interpreted, as somebody else in the room has said, woman as a standalone word and entity whereas when we're talking about in conjunction with the unborn and the Mother is where I think the clarity comes?

A. **DR. WALSH:** Yes, the pregnant woman.

MS. FINEGAN: Sorry, can we just have quiet, we've another question, thanks.

Q. **TABLE 5 - CITIZEN:** Sorry, it's just a point of confusion over the previous round of questions. I just wanted to ask a question of Mr. Doyle. There was -- another table asked a question in relation to if we were to go to with Option 2, would it mean that the Constitution would then have to contain a list of the different circumstances under which abortion might take place and you answered the question yes. To me that sounded like that that would be -- all the details would have to be contained within the Constitution but

if you vote for Option 2, it says down at the bottom of the page that you go to Ballot 4C and part 2 of 4C indicates that you can have all those options in legislation only, which seems to be a contradiction?

- A. So, the way -- so, Ballot 4C, Part 2, (ii) you would still need a provision which would say, and we can look at it in more detail when we come on to Ballot 4C, if that's the one we get to tomorrow, but you would still need a provision in the Constitution that would say something like there should be an exception, just take that purely random example, hypothetically for pregnancy as a result of rape, the Oireachtas must enact the laws in relation to this. So, you'll still need something in the Constitution to identify that the Oireachtas had the power to enact all of the laws in relation to that exception.
- Q. **TABLE 5 - CITIZEN:** But references then to those individual circumstances would have to be listed in the Constitution and then in turn dealt with in legislation as well?
- A. **DR. DOYLE:** Yes.
- A. **DR. WALSH:** I think the key phrase in that ballot, 42, part 2, is implementation. So, what you're concerned in (i) and (ii) in Ballot 4C is the implementation, the working out in substance as to how these different grounds would be dealt with and the question is whether you want a significant amount of that done at constitutional level or wholly in legislation. That's what is being asked in that part.
- Q. **TABLE 5 - CITIZEN:** Then you get into the scenario of toing and froing, constantly changing the Constitution with these details in it. Could a generic wording be put in and then that row of legislation, option 2's, would bear fruit in terms of legislation in different circumstances. I don't understand the level of detail that's required to be put into the Constitution?
- A. **DR. WALSH:** Well it would have to signal, if you were going the route of having particular reasons for abortion as opposed to generally giving the power to the Oireachtas, those reasons would have to be indicated at Constitutional level and how those would be given effect to could be dealt with in legislation as opposed to in the Constitution.
- Q. **TABLE 5 - CITIZEN:** Why? Why would you have to put those in the Constitution, I'm sorry, I don't understand?
- A. **DR. WALSH:** Well I suppose it comes back to the fact that the two options that you're looking at in Ballot 3 are whether you're explicitly granting the power to deal with this to the Oireachtas or you're holding back at a Constitutional level certain powers to limit how the Oireachtas can deal with the issue of termination. So, in doing so the purpose of

Option 2 is to indicate at a Constitutional level where those instances of constraint on legislative power should be.

- A. **MS. FINEGAN:** And if I could just add, I mean part of the reason why this is here is based on the feedback from the members at the last meeting, where we saw from the feedback form that we got, that in some cases members said you know that they may want to allow the legislature to have power over certain instances but there were certain things that certain members wanted to see constrained in the Constitution. So that was the specific feedback that we got and so that's what this ballot provides for. So, it's not to say that, as you say rightly somebody, if you get to Ballot 4C, somebody could tick legislation only in all cases but others may wish to select that the Constitution in some cases may have a constraint in those certain circumstances. That's the reason why it's there. It's because based on some of the feedback that we got it's to provide --
- Q. **TABLE 5 - CITIZEN:** But the crux of what I was getting at is to try and avoid the situation where there's a high level of detail going into the Constitution and there's a lot of hassle then as a result of trying to govern the whole thing?
- A. **DR. DOYLE:** If that's what you want to achieve and obviously people can have arguments about that on both sides but that's what Option 1 allows for because it doesn't have -- the detail would be just saying pass the job over to the Oireachtas.
- Q. **TABLE 5 - CITIZEN:** Okay, thank you.
- Q. **TABLE 4 - CITIZEN:** Hi, I know this was passed into yo inside and I've been asked by -- on my last count, 13 members across the room, to raise the fact that there's a concern over the influence that Brian Murray's paper has had on Ballot 2, in particular, now apologies, let me grab my notes, in particular basically the fact that there was too much emphasis on the uncertainty if we were to vote for repeal and that Brian Murray's paper was emphasised immediately proceeding the Ballot and that it was emphasised without alternate opinions. As an example, one of my colleagues has provided me with another legal scholar, Mairead Enright, who published a piece. It said

"after repeal the court would likely find that the State is entitled to protect foetal life but that this entitlement must now be balanced against pregnant women's rights, not only to life but also health and autonomy."

There is a query as to whether or not Brian Murray's paper influenced the vote and if a

break had been taken and sufficient time to reflect had been given, would a different result have been reached. I've been asked to raise that on behalf of -- in and around 10% of the members of the Assembly and that's just the ones I've spoken to. So I wanted to put that to Expert Advisory Group and the Secretariat please?

CHAIRPERSON: I'll hear another question.

- Q. **TABLE 5 - CITIZEN:** Sorry, the citizen on Table 5 here that put the original recommendation to delete any rights to the unborn. Now, we're here for five months debating the Eighth Amendment to the Constitution in Article 40.3.3. We've already voted to delete Article 40.3.3 from the Constitution and now we've ended up with another way of wording in Option 1, to vindicate the rights of life of the unborn with equal right to life of the Mother, in just another wording. So, I still think we should delete the last eleven words of Option 1 and that if people believe that the right to life of the unborn should be vindicated and with the equal right to life of the Mother they should vote for Option 2 and I still propose that we delete the last eleven words of Option 1 because it seems to bring us back to square one, where we started four or five months ago with exactly the same wording, going forward to Dáil Committee for recommendation?
- A. **DR. DOYLE:** Well I take your point, okay. With respect I disagree that that's the effect of the wording of Option 1 as proposed. If we did, if I understand what you're suggesting is, excusing me for not counting the words, but that you end after the words "to legislate". Is that right, so "*Article 40.3.3 should be replaced with a Constitutional provision that explicitly authorises the Oireachtas to legislate.*"
- Q. **TABLE 5 - CITIZEN:** From "*any rights to the unborn and any rights to the Mother*"?
- A. **CHAIRPERSON:** Oh yes, you're leaving in termination of pregnancy.
- A. **DR. DOYLE:** I think it isn't the same as the existing 40.3.3 because it doesn't talk about vindicating the rights of the unborn or protecting the rights of the unborn. What it does is it makes it clear that the Oireachtas can address the rights of the unborn, sorry, address any rights of the unborn which could include restricting those rights or protecting them further and if you don't include that, my view is that there is a risk from your perspective I think because you are somebody, if I understand you correctly, you want the Oireachtas to have a broad power on these issues but it does open up a risk that the Oireachtas would find itself constrained because it hasn't explicitly been given the power to address the rights of the unborn and there is an argument that there are rights of the

unborn implicitly protected by Article 40.3.3.1 and so you might not achieve what it is that I think you are trying to achieve. I don't have any view on what you should be trying to achieve but from what I understand you are trying to achieve, I think you can achieve that better by leaving in the phrase *"any rights of the unborn"*.

A. **DR. WALSH:** I might just add on that, for the Assembly's consideration obviously in all of these proposals, just to reiterate that taking out those last eleven words would bring you to a situation where the proposed amendment that you would be putting forward in the recommendation only deals with termination of pregnancy and not any other issues that might be related to the Eighth Amendment as it currently stands. It would be a very specific terminology that would be used and its limits would be clear in that respect.

Q. **TABLE 6 - SPEAKER:** The way I look at it, with the two options that we have, Option 1 is basically to give -- maybe if you call it unlimited power to the Oireachtas they'll come up with legislation. Option 2 is to limit that. To get caught up now at this stage with commas and ands and rights and this woman with mother and I'm not being flippant and I'm not demeaning anybody or anything, is kind of losing the point because the next question that will be asked after this debate on this section will be do we have to go through that again now tomorrow with 4B and 4C. Are those words okay?

A. **CHAIRPERSON:** Are those words?

Q. **TABLE 6 - SPEAKER:** With the way that words are being added or changed or whatever and these two ballots, will they now effect 4B and 4C tomorrow or have we to go through the same thing again. I mean ultimately we're coming up with recommendations when we're finished but to get bogged down here and now, all this is going to do is move us on to the next stage of the process and we have all our options then in 4B and 4C, which include the word 'woman' and 'unborn' and everything else. So, I think we're getting bogged down here on this and potentially to get bogged down on this then could bog us down then tomorrow because we have to go through the whole thing again. Is this word right, is this comma right. So, I think we should just move on from this. Choose our Option 1 and Option 2 and then tomorrow, which will be further down the line of where we need to be as regards putting recommendations to the Government, we'll have a better choice because there is more options given to us when we're voting. That it will be better placed to actually decide what to choose. Just an opinion.

A. **CHAIRPERSON:** Yes. Any other question?

Q. **TABLE 11 - FACILITATOR:** I'm the Facilitator for Table 11. Just two comments. First, in clarifying the implications of Option 2, the table have looked at how divorce is handled. Page 164 of the Constitution, the issue of divorce as covered in the Constitution is made up of general principles and then lists specific circumstances and also has a catch all provision at (iv). Just it was submitted by this table that that might assist any other citizens who were wondering how Option 2 might work in practice and then another citizen would like to me to comment. *"I know I am trying to achieve but I am now so confused I don't know how to get there through the remaining ballots."*

A. **TABLE 7 - FRANK:** Hi, it's Frank here from Table 7. I'd just like to address the issues raised at Table 4 and the huddle that took place with regards to the influence of the legal information we had before the last ballot and that that had in somehow hoodwinked us or confused us into voting the way we did. We have sat here for five and six weeks. We're intelligent people. I've heard the same groups argue in different times and different places that we don't need to be condescended to in some way. We voted the way we voted. I didn't like the way the first vote went but I've stayed and voted for the second vote and we voted the way we voted and if people would want to claim that we were misled in some way I just think it's a farce. I'm sorry but I'm angry by that. I'm angry by a forum of influence taking place just prior to a vote.

CHAIRPERSON: Very good. Anybody else, any other observations?

Q. **TABLE 8 - CITIZEN:** I would just like to second Frank there. That there was quite a bit of lobbying going on and I object to that because everybody came here through innocence and to have their own views and there has been quite a lot of lobbying going on, particularly before this vote that is going to happen now.

Q. **TABLE 12 - CITIZEN:** Member from Table 12. I propose that we move on with the ballot as presented in the draft for paper 3.

A. **CHAIRPERSON:** And sorry, your last observation?

Q. **TABLE 12 - CITIZEN:** That we proceed with the vote on Ballot 3 with the draft as originally proposed to us?

A. **CHAIRPERSON:** As originally proposed. I just wanted to be quite clear, that that's

what you were saying. All right.

- Q. **TABLE 5 - CITIZEN:** Hi, a member from Table 5. Just to comment on the lobbying comment. I asked a question earlier to clarify what was the difference between having a -- sorry, voting on Ballot 2, what was the specific difference between choosing Option 1 which would lead us to Ballot Paper 4A and Option 2 which would lead us to Ballot 3, Option 1. I'm sorry, this is longwinded. My understanding was that the only difference between those two options were that Option 2 was stronger legally. That the legislation that the Oireachtas could put through could not be subject to constitutional argument at the Supreme Court level and that it would be stronger legislation as a result of having the provision in the Constitution that specifically said we're taking out 40.3.3 and we're replacing that with a statement saying we're giving the Oireachtas the power to legislate for this. Is that true?
- A. **CHAIRPERSON:** We're talking about Ballot 3 not Ballot 2.
- Q. **TABLE 5 - CITIZEN:** I know but I want to address what the member over here on Table 4 said and about the huddle that happened here because I have spoken to a couple of people myself who were confused after they made the vote on Ballot 2, they seem to feel that now on Ballot 3 we're not where we thought we were going to be. That's what I'm trying to say?
- A. **CHAIRPERSON:** I'm not sure I understand what you're saying. I understood you to be talking about Ballot 2 first of all but you are really talking about Ballot 3 are you?
- Q. **TABLE 5 - CITIZEN:** Originally, sorry, originally I stood up and asked this question before we had Ballot 2. Okay and my understanding was that the main difference between the two options that I've outlined were that the choosing Option 2 which led us to Ballot 3 left us in a stronger position that the Oireachtas had more power in terms of legislating in this area and I'm just slightly concerned now that we seem to be in an area where it feels like that they might actually have less power or that it could be -- sorry, they have more power but it could mean that there's no change. That's my theory is concerned now. That I've got myself into a situation where I've voted a certain way because I felt that legally that was the advice I was getting and that now maybe I'm not where I thought I was going to be. Apologies for sounding stupid?
- A. **DR. WALSH:** So if I can just make sure I'm understanding your point first of all and then give you my response to it. Your concern is that in voting for Option 2, replace or amend as opposed to repeal, your aim in doing that was to get yourself into Ballot 3 and

in that give the Oireachtas a firm legislative mandate that wouldn't be susceptible to any legal uncertainty or challenges. To deal freely with these issues without any restriction as to grounds or reasons et cetera. Is that correct in my understanding?

Q. TABLE 5 - CITIZEN: Yes.

A. **DR. WALSH:** So the aim of Option 1 in Ballot 3 is to do exactly as you are suggesting. It is to, reading the wording to you again, "*explicitly authorise the Oireachtas to legislate to address these issues.*" Okay, and the purpose there is to deal with the fact that you've heard that there is legal uncertainty around the implications of repeal and you've heard that from Brian Murray and the advice that he gave to the Assembly but you've also heard it, if I can just refer back to the advice that was read out by Table 4. The advice that was read out said "likely to be the case" because nobody can say with certainty what the impacts are. There's lots of different interpretations. Different people have views as to which are more plausible or likely than the other and Brian Murray gave his view as to the most plausible outcome but there's uncertainty there. So the aim in framing Ballot 3 in the way that we did, was to get around that concern and have an option on the ballot that regardless of the view that's taken as to the interpretation that would be taken at repeal, there was an option for the citizens to vote for that would give a secure footing to the Oireachtas to legislate on these issues.

So, that's the aim of Ballot 3 and we are tinkering with the wording now in trying to get that right but that was the framing, the intention in framing that the way we did and sequencing the way we did. Does that answer?

Q. **TABLE 5 - CITIZEN:** Yes, that was my understanding. I just got confused momentarily. Thank you.

CHAIRPERSON: All right. Well I suppose I should deal and give my view on what was stated by Fionnuala in relation to the information we have given in relation to Ballot 2 and in particular 1 in Ballot 2. I mean this is live streamed. It will be available on line but not only that, we have a Stenographer here and we will have a transcript of what was said but just looking at the notes from which I read, what I said was the important point is that it cannot be said with certainty, just with certainty, which consequence would prevail if Article 40.3.3 was simply repealed. Then I referred to Mr. Murray's three views and I did in there, there could be more, you may remember that and his three views on what the consequences of repeal would be and then I itemised them one, two and three and

then I said, number one was that the form of abortion legislation would be exclusively be a matter for the Oireachtas. That was number one.

Then I said that he indicated that his opinion was that the first consequence would prevail but as I'd already mentioned, this cannot be said with certainty. That's all I said and I don't think that could have been misunderstood and I mean as I say the transcript will be there and I also at that point I think reiterated point one. That's my recollection. That I reiterated what point one was. That the form of abortion legislation would exclusively be a matter for the Oireachtas and that was Mr. Murray's opinion as the consequence which would ensue but I did add then I think that the implications of a recommendation from the Assembly for a simple repeal would be uncertain. I said that in my notes and I'm sure I read it out. So that's what I said. I said there's uncertainty here but on the advice we have got the likelihood is that repeal simpliciter would be construed if the matter became a legal issue in a court, would be construed as that the form of abortion would be exclusively a matter for the Oireachtas.

So, I don't think there is anything misleading in that and as I say the transcript is available, the live streaming is available and you can access what was actually said and check it out but I have a clear recollection on that and as I say I'm reading from my notes but I would have added a word here and there as one does in those circumstances but I don't think there was any confusion about what I said and I don't think it should have given rise to confusion. So, I mean on that basis I could see no basis for re balloting on Ballot 2. I don't think there was anything misleading, but as I say the material is there and it is accessible but I genuinely believe that was what I said.

AGREEMENT OF BALLOT 3 INCLUDING EXPLANATION OF ANY AGREED AMENDMENTS:

CHAIRPERSON: Now, so where are we are we at this stage. It's a question of going on to Ballot 3 and it's a question of whether at this stage, whether we go forward with the draft ballot in its draft form, which is before you there or had that been -- oh no, that has been added on. Go back to the original.

I was of the view and I think I expressed it earlier this afternoon, that Fionnuala's

suggestion about adding any rights of when we said the woman, we could say pregnant woman, I thought there was merit in that I have to say but I think there is no merit in ending Option 1 after the words "*to address termination of pregnancy.*"

MS. FINEGAN: Do the Expert Group want to say anything?

CHAIRPERSON: Do you want to make any observation on that?

DR. WALSH: I mean I would agree as a matter of opinion but I suppose it would be perhaps advisable to get consensus.

CHAIRPERSON: Oh definitely we have to have a vote. Definitely. I suppose maybe -- I mean we are now in three possibilities. The possibility of ending Option 1 with the words "*to address termination of pregnancy*" and making no amendment to Option 2. That's the first and that's what has been suggested, am I right in that, yes, thank you.

Then the second possibility is what Fionnuala suggested, to take out the both and so that the three factors are governed in both Option 1 and Option 2 and I think that's important from a consistency perspective and the three factors are to legislate. First of all, to address termination of pregnancy. Secondly, to address any rights of the unborn and thirdly to address any rights of we'll say the pregnant woman because that is the terminology that is used in the 2013 Act. A pregnant woman, yes, is used in the 2013 Act. I've checked it. So that's the second option and then the third option is to go back to the draft we put before you.

DR. WALSH: Sorry, Judge, I think the proposal would be to end at termination of pregnancy, under both Option 1 and Option 2, so they'd mirror each other?

CHAIRPERSON: No, that's not right. It's only in Option 1, I'm quite clear about that. I am absolutely correct in that. So, do we do it -- will I put each of those matters to you.

SPEAKER - JORDAN: I suppose just if we change the details of the end of either Option 1 without changing the details of Option 2, it seems to polarise or make partisan either option, so that Option 1 would allow the Oireachtas to legislate, to address termination of pregnancy and any rights of the unborn. If we ended it at termination of pregnancy it would make it different than Option 2, having that dealt with just under the Constitution. So, it seems to make the details of what is being dealt with different as opposed to whether the Constitution allows the Oireachtas to do it explicitly or whether the Constitution deals with it itself explicitly and I suppose that's the issue that I'd have

with just changing the details of one option.

CHAIRPERSON: What precisely is your problem, the problem you perceive?

SPEAKER - JORDAN: Well I suppose Option 1 boils down to explicitly authorising the Oireachtas within the Constitution and Option 2 boils down to explicit or having the details dealt with explicitly within the Constitution. So, if we change the details of what the Oireachtas can do in the ballot for Option 1 but we don't change what can be dealt with in the Constitution equally, do you know what I mean. It's not balanced?

DR. WALSH: So, the question is should the two not be the same wording, so they would be consistent. Option 1 and Option 2 should be consistent.

SPEAKER - JORDAN: So one is the Constitution, so as my colleague said, one is explicitly for the Oireachtas to legislate and one is explicitly dealt with in the Constitution. So that they are both consistent in what they deal with, whether through the Oireachtas or in the Constitution.

DR. WALSH: So I think the issue is, there's two aspects to the issue. The first is whether in setting Option 1 and Option 2 against each other as propositions to you, you want more or less the same question to be at play in both of them. So the question at play in both of them now is do you want the power on this issue to be dealt with by the Oireachtas or do you want at least some power on this issue to remain in the Constitution as to the same issues. If the change is implemented in the manner suggested by Table 5, there then becomes not a difference between the two options in terms of allocation of power but a substantive difference between the two options as well. So, I agree with that point that has just been made from the table and that would need to be taken on board I think if the citizens were to go that route.

CHAIRPERSON: Yes. All right. Yes, is there any other?

Q. **TABLE 8 - CITIZEN:** Am I right in believing that people are confusing the words up there with what's actually going into the Constitution and that this is just a vote. Tomorrow we specify the recommendations. So, I think there is too much time being taken up with the wording there. That isn't the exact words that are going in the Constitution. Am I right?

A. **MS. FINEGAN:** I mean it would be a matter for the Oireachtas first of all to consider the recommendations of the Assembly and then second of all if the Oireachtas and the Government decide to act on that, it would be a matter then for the Office of the Parliamentary Council to draft the text.

Q. **TABLE 4 - WILLIAM O'HALLORAN:** I just have an observation and a concern about this change to remove the words "and any rights of the unborn" from both. I think this is and I just want to say I think this is changing and has huge implications for what we will be considering tomorrow. So, I mean we won't have a decision to take tomorrow on any rights or the amount of rights of the unborn versus the amount of rights of the Mother if we remove these words "and any rights of the unborn" and I think we'll get ourselves into trouble here.

CHAIRPERSON: I think that what we should do at this stage is to put you before you on voting on our draft in its unchanged form. I don't have a difficulty with the suggestions by Fionnuala of the amendment to both Option 1 and Option 2 and I would allow you vote on that but I do think there is very considerable difficulty with the suggestion that Option 1 ends at "to legislate to address termination of pregnancy" and I'm not going to put that as a proposition. So, first of all I would ask you to indicate by a show of hands and we may have to do a count on this, by a show of hands, how many people are in favour of going ahead on Ballot 3 with the formula which was put before you by us. In other words Ballot 3 as it now appears on the screen behind you.

MS. FINEGAN: So, in other words, there are two choices we're putting before you. One is this, it's the original text and the second is the revision and I think there would be a revision to this which I might just put up on screen now to say that it's the rights of the pregnant woman. Just a point of clarity for that issue that was raised. All right, they're the two options.

CHAIRPERSON: And the first choice is the draft in its original form. I'd like to see a show of hands in relation to that?

(SHOW OF HANDS BY ASSEMBLY MEMBERS)

CHAIRPERSON: And then the amended draft?

(SHOW OF HANDS BY ASSEMBLY MEMBERS)

MS. FINEGAN: I've already gotten to 40. So I think we can take it that the revised version carries.

CHAIRPERSON: Does anybody have any issue in relation to doing it by a show of hands and doing the count in that way?

MS. FINEGAN: Okay, well what we'll do then is proceed with the ballot, with the vote at this stage but obviously in light of this change you'll just have to bear with us to print new ballot papers and we'll be with you momentarily.

BRIEF ADJOURNMENT

MS. FINEGAN: The ballot, there's a missing word in it. So, just in Option 2, the revision, the word Constitutional from Option 2 was removed. It was just an accidental I'd say, just slipping in the running of it. So if everybody could just return, anybody who hasn't filled in a ballot just return their ballot and I'll ask the Returning Officers to discard the ones that have been cast already and we'll start again with the revised ballot. So, I'm sorry.

MS. FINEGAN: Members, if I could please have your attention. There is just a further matter which has come to our attention just as we were printing it through and properly proof, not that we didn't properly proof it previously. So, you'll see in Option 1 it says Article 40.3.3 should be replaced with a Constitutional provision. In Option 2 it says Article 40.3.3 should be repealed or amended with a new Constitutional provision. So, in Option 1 it just says Constitutional provision and then in Option 2 it says a new Constitutional provision. So we're proposing that for consistency that both would say with a Constitutional provision. Just for the consistency. So, I think maybe we'll just do -- if people could actually take their seats just so we could do a show of hands just to be absolutely sure. We promise we will get you out here. I know you're right, Denise. We have to get it right, absolutely. So, can I just ask for a show of hands in favour of removing the word "new" in Option 2. Okay, that's unanimous, thank you.

CHAIRPERSON: The eagle eyes on the Steering Committee, no more than myself, didn't spot it.

MS. FINEGAN: Okay, for the purposes of clarity, the revised Ballot Paper is now available and citizens are invited to go up to the assigned booth and cast their vote. Just to give you a sense, we'll obviously turn, once the voting has been completed we'll turn the count around as quickly as possible but we would want you to come back obviously for the announcement of the results which will happen this evening. We're anticipating maybe six or ten past six. I think what we'll do is we'll give a five minute

warning in advance to allow people to gather, so you don't miss it. So, I just want to make that clear just for the avoidance of doubt. You know if you want to hear the result come back for sort of six or ten past.

PUBLIC VOTING CONCLUDES

MS. FINEGAN: Okay, folks, we have the results, they are in. So, if you want to take your seats we'll have the announcement momentarily.

ANNOUNCEMENT OF RESULTS AND OUTLINE OF NEXT STEPS BY THE CHAIR

CHAIRPERSON: Now, I'm going to announce the result of Ballot 3. First of all, the number of eligible voters 92. The number of votes cast 92. You will recollect that this morning you did approve of somebody who couldn't be here this morning joining us in the afternoon. So that explains the 92 as distinct from the 91. Once again no invalid votes, zero and the total ballot poll then was 92.

Then the manner of voting on the options. First of all, on option one and that now in the terms that you voted for it is Article 40.3.3 should be replaced -- it's the new language on the result document I have. It's Article 40.3.3 should be replaced with a Constitutional provision that explicitly authorises the Oireachtas to legislate, to address the termination of pregnancy, any rights of the unborn and any rights of the pregnant woman.

The number of votes in favour of that option, 51 which represents 57% of the votes and then Option 2, Article 40.3.3 should be replaced or amended with a new Constitutional provision that directly addresses termination of pregnancy, any rights of the unborn and any rights of the pregnant woman and the votes for that option were 38 which represents 43% and "prefer not to state an opinion" just three on this occasion.

So, the position is that the majority voted for Option 1, 57% to 43%. So, we go on tomorrow to Ballot 4B. That's the consequence of that and just before we wind up I just want to say something. We've had a very fraught day and I just want to recall what I said at the private session this morning and I think it's no harm repeating it. I said as we

reached the climax of our work I know that members will take their role very seriously and that undoubtedly happened today.

In so doing, when engaging in discussions this weekend, I would encourage you to be respectful of your fellow citizens and of alternative view points to your own. There was certain remarks this afternoon which were unfortunate I think and some people feel aggrieved but in any event I just think bear that in mind and I also mentioned today, I can't remember whether it was in the private session or the public session, I mentioned collegiality and I hope we will regain collegiality and I hope that tomorrow everything will go ahead in a less fractious manner than this afternoon but just we've had a long hard day. I hope you will all have a pleasant evening and I'll see you all tomorrow at 9.30. Thank you very much.

MEETING ADJOURNED

STRICTLY PRIVATE AND CONFIDENTIAL

THE CITIZENS ASSEMBLY

TRANSCRIPT OF MEETING RE

THE EIGHTH AMENDMENT OF THE CONSTITUTION

HELD ON SUNDAY, 23RD APRIL 2017

AT

GRAND HOTEL, MALAHIDE

APPEARANCES

**THE CITIZENS ASSEMBLY: MS. JUSTICE LAFFOY, CHAIRPERSON
MS. SHARON FINEGAN, SECRETARY**

**EXPERT ADVISORY GROUP: DR. ORAN DOYLE
DR. RACHAEL WALSH
PROFESSOR DEIRDRE MADDEN**

**CLINICAL ADVISORY
GROUP: DR. ELIZABETH DUNN
DR. ADRIENNE FORAN**

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THE MEETING COMMENCED AS FOLLOWS ON SUNDAY, 23RD APRIL 2017:

**ADDRESS BY THE CHAIR TO INCLUDE BRIEF SUMMARY OF PROCEEDINGS
ON PREVIOUS DAY AND INTRODUCTION TO VOTING ON BALLOT 4B:**

CHAIRPERSON: Good morning everybody. I think we're ready to start now and this is the last occasion on which I'll say welcome to consider the Eighth Amendment. As you know, we are agreeing the recommendations which will form the basis of the Assembly's final report on the topic of the Eighth Amendment for the Houses of the Oireachtas. Yesterday, the members voted on three ballots. As demonstrated yesterday, I think the ballot paper is fairly complex. Not only that, the balloting system is sequential and that makes it somewhat complex and perhaps difficult to understand. It means that a later ballot, if it is going to happen, depends on an earlier ballot but in any event we have, as it were, come to the end of the road and today we're going to be dealing with Ballot 4B.

Now, just to recall briefly what happened yesterday. First of all in Ballot 1, the members voted by a majority that Article 40.3.3 should not be retained in full. Then, in Ballot 2 the members voted by a majority that Article 40.3.3 should be replaced or amended and then finally, in Ballot 3, the members decided that Article 40.3.3 should be replaced with a Constitutional provision that explicitly authorises the Oireachtas to legislate, to address termination of pregnancy, any rights of the unborn and any rights of the pregnant woman. That was the basis on which the last ballot was voted on and really just to make it absolutely clear.

In other words, what you have done is that you have recommended in the words I used yesterday in explaining Ballot 3, you have recommended that the Oireachtas would have exclusive power to make law on these issues. So that's really -- you have to understand clearly that that is what you voted on yesterday.

Now, I'm going to go on now and explain Ballot 4B. Again, this draft ballot was prepared by myself and the Secretariat with the assistance of the Steering Group but after a lot of consultation, if I may say it again, with the Expert Advisory Group, who gave us invaluable assistance. Now, the text is displayed on the screen. This is the

text of Ballot 4B, which as you'll see is even more complicated than the Ballots you had yesterday.

The top of the paper outlines how we have reached this ballot, Ballot 4B. In Ballot 3, as I've already stated, the Assembly voted by a majority to amend the Constitution to explicitly authorise the Oireachtas to legislate. This Ballot, the one we're dealing with now, 4B, will provide the recommendations of the Citizens Assembly to the Oireachtas about what should be included in the legislation. Specifically, it will provide recommendations about the reasons, if any, for which termination of pregnancy should be lawful in Ireland as well as any gestational limits which should apply.

The suggested wording of the draft ballot paper seeks the recommendations of the citizens, the members of the Assembly on eight reasons listed on the left hand side of the table and they are numbered one to seven. One to eight rather. Numbers one to seven on the list, they list possible reasons for which termination of pregnancy could be lawful in Ireland, while number eight provides

"for lawful termination of pregnancy without the requirement of any specific reason for termination."

Now, just to look at the reasons in order. First of all, one is real and substantial risk to the life of the woman and number two is real and substantial risk to the life of the woman by suicide and those first two reasons, they represent the current law which is contained in the Protection of Life During Pregnancy Act 2013. So, that is the law as it is now. Moving on then to number 3, the reason, one reason suggested is "serious risk to the physical health of the woman."

Number four, "serious risk to the mental health of the woman."

Number five, "Pregnancy as a result of rape."

Number six, "the unborn child has foetal abnormality that is likely to result in death before or shortly after birth."

Number seven, "the unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth."

Then finally, number eight, "available on request." In other words, termination should be available with no restrictions as to reasons.

So, if you look at the right hand side of the table now. That is where you are supposed to indicate your recommendation or there is an alternative, a preference to state no opinion and you do so by marking X opposite each reason. So, we expect you to express a view on each reason and you do that on the table on the right hand side.

Now, linked to these reasons there are five columns which allow you to make recommendations on when, if ever, termination of pregnancy shall be lawful by the various reasons set out on the left hand side of the table. That's the numbers one to seven and indeed eight as well and then the choices presented in the columns I've just referred to are first of all (a), you see (a) there. "Never for this reason."

So, you're voting against this particular reason, justifying on a lawful basis, a termination of a pregnancy and then B1, B2 and B3 deal with the gestational limits if any and B1 refers to up to 12 weeks gestation only. B2 up to 22 weeks gestation only and B3 with no restriction as to gestational age and then finally column C, the fifth column, that's another choice and it is "prefer not to state an opinion" and once again, as was the case yesterday, in the ballots you dealt with yesterday, this is included on the ballot paper to accommodate members who may not wish to express a view on change for all or any of the reasons for which it might be provided that termination is lawful. So, each member has that option to mark X in column in C if you don't want to express a view.

Now, this is important, excuse me. Members should only select one of those options. While it is conceivable that there may be more than one option which reflects your point of view, it should be noted that any ballot paper with a mark in more than one column for a particular reason, will be considered to be a spoiled vote and

therefore will not be counted. So I hope everybody is clear on that. It is consistent with the explanation we gave in relation to what was a spoiled vote yesterday.

So, just to repeat. One X opposite each reason. I'll deal briefly now with the reporting of the results of this ballot and I'm doing this at this stage not only to give you some information but to aid your comprehension as to the implications of your votes. Given the nature of the ballot and the number of questions being asked reporting will necessarily be more complex.

A sample results sheet for this ballot is provided on the screen behind me and you can all see it. Once again, it will specify the number of citizens eligible to vote and the number of citizens who voted as was the case yesterday. Effectively, eight separate recommendations are being made on this ballot paper. You will be casting a separate individual vote on each of the eight reasons listed. Each one of the reasons will be reported on separately when I announce the results later this morning.

A further point must be made clear. As you will see, the columns have also been alphabetised and I've mentioned A, B1, B2, B3 and C previously. So, I'm about to explain what this is about. The first column which is listed A is never for this reason. So, if you don't want a particular reason to be a basis for rendering a termination lawful you put your X in that box. The middle three, up to 12 weeks gestation only, up to 22 weeks gestation only and with no restriction as to gestational age, we've listed those B1, B2 and B3 and the last column is listed C and that's prefer not to state an opinion. In other words, if you are not making a recommendation, you put the X in box C.

Now, I want to just explain the position in so far as it is necessary at this stage, in relation to the three middle columns, B1, B2 and B3. Those three have been grouped together in order to facilitate reporting of the results of the voting. Each option listed under B permits the termination of pregnancy up to certain, if any, gestational limits. As such these will be added together in the initial reporting because collectively they represent all votes cast as to gestational limits on the termination of pregnancy or no gestational limit. In reporting the votes cast in each option listed under B will then be broken down to show how the citizens have voted in

relation to gestational limits or none.

Once again, I want to make it clear how the majority vote of the Assembly will be determined here. Full details of this are given in the note you got yesterday, the note on voting and that note, for members of the public, is also available on line. In relation to this ballot, a majority for each individual recommendation will be determined in the initial reporting by reference to the votes cast for recommendations B1, B2 and B3 combined.

In respect of any of the eight reasons, there is -- sorry, if in respect of any of the eight reasons there is equality of voting on the recommendations, the Chair will have a casting vote as provided for in the resolution of the Oireachtas, under which we're performing this task. Now, the slide -- sorry, this will be how this will be displayed. Can you all see that and I hope it is clear. If not, you can ask some questions in relation to. Anyway, that concludes the description of Ballot B and we're now going to go into private session and we will discuss that ballot, it's a complex one, I should have said 4B. You will discuss that in round table format and you will prepare any questions you have and as was the case yesterday, we would be grateful if you would write the questions out in duplicate. You can keep one format and then give the other to the Secretariat who will pass it on to the Expert Advisory Group and as soon as you have a question formulated please make it available.

So this is a complex ballot process. There's no doubt about it and I think we're allowing 45 minutes I think for the round table and then we will have the Q&A session and we'll hear your views on the ballot and any amendments you want to make. So we'll resume at 10.30. Thank you very much.

MS. FINEGAN: Just to say we're in private session for this part but the members have been given some conversation starters and there are a number of additional ones to what you've seen yesterday and I suppose that's just given the complexity of this ballot. It is just to make sure that you try to tease it out as much as you can. So, the Facilitators have these in front of them as well. So, we've 45 minutes and I'll be reminding you towards the end of the discussion just to capture those questions but just as the Chair has said, to begin to send them up as they emerge from the discussion, that would be very helpful, thanks.

FEEDBACK AND Q&A FROM MEMBER DISCUSSION ON DRAFT BALLOT 4B

CHAIRPERSON: Could I have your attention please. We've run a little bit overtime but it is quite clear to us that you have done an awful lot of work in the last three quarters of an hour plus and we're going to start now and deal with your questions and once again you'll see that I'm joined by our Expert Advisory Group, Dr. Oran Doyle, Professor Deirdre Madden and Dr. Rachael Walsh to deal with the legal issues and on the medical side we have Dr. Elizabeth Dunn again today but to help her today we have Dr. Adrienne Foran. You may remember Dr. Foran gave us a very interesting talk. I think it was the second weekend and she's a Neonatal Consultant at the Rotunda and at Temple Street Children's Hospital and the reason she's here I should explain this, Dr. Declan Keane, who is on the Expert Advisory Group and has been of great assistance to us, he could not be here today. So Dr. Foran very kindly decided when we asked her that she would come and I'm very, very grateful to her. So, we'll start on the questions.

The mics you'll see -- there are a lot of similar questions from the documentation we've got. We'll try and group them together as best we can and please deliver the question as clearly as possible so that the Stenographer can transcribe it. So we'll start on the questions now.

Q. **TABLE 5 - FACILITATOR:** I'm the Facilitator for Table 5 and I make these points on behalf of the members from the table. There is a few, so I'll just go through them quickly. In relation to Option 3, which states "*serious risk to the physical health of the woman*", a member would like to know who determines this risk and what does this mean. In relation to Option 6 and 7 and the testing for abnormalities, what is the accuracy of these tests and what is the percentage of accuracy, if someone is able to answer that question. Some members also stated that they felt there should be a reference to socio economic reasons included on the ballot paper and finally, in relation to Option 8, there was an issue raised by a member of the table on the wording, saying on request and there was a possible inclusion suggested of available for crisis pregnancies that maybe would be considered.

A. **DR. WALSH:** Thanks very much. I'll deal with the first couple of those and my colleagues from the medical side may deal with some of them. In relation to your first question, who determines what constitutes serious or substantial risk, what's the difference between those, I suppose the first thing to say is coming back to what the Judge said this morning about where we're at now, given your recommendation yesterday, is that these are recommendations to the Oireachtas about what you think ought to be in legislation. So, obviously there would be a lot of working out of the detail in terms of implementation. So, what we were trying to capture in the table here, was for you to be able to give a general steer to the Oireachtas as to how you thought these different issues should be dealt with. I suppose one possible way and this is only a possible way in which that could be dealt with, would be for doctors on a case by case basis to look at whether a medical situation raised a risk that they thought was serious or substantial and to work that out as a matter of medical practice but that's only one possible way in which this could be dealt with and it would be a matter for implementation and certainly I think if the citizens had views on that, that's something that could be incorporated in ancillary recommendations to give further guidance as to how you think that should be dealt with.

In terms of the issue in relation to socio economic consequences and problems, I think they are captured by ground eight, which deals with the availability of a termination of pregnancy without any restriction as to reasons but certainly I wouldn't see any problem if the room was of the view that specifically socio economic rights, socio economic difficulties were to be a reason to be voted on as a matter of law and that could be

something that the room could be canvassed on if there was consensus on that.

In relation to the language of on request. I don't know whether you can give me some more background as to what the particular difficulty identified with it. I suppose what was attempting to be captured in eight was simply the fact the fact that in juxta position to the other one to seven, what was at stake in eight was no requirement as to a particular reason being articulated to justify a lawful termination in a particular situation. Sorry, do you want to follow up on that at all?

Q. **TABLE 5 - FACILITATOR:** So the members, and again it was mixed views at the table. In relation to on request, it just sounded a bit flippant. That's what they kind of described it as. They felt on demand, yes. They felt that if it was to say in the case of a crisis pregnancy that this may define it a little bit more with no restrictions?

A. **DR. WALSH:** So, I think on that certainly crisis pregnancies are captured by eight but I think eight would potentially be broader than a crisis pregnancy. So you -- given your concerns maybe one thing that you might want to consider is simply including in ground eight no restriction as to reasons and taking out the available on request language that might speak to your concern and again that might be something to canvass the room's views on it but I think limiting it to crisis pregnancies might not capture what you're suggesting, although crisis pregnancies would come within that would be my view.

Q. **DR. FORAN:** The option six and seven clarity, what we felt with Option 6 would be definite life threatening conditions and there would be three very definite ones for that. They would be Edwards' Syndrome, Patau and Anencephaly and they can be diagnosed, particularly the Edwards and Patau with 99% accuracy. Option 7 is slightly greyer in the sense that this would be -- an example of this might be where you pick up a severe structural abnormality, like ventriculomegaly, hypo-plastic left heart that are compatible with life but they are very difficult conditions to live with but there's no confirmed chromosomal abnormality. So that's why there's the distinction between those two.

Q. **TABLE 6 - DAVE:** My name is Dave, Table 6, first question would be after the vote is counted, the example that was given of the result ballot, the 3 (b) selections were all included in one count if you know. Will there be a breakdown of the three after that?

A. **MS. FINEGAN:** I'll show you that now. This is what it will look like. So each individual reason will be listed as follows. So you'll get a separate sheet like this in

respect of each of the reasons. We just didn't want to kind of go through it all in that level of detail for the -- but exactly as you say here. So, you'll see there, so this shows the result for reason one. So, you have on the left hand side each of the options which represents each of the columns on your voting form. So, you see in the first column there votes. So, that will be the absolute votes provided under each and under B1, B2 and B3, what will appear in those boxes in each case is the absolute results and then in brackets the percentage terms. So the percentage which is a percentage of B1, B2, B3 combined. So, it will be very visible and very clear.

Q. TABLE 6 - DAVE: Then a second question from the table would you be could you explain the reason for the separation of serious risk to physical health of the woman and the serious risk to mental health of the woman, section 3 and 4?

A. **PROFESSOR MADDEN:** I'll deal with that issue. That's actually a question that has come up from a number of tables. I think the reasoning for the distinction between -- or the separation out I suppose of three and four. So a number of you have raised that question with us and it is actually an issue that the Expert Advisory Group sort of talked about and discussed at length ourselves as well. So, I suppose the first reason that it was included on the ballot paper was because it reflects the position in the 2013 Act which does have different certification procedures in relation to the physical risks to the life of the woman and the risk to the life of the woman by suicide. So there are different procedures prescribed in that Act. So this is following I suppose in a sense that same model.

It's also possible that some citizens might see a distinction in terms of or have different views on whether termination of pregnancy should be permitted in a case of physical health or mental health. That's -- it's a matter for the room. This is a draft ballot paper obviously. So, if the consensus in the room was to merge the two of those together that would be absolutely no problem. We wouldn't see any difficulty with that. Another issue that has arisen in relation to the wording of three and four, I might just mention as I'm speaking about it, is in the use of the word serious. So there has been some suggestion as to whether or not that the word serious should be removed and that it should just refer to any risk or a risk to the physical health of the woman and then that also a separate consideration would be to merge the two of those considerations together.

So, this is a matter for you to decide. So, as I say there is two issues. One, is to

whether to merge three and four together and to have physical and mental health considered as one category and then there's a second issue as to whether or not to remove the word serious. So, those are matters that I think should be considered and perhaps voted upon. So, I think just procedurally what I'm taking note of here is any new grounds that are proposed and then any amendments to the current grounds. So I'm going to collect those as we're going along and then we can come back to them collectively. So, I probably should have just said also in relation to serious.

Obviously this goes back to what Rachael was saying in terms of how the word serious would be interpreted. Obviously one of the ways in which it would be implemented is that there would have to be some sort of a clinical assessment in terms of the threshold of risk that would be required in any legislative implementation of your recommendations. So, that's where that word is coming from.

Q. TABLE 11 - FACILITATOR: I'm the Facilitator for Table 11. I have a couple of comments and then one question. I think I'll start with the comment. A comment from one member. I have complete confidence in the process that has been followed by the Citizens Assembly. While the topic is obviously complex and full of public interest, the information provided to members to my mind has been clear and impartial and the discussions amongst members have been impassioned and enlightening and then an ancillary recommendation that was suggested by a citizen at this table. It should not be a criminal offence for a woman or a medical professional to facilitate or obtain a termination of pregnancy. So, that would be an ancillary recommendation.

Finally, one question for the panel. Where do the 12 and 22 week timeframes come from?

A. DR. WALSH: I might just respond briefly on the recommendation in terms of decriminalisation and that is certainly something that you know you all have freedom in your ancillary recommendation to recommend in any way that you see fit but just to give you maybe some context for thinking about that kind of recommendation in light of your recommendation. Yesterday, your recommendation yesterday was to the effect that the Oireachtas should have the explicit authority to legislate on these issues. The effect of that in the immediate term, if implemented, would be that the 2013 Act that is currently the law on this issue in Ireland would remain in force and that contains within it a criminal

offence dealing with the destruction of the -- the intentional destruction of human life. Obviously if legislation was enacted, reflecting the recommendations that you make here today about circumstances and reasons for which terminations of pregnancies should be lawful in Ireland, that would change the parameters within which that criminal offence would take effect because you would be indicating and the Oireachtas, if implementing your recommendations, would be indicating additional circumstances beyond the current status quo potentially where termination of pregnancy should be lawful. So just to maybe give you some information in thinking about that.

- A. **DR. DUNN:** Okay, I'm going to take the questions on the gestational age. We also, as the Clinical Advisory Group, actually toyed around a lot with the different gestational ages and we looked at the different presentations we received, that you also received here at the Citizens Assembly. A lot of it was based on one or two of the speakers, especially Patricia Lahore, looking at the gestational ages that women presented in the UK and around the World. So with regards to the gestational age of 12 weeks, the main reason why we picked that is that most patients or women would know they were pregnant at that gestational age and also, that if someone was going to go ahead and end the pregnancy at 12 weeks, the ability to do that would be usually using medical way of doing it, basically with taking medications. Once you go over the 12 weeks the concern is that you are now looking into the surgical procedure which increases the risk to the Mother going through that procedure. I think you're going to make a comment with regards to the 12 weeks, with the access to medications over the Internet, oh were you not, okay. Then the other gestational age, one member actually had asked why didn't we have a cut off of 18 weeks and just when we get to that table, if they would just like to highlight why they were concerned about why we didn't have the next interval at 18 weeks and then why we picked the next interval at 22 weeks. The reason why we picked the next interval at 22 weeks was from a viability point of view. Somebody had asked why we picked 22 weeks, is it 22 weeks and zero days or 22 weeks and six days. We picked it as 22 weeks and zero days.

However, in most of the literature anywhere you'll read they usually say the cut-off is actually just the amount of weeks. No literature actually gives the amount of days or no one table asked exactly was it going to be zero days or six days. We're sticking with 22 weeks and zero days. The reason we picked 22 weeks from a viability point of view, once you go over 22 weeks and Adrienne can obviously back up on this, there is a risk

that the foetus that will be born alive and we're looking at from 22 weeks onwards you would have to inject potassium chloride. I know that you had two speakers in January talk about that. Dr. Peter McPartland and Dr. Thompson who came from the UK. So they were the reasons why we picked those gestational ages and I think there's a lot of other tables have more questions on that.

- Q. **TABLE 3 - FACILITATOR:** Thank you. I'm the Facilitator for Table 3. The citizens at this table would like to suggest two additions. One has already been mentioned in terms of the socio economic reasons. The second one being to add in self autonomy over female reproductive system.
- A. **DR. WALSH:** So, I'm happy to respond to that. I suppose in the first instance I'd suggest that ground eight certainly does speak to lawful termination on those grounds and in terms of the question of whether that would be a standalone basis for voting for a reason for a lawful termination, there would be duplication as I would see it with ground eight to include an additional one specifically referencing bodily integrity of the woman in that what eight is designed to capture is full autonomy over decisions in respect of this issue.
- Q. **TABLE 3 - FACILITATOR:** Sorry, just one of the members were saying to add in full autonomy over the female body or the female system, purely for the reason that it isn't anywhere?
- A. **PROFESSOR MADDEN:** Can I just clarify. Do you mean that termination of pregnancy should be permissible in order to satisfy the right to autonomy of the woman?
- Q. **TABLE 3 - FACILITATOR:** Just that it is actually written somewhere that women have full autonomy over their reproductive system because it isn't written anywhere?
- A. **PROFESSOR MADDEN:** I suppose this ballot is trying to elicit your views.
- Q. **TABLE 3 - FACILITATOR:** Correct, so if it is written anywhere in the process?
- A. **PROFESSOR MADDEN:** Okay, not specifically in this ballot?
- Q. **TABLE 3 - FACILITATOR:** Just so that it's documented.
- Q. **TABLE 1 - FACILITATOR:** Thank you, Judge. I'm the Facilitator for Table 1 and the citizens at this table have asked me to put forward two comments and two questions. If I start with the comments. These comments are a minority view. They do not represent the views the majority of the people at the table. The first comment is that rape should not be included as a reason for termination as it adds to the problems of the

woman and the second comment is that gender selection should be specifically mentioned as a restriction on termination. The two questions, one has been address already and it was about the gestation age. So thank you very much for that. The second question is why is incest not included as a reason for termination. Thank you.

- A. **DR. DOYLE:** So, if I can take the question in relation to incest which has come from a number of other tables as well. So, as we're using the term rape, rape covers all non-consensual sex including sex with a minor in the sense of statutory rape. So I think that's covered within the idea of rape. The additional things that would be covered by incest if you were to include it, and it's a matter for the citizens to decide what should be included, would be situations of consensual sex between adults where they are in a close family relationship. So, as defined, as set out in Tom O'Malley's paper to you I think in Weekend 3.

So, if Father, Grandfather, brother or son are looking at in terms of a female's Mother, Granddaughter, sister or daughter but in all cases it would be adults fully consenting to the sex, that would be the only additional ground that you would be bringing by including incest. So the reason we didn't include it was that we didn't feel from the comments that had come through from the members that they wanted an exception to cover -- they wanted a ground for rape or sorry, a ground for termination that would cover those sorts of situations and we thought that given that rape included all non consensual sex and all sex with minors that that adequately captured what had been coming for from the citizens but as I say this is one that can very definitely be put to you and if you want to include incest or include that other category of cases, then it's certainly something that could be added to the ballot.

- Q. **TABLE 4 - CITIZEN:** The panel has already touched on my point but I'll present my proposal actually for the record. I wish to propose to the Chair and my fellow members that another reason is added to the ballot paper. I should say for the record this is my view and not the view of the table. Let me preface it by saying that I understand that these are just recommendations to the Oireachtas and that we're a long way from the eventual right of any laws and I understand that and I'm aware of that and I say that because my proposal is specific in its wording but I'll explain why I think it merits inclusion. My proposal is that reason nine would read as follows:

"the continuance of the pregnancy would involve risk greater than if the pregnancy were

terminated of injury to the physical or mental health of the pregnant woman."

If this sounds familiar it's because it is Option C of the statutory grounds for legal termination in Britain, 1967 Act. So my reasons for this proposal are number one. The Assembly voted overwhelmingly for change. I believe a driving factor for this vote was a desire to help and care for Irish women in their own country. In order to do this it's common sense to remove the reason to travel to England for medical care. To achieve this we need an equivalent law in Ireland. Any significant difference would not solve this issue nor effect the change we wish to implement.

Number two. While the wording in the proposal is similar to reasons three and four of the ballot paper, it is less constrained by language. It omits the word serious which I believe could be a legal milestone for doctors in the future. The language in the proposal has already been legally tested, albeit in a different jurisdiction.

Number Three. By including physical and mental health together it gives them both equal standing and equal importance. So my original thought was to propose this as an extra reason on the ballot paper rather than replacing reasons three and four. I believe it is sufficiently different to warrant inclusion on its own and more importantly I didn't want to restrict the choices available to the members. However, if the members feel that it would be better to replace three and four well then they should voice their opinion. I hope that this proposal is seconded and voted on by the members. Thank you.

A. **CHAIRPERSON:** It might be no harm if you just read out once again what you're suggesting so that everybody is clear about what you're suggesting. The terminology from the UK Act.

Q. **TABLE 4 - CITIZEN:** Reason nine would read and it's the text from Option C of the statutory grounds in the legal termination in Britain and it reads

"the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman."

CHAIRPERSON: Would anybody like to comment on that?

A. **PROFESSOR MADDEN:** Part of what you've said we've already touched on in answer to earlier questions about firstly, the merging of physical and mental health, which is of

course a matter for the Assembly and the other issue is I suppose removing of the word serious, which is also a matter for you to consider, whether you want to I suppose broaden the threshold from serious to consideration of any risk. So those are proposals that can be put to the Assembly and the specific proposal then that you're making which is to adopt equivalent wording to the wording in the legislation in the UK, is also a proposal that can be put to the Assembly and voted upon I think. It's consistent with what we've already, so there's three possibilities. You merge three and four as they currently stand. The second option is that you remove the word serious, having merged the two of those you remove the word serious and the third option is that put the specific wording as you've suggested to the members.

CHAIRPERSON: Instead of?

A. **PROFESSOR MADDEN:** Instead of, yes.

CHAIRPERSON: Three and four that is. Very good.

Q. **TABLE 13 - FACILITATOR:** I'm the Facilitator for Table 13 and we have one question for the panel and one of the members has just a comment to make. If reason number eight was designed to capture autonomy, why not just call it full autonomy and the question is also in relation to reason number 5, in other jurisdictions where abortion is now permitted in legislation, what kind of mechanisms or criteria are applied by the Governments of those respective countries to test the validity of rape claims?

A. **DR. WALSH:** I might just respond on the first point in the same way really as I did earlier, which is to say that by framing eight in terms of having no requirement whatsoever as to a reason or ground being articulated for termination, for lawful termination of pregnancy, the framing of that was intended to capture giving full autonomy to women in relation to decision making on this issue and perhaps coming back to the point that was made at an earlier stage in the process. If that's a statement of principle, that the Assembly wants to include, that's something that could be discussed in terms of recommendations but that phraseology just didn't seem to capture the functions that we were trying to capture in this space for the draft ballot.

Q. **TABLE 7 - FACILITATOR:** Judge, I'm the Facilitator for Table 7 and I've two questions. My first question is for Dr. Foran. Regarding the tests for abnormality, could Dr. Foran tell us at what gestation do these tests take place as most women in a

second or subsequent pregnancy are not scanned until they are 20 weeks?

DR. WALSH: We might just pause for two seconds. Was there a second question from Table 14 that didn't get answered. Would you mind restating. Do you mind if we come back to you and just make sure we don't miss.

Q. TABLE 14 - FACILITATOR: Yes, the question was in relation to reason number five and basically it was that in other jurisdictions where rape is covered in legislation in terms of abortion, what kind of mechanisms do these other jurisdictions or Governments apply to test the validity of claims from people who would claim that they had been raped and want an abortion?

A. DR. DOYLE: So, the answer to that is that we haven't been able to undertake a comprehensive research of all of those countries to establish how they go about testing such claims and also in any event we didn't want to be providing new information to you during the ballot sessions today. So, I think the approach probably to take is you have had the paper from Tom O'Malley. What you're doing again is making recommendations to the Oireachtas as to the sorts of things that you would like them to include in any new legislation and if the citizens were to vote to include the rape exception or the rape ground reason number 5, that's just a broad steer to the Oireachtas and then the Oireachtas would have to give thought on to how to implement it and it with its greater resources might be able to undertake the sort of research of other jurisdictions that could inform its decision making. So, really you are probably with nearly all of these things saying there's a general area here. We're handing it to the Oireachtas and the Oireachtas needs to think through how to implement it?

A. DR. FORAN: I can remember your question. So I'll take some of it and Dr. Dunn will answer a bit more of it. So, the Option 6 is probably again a little bit clearer. So it's non-invasive pre-natal testing. Most of the conditions that are incompatible with long-term survival such as Patau, Edwards and Anencephaly would be 99% diagnosed with a chromosomal ones with the blood test and then the Anencephaly with the ultrasound. You're right. Option 7 is a little bit greyer in the access to ultrasound scanning for other abnormalities that may be detected on scan and that again comes down to implementation and probably part of the recommendations I think that should come from this Assembly is that all women should have anomaly scans prior to that gestation, if that's what we agree or you agree as a Citizens Assembly. Dr. Dunn might

give you more of the accuracy figures for it as well.

- A. **DR. DUNN:** So a lot of what you're asking us down to implementation. So, on the ground basically most women will know they're pregnant by 12 weeks. Not every woman will have an access to a scan at 12 weeks. This non-invasive pre-natal testing, which is the new diagnosis for chromosome abnormalities can be taken by any woman in the country but they have to pay for it. So it can cost between €400 and €450. It's a blood test from the Mother that is 99% accurate now with regards to chromosome abnormalities. Once that's undertaken and it shows that the woman could be high risk, she then is allowed or makes a decision to go ahead and have a further test which is more invasive, which is either taking a piece of placenta which I think Peter explained is between 11 and 12 weeks and this will give you a more definitive diagnosis that would be free to any woman in the country or else they may want to wait because the risk of a miscarriage doing that test early on in pregnancy is very high. It's one in a hundred. So if you go ahead and have the test you could lose a perfectly healthy foetus. So most women wait to do the amnio which is usually done after 15 weeks and the risk of that is usually quoted as one in 200 hundred. So a lot of it is down to implementation about when the diagnosis can be made. Most women would be offered an anatomy scan at 18 weeks. Most of those women will not have had any other scans in that pregnancy. Some women who have had a scan early on in pregnancy we defer that scan to usually about 20 weeks because obviously the size of the foetus is getting bigger. It's much easier to see inside the brain, the heart and look at the spine. Most anencephalic babies will be picked up at 12 weeks if the woman has an early scan. I don't know, that might be too detailed for you.

- Q. **TABLE 7 - FACILITATOR:** My second question is of a legal nature. If the State was unable to carry out a procedure, i.e termination within the gestation period recommended by the Assembly, what would the legal implications be in relation to the time over run?

- A. **DR. DUNN:** So, I'll just to start to answer that. I'm sure Rachael will jump in as well. A lot of this will be down to access. So, in an ideal World women should have earlier access to scans and to investigations, tests, et cetera. So, one would anticipate but obviously this is all down to implementation and Government funding, how early women can access their scan and the investigations that they wish to proceed with. So in an ideal World most of the diagnosis should have been made within the limit of 22 weeks. I

don't know if that helps.

- A. **DR. WALSH:** I suppose just on the legal point if I understand what you're querying is depending on the gestational limits that might be recommended, what would be the status of any termination of pregnancy outside those time limits and I suppose again the first thing to reiterate is that barring any further developments, the 2013 Act would remain in force barring Oireachtas action on that and as I've said that provides for a criminal offence outside the context of lawful abortion. So I don't know does that answer the question that you're asking?
- Q. **TABLE 7 - FACILITATOR:** I think what my friend was trying to clarify, was if the Health Service couldn't accommodate within the timeline, what would be the legal implications if it ran outside that?
- A. **CHAIRPERSON:** That's not really a matter for us. What we're dealing with here are recommendations in relation to the Eighth Amendment. There are implementation issues and then there are public policy issues in relation to funding, services and all of that but we're only concerned with the reasons. That's all we're concerned with today.
- Q. **TABLE 7 - CITIZEN:** Very good, Judge, thank you.
- A. **CHAIRPERSON:** Would my advisors agree with me on that or would they have anything further to add?
- A. **PROFESSOR MADDEN:** So is the question whether you could take any sort of legal action against the State for not providing a woman with the treatment within the timeframe set by law. Is that the question?
- Q. **TABLE 7 - CITIZEN:** Well would the law be broken. Perhaps the termination wouldn't go ahead because of the over-run and therefore she would be denied the termination which she requested and that the State would have let her down?
- A. **PROFESSOR MADDEN:** Well I suppose the first issue is that if there are specific time limits set in the implementation of your recommendations by the Oireachtas, if there are specific time limits set in the Act then obviously exceeding that time limit would naturally incur some sort of a penalty because it's lawful to provide the termination within the timeframe that has been set by the law and therefore if it falls outside of that time limit then it's by definition almost unlawful.

So therefore that's one issue in terms of whether or not there will be penalties attracted by somebody who has had a termination outside of the time limits set by the Oireachtas but that's a matter for implementation and further than that if the woman is unable for

whatever reason to avail of a service within the timeframe set by law, then again I suppose that's a matter for the Health Service to design a service in terms of making sure that the screening, as Liz was talking about, is available to meet whatever time requirements are set by the law but that's really an operational issue I think.

A. **CHAIRPERSON:** The implementations of any change in the law is going to involve a wide, wide range of issues and many of those issues would be issues of policy. So, I mean we cannot go down that road.

Q. **TABLE 7 - CITIZEN:** Thank you.

Q. **TABLE 14 - FACILITATOR:** I'm the Facilitator for Table 14 and one of the citizens at this table asked me to ask a question, has a query with regard to the scope of reason seven. He asked what does significant encompass and would this be seen as encompassing cases of physical handicap?

A. **DR. FORAN:** I think seven is less clear cut than six as I said earlier. The Section 6 is very clear. I think seven is when there is a significant abnormality found either structural or biochemical in the foetus that is associated with a significant disability or handicap and I think you can't get any more specific than that and that's why we've separated six and seven because six is clearly life limiting where seven is not life limiting and you can't get any more specific than that and the example I used earlier might be a structural complex heart lesion that requires a lot of surgery or a biochemical disorder that would be associated with maybe a lot of handicap and disability but not incompatible with life and that's why we made the clear distinction of those two. Unfortunately, it's very difficult to get more specific in seven than that.

Q. **TABLE 14 - FACILITATOR:** Thank you.

Q. **TABLE 4 - FACILITATOR:** I am the Facilitator for Table 4. There are three things. First of all, we were one of the tables who asked about incest. Is incest always classified as rape. If not there is no inclusion of incest in the reasons listed on the ballot paper 4B, the panel may feel it has answered that?

A. **CHAIRPERSON:** That has been answered, yes.

Q. **TABLE 4 - FACILITATOR:** There is a proposal for an extra column up to 18 weeks. So 18 weeks gestation only should be included as the maximum gestation for the grounds. If we are going to permit abortion in Ireland a time limit of 18 weeks in certain circumstances should be permissible?

- A. **MS. FINEGAN:** Can I just ask, I know Liz referred to this earlier because we got this in and I think Liz you were looking for clarification as to?
- A. **DR. DUNN:** Yes, I was just wondering if I could know exactly why someone picked 18 weeks?
- A. **CHAIRPERSON:** What's the rationale behind it really?
- A. **DR DUNN:** Because I'd find it easier to answer the question.
- Q. **TABLE 4 - FACILITATOR:** As I understood it, it was felt that the period between 12 weeks and 22 weeks was too broad and that there should have been mid ground between those?
- A. **DR. DUNN:** Well that's probably what we thought the citizen was thinking of. So, basically the reason why we didn't put in a gestational limit at 18 weeks is because the management would be the same as if at 12 weeks. However, the method of the termination of pregnancy would be slightly more difficult for both the physician and also for the woman herself because the foetus born at 18 weeks will not be viable.
- Q. **TABLE 4 - FACILITATOR:** And there is a comment I've been asked to read out just to put on the record by one of the members. The Oireachtas Committee should read all documentation and watch all presentations, Q&A to ensure they are as informed as the members are. Test them, we don't trust them!.
- A. **CHAIRPERSON:** Well all I can say to that is we have arranged to have a Stenographer here today. So we will have a transcript.
- Q. **TABLE 14 - MICHELLE:** Hello, my name is Michelle, Table 14. A question I'd like to ask the panel is how will terminations be funded here in Ireland going forward please?
- A. **DR. WALSH:** I suppose there's nothing in the draft ballot dealing with that. It's certainly coming back to some of the issues that were raised earlier, an issue that the citizens might want to address in terms of ancillary recommendations on your forms but the status quo would be that there isn't funding for this and that would be something for you to consider, in making your recommendations.
- A. **CHAIRPERSON:** And of course it is a matter of policy, which would have to be considered by the Government in particular down the road but it can be -- a recommendation can be put in if you wish in the ancillary recommendations.
- Q. **TABLE 14 - JORDAN:** Hi, Jordan from Table 14. I suppose we arrived at this ballot because the Assembly voted for change to the Constitution to allow the Oireachtas to

legislate. So, I was curious as to why there's -- the ballot heavily relies on language that from legislation that was enacted with the current Constitutional provisions. Examples include the words real and substantial which I think was referenced earlier. It is from the 2013 Act and the X case and other pieces of, I suppose other words, serious risk as opposed to just risk. Yes, so I wondering why are we using that wording from existing legislation and Constitutional provisions if the Assembly has voted for change?

A. **DR. WALSH:** Thanks for your question. I suppose in relation to real and substantial risk, 1 and 2, our aim in framing one and two was to have something on the ballot that deals with the status quo. So those are the reasons for which termination of pregnancy is currently lawful in Ireland, reflected in the 2013 Act and as you indicate reflecting the X case and one reason behind having that at this stage was recognising the fact that there may be citizens involved in the process still voting, who might actually want to -- their view might be to make that more restrictive. So, for instance, removing ground two and they may wish to indicate a view on the status quo notwithstanding the stage that we've gotten to through the majority vote. So, we felt it was important to reflect the status quo in terms of reasons for lawful termination on the ballot but certainly in terms of the wording of recommendations that you might make for proposals for change to the status quo, that's a matter for you, the Assembly and as we've seen, recommendations have been made as to whether serious might be taken out et cetera.

A. **CHAIRPERSON:** And our objective was to give a wide range of reasons because of the diversity of views.

Q. **TABLE 10 - FACILITATOR:** Hi, I'm the Facilitator for Table 10. They had a few points and a question. The members of the table felt they should have got the ballot paper three that was amended to show the pregnant woman at the end and it is at the introduction for ballot 4B, we should have been reissued showing that also. The table asked for clarity on Option 7 and what is meant by significant fatal abnormality that is not likely to result in death and to give examples. Finally, they asked for another reason to be added in for social circumstances and they felt that this should be added because we know you said about point 8, but that if point 8 isn't actually taken as a recommendation for going forward, that it would be missed in that circumstances?

A. **CHAIRPERSON:** Well, can I just say it was just for administrative reasons we haven't done the changes yet to 4B.

A. **MS. FINEGAN:** Because I suppose we have already amended the ballot paper, the

preamble in light of the decision taken yesterday. So certainly the ballot you'll be voting on will be reflective of that change that was made to Ballot 3 but I suppose it was anticipation of potential further changes on the ballot paper as a result of this discussion and in the interest of trees, to not be reissuing all manner of paper again really.

A. **DR. FORAN:** The question on Option 7 I think may have been addressed but to clarify again it is conditions such as structural abnormalities that don't have a chromosomal abnormality or via chemical disorders that may lead to disability but not death for the child.

A. **DR. WALSH:** And just in relation to the point on social circumstances, I think from what we've discussed, when this arose earlier, that's now in the list of potential issues for the Assembly to vote on in terms of recommending. So, I think socio economic is the language, does that capture what you want?

Q. **TABLE 4 - CITIZEN:** Hello, I'm a member of Table 4. Just with regard to removing the word serious from reasons three and four. It's my understanding after supporting my wife through three pregnancies and successful deliveries, but that there's always a risk involved in pregnancy and there's always a risk involved in child birth. There is a risk of, and a life threatening risk, albeit a low risk, in most cases. In all cases maybe a low risk. So, to remove serious risk or serious and just say risk to the physical health of the woman and risk to the mental health of the woman, effectively means available on request I believe but I'd just like you to comment on that?

A. **DR. DUNN:** I'm just going to give a little preamble on risk. So basically everything in life has a risk and the idea is that obviously the benefit of doing something would far outweigh the risk and when we discuss anything with a patient you try to quantify it into how risky the procedure is or how risky the scenario is. So you would divide it up into whether it's common, rare and a variety in between and you would say if something is very common, it's between one and ten chance of that happening and you might say to the patient, it's like a person in your family.

The next thing is you might say it's common. So that would be one in ten to one in a hundred and that's like somebody who lives on your Street. The next thing is uncommon, one in a hundred to one in a thousand and then you start to work your way up. Now, what might be a risk to someone, they might say oh one in ten, that's definitely going to be me. The other person might say nine out of ten probably not going to

happen to me. So, the word risk it is quite difficult to quantify and it's all down to the actual couple or the patient themselves and how they discuss it with either their midwife or their obstetrician.

A. **DR. DOYLE:** Just to come in, in terms of ballot options. I think to take your point in that direction, it seems clear from some tables that some people would like to be able to vote on an option without the word serious in it but that doesn't mean that an option can't be included as originally drafted. You could have both options there and I think that's maybe something for us to consider when we recess to look at all of the suggested amendments that have been put forward.

Q. **TABLE 4 - CITIZEN:** Can I just clarify. Just I'm not in favour of removing the word serious from Option 3 and 4. Look it, I haven't an opinion on the extra option but I think if there was an amendment proposed to remove the word serious from options 3 and 4 and I think if the word serious is removed from options 3 and 4, you are effectively having three options which effectively mean the same thing available on request. That's my point.

Q. **TABLE 9 - FACILITATOR:** I am the Facilitator for Table 9. The question raised by the citizens at this table has already been addressed. So just a couple of comments. The citizens feel there should be an inclusion of funding in the recommendations as well and some members also feel that termination should be seen entirely as a health issue and not a moral issue, thank you.

CHAIRPERSON: Are there any remaining issues that haven't been covered. We do want to deal with everything but we don't want to sort of replicate reasons.

Q. **TABLE 7 - CITIZEN:** Hello, my name is Frank. I'm a citizen at Table 7. Just with regard to the suggested additions of the UK, what is stated in UK law and what my fellow citizen raised here with regards to the words "serious risk", I'd just like to say a couple of things. One is that the Assembly has agreed by majority to change the existing Constitution and has also agreed by majority to insert something new into the Constitution which gives the Government or the Oireachtas authority to legislate but I'd like to just also point out that the authority that we've given democratically is to address both the termination of pregnancy and any rights of the unborn and so the words

"serious risk" should certainly remain and I would be opposed to the inclusion recommended by my friend and colleague on Table 4 of the UK wording because that is in effect abortion on demand and I would just say to my fellow citizens that we've done what we've done democratically. We are where we are and there is a life also in the room who is dependent on another life and we just shouldn't forget that when we go to this ballot. Thank you.

- A. **DR. WALSH:** I might say I think that just reinforces the point that was being made by Oran, that perhaps there's a need for two options on this to be included on the ballot. One, including the word "serious" in relation to physical and mental health, separately or merged, depending on the views of the Assembly and the other not including the word "serious", depending on that seems to be consensus that's emerging from the room but obviously a vote would be required.

CHAIRPERSON: Very good. Well then have we got to a point where we can discuss what changes you would like to see to the ballot paper. I just want to be clear that I'm not cutting off anybody?

MS. FINEGAN: We've Table 10 please?

- Q. **TABLE 10 - CITIZEN:** I think the majority of people here agree that we would suggest that we might include that all women have access to the same standard of obstetrical care, to include early scanning and testing. This would be an ancillary recommendation and this is based I think on earlier presentations that we had where it was outlined that there wasn't an equity of provision throughout the Country?

- A. **CHAIRPERSON:** Well that really is a matter for the ancillary recommendations rather than for the ballot paper.

- A. **MS. FINEGAN:** Just need to be clear on that. When the voting has concluded and the counting is taking place because that by nature, the ballot will take longer than it did yesterday. That will be the opportunity. Those forms will be circulated and we had indicated to you in advance, some weeks in advance that that was what we were going to be doing, to allow you time to start thinking about it and it was precisely for those types of issues. So thanks for that.

DR. WALSH: There's just one question I've noted in my papers here that came into us in the room that hasn't been asked which I can just answer briefly, which was what the

law at the moment is in relation to gestational limits. I think as I mentioned yesterday, the 2013 Act doesn't expressly on its face include any gestational limits, nor did the X case upon which it was based. Important to note though that the 2013 Act does require a Doctor to be of the opinion, an opinion formed in good faith, that a medical procedure pursuant to the Act is required and in forming that opinion has to have regard to the need to preserve unborn human life as far as possible. Just for your information.

Q. **TABLE 8 - FACILITATOR:** A question has just arisen from a citizen at Table 8, I'm the Facilitator. With regard to the eight option, should the wording on number eight be "demand" rather than "request"?

A. Right.

CHAIRPERSON: Very good. Thank you very much. Well perhaps -- the notes I've been taking the first two reasons that we have to consider and put the possibility of varying the ballot paper to you are three and four. Aren't they the first, yes. We will recess to consider them.

MS. FINEGAN: I think we've captured -- you know I think we have a very strong sense of what exactly it is we need to look at in order to come up to address your issues. So it probably makes more sense to on that basis come up with a revision that we could put to you. So we will recess and come back.

CHAIRPERSON: Before we go out I just want to say one thing. You remember yesterday an issue was raised about the terminology. We have the termination of pregnancy and other possible terminology, abortion and we said we'd think about that over night and this is our answer to the question that was raised. The term of abortion is used in many countries to refer to termination of pregnancy but this term is not -- is generally not used in Irish obstetric practice but for our purposes and for the purposes of the ballots we have put before you, termination of pregnancy means "*the intentional procurement of miscarriage of a woman who was pregnant that results in a foetal death.*"

We might put that up on the screen, could we arrange that so that's you'd see it but we just want to clarify that for you as the issue was raised yesterday. We'll consider all of the points you've made.

MS. FINEGAN: We'll have a coffee break and then we'll come back and we'll look at

the wording.

COFFEE BREAK

AGREEMENT ON WORDING OF DRAFT BALLOT 4B INCLUDING EXPLANATION OF ANY AGREED AMENDMENTS

CHAIRPERSON: Very well, we can resume our business. We're very grateful to the members for the comments and suggestions and recommendations they made in relation to the ballot paper and we've considered it, as you will appreciate, in some depth and first of all, all I'm just going to put up, just so that you'll see it, the definition of termination of pregnancy that I said I'd put up and then I'm going to move on to a revised ballot paper, that we're going to discuss with you. This is not something that is going to happen necessarily. You're going to get a chance to vote on the changes that appear in it but we're going to put the revised paper up and we have identified where we see issues that you want to have included in the ballot paper and we're going to go through those and Dr. Doyle is going to do that. So I'll put up the revised ballot paper now and Dr. Doyle will indicate the changes and what we're going to put to you to vote on in relation to the changes via a show of hands of course.

DR. DOYLE: So I'm going to speak through or talk through each of these, focusing on the areas where there was discussion and explaining why the Ballot Paper has been changed in the way that it has had and in some places why it hasn't been changed. So, the first change, there was a general query about an 18 week gestation limit. We think that when that was explained, the person who had asked the question, they were happy that that not be included. So we haven't included a separate column of 18 weeks.

There was no real discussion around one and two. So they've been left as they are. There was obviously a lot of discussion around three and four and our view is that three and four need to stay with the separation of physical and mental health because there maybe citizens among you who want to distinguish between those things and if a majority took a different view that those two things should not be distinct that would disenfranchise citizens from being able to express their view in the way that they want to

express their view.

So, for that reason, we have left "serious risk to physical health" and "serious risk to mental health" as separate options three and four. However, recognising the points that were made, that a distinction should not be drawn between those two types of health because there isn't a distinction, we'll put to you the inclusion of an additional option and just serious risk to the health of the woman and we appreciate that that may involve some element of repetition but we thought it was the best way of ensuring that no citizens were disenfranchised, while still recognising the view that was put forward by others, that a distinction should not be drawn between physical and mental health. So that's the first thing I think that's going to need to be put to a show of hands vote as the Judge later moves through the ballot paper with you.

Then in relation to the question of whether serious risk should be included, the view that we took was that there should be both options. So one with serious risk and one without the qualifier serious and that explains why 6, 7 and 8 are there. Obviously the inclusion of 8 would depend on the view taken as to the inclusion of 5. We think that's the best way of allowing again citizens to express the preferences that they want to express and take whichever they view want to on both of those types of options. We haven't included one framed in terms of the statutory language used in the 1967 Act. We think that the phrase "risk to the health of the woman" captures more or less that. Captures what the English Act captures but without using that sort of legalistic language that we haven't been using elsewhere in the ballot paper, but if there were a majority in favour of number 8, we would propose including in the final report a reference to the English statutory language as a way that another jurisdiction has given effect to that sort of idea.

In relation to number 9, we haven't added incest for the reasons that were given and I think that the people who had raised that were happy with the answers that were given on that. It would be introducing a very different category of thing. Then in relation to 12 there's a -- maybe if there's a question?

Q. **TABLE 3 - CITIZEN:** Sorry, just on the question of incest. I raised this morning it said in Irish law rape and incest were regarded as the same?

- A. **DR. DOYLE:** It's not that they are the same. It's that incest includes an additional range of things. So what rape covers is all non-consensual sex and we're also including, and we can clarify this in the report if necessary, the idea of statutory rape which is sex with a minor irrespective of whether they are consenting or not because they are legally not able to consent. So, what's now number 9, pregnancy as a result of rape would cover those situations. If you included incest as well, you would also be including situations where adults who were consenting but had sex with their brother or sister, father or mother and Grandfather and Grandmother, would also, and a pregnancy resulted, that would be grounds for a termination of pregnancy. Again, so we may have misread what the room wanted on that, so we could -- I think it would have to be kept separate from rape because I think it is very different but we could put to the room the option of separately voting for pregnancy as a result of incest?
- Q. **TABLE 3 - CITIZEN:** No, I was just curious because in the chart that we got for jurisdictions, that rape and incest is put together?
- A. **DR. DOYLE:** Yes, and the chart uses those terms quite loosely and certainly couldn't be saying, as there wouldn't be the same legal definition of all of those in every country and so the fact what counts as incest in Italy, for example, is likely to be different from what counts as incest here. Indeed what counts as rape in different countries is likely to be different. You are happy enough not to include incest?
- Q. **TABLE 3 - CITIZEN:** Yes, okay.
- Q. **TABLE 6 - CITIZEN:** Just regarding 3, 4, 5, 6, 7, 8, I mean it's obvious what they are. One is serious and one is not serious. If you were to feel that you didn't want the serious in the text, so therefore you'd vote or your option, now only as an example your option was B1 for 6, 7 and 8, would you be expected to vote B1 for 3, 4 and 5 or would you be expected to -- even though that the only difference to the term is "serious", you know what I mean. You're nearly being asked to define what is serious, what is not serious by having both of them there or the same, if you wanted "serious" in it. So you voted just say B1 for 3, 4 and 5, would you automatically vote B1 for 6, 7 and 8 because with the exception that it doesn't have "serious", it's the same thing. So you know what I mean?
- A. **DR. DOYLE:** I think it's a very good question. I think you need to consider each of them individually from one to 13, because you don't know how everybody else is going to vote on the other issues. So irrespective, if you were a person who was voting,

somebody might want to vote for in favour of six but would not know whether a majority of citizens will vote in favour of six. So therefore that person would need to consider how they would vote in respect of number three as well, bearing in mind that they don't know how the rest of the room is going to vote on number 6. So I think you have to take each one in isolation and I think that if what I wanted to happen doesn't happen in respect of any of the other reasons, what would I like the outcome of this one to be and then vote for that. That might mean different things to different people in different contexts but I think the important thing is to take each line individually and imagine it is the only thing you're being asked to vote on.

Q. **TABLE 3 - CITIZEN:** I'm just wondering if I don't want to distinguish between physical and mental health, if I want my vote to show that the health of the woman encompasses all, that there should be no distinction between the two, there's no way for me to vote on that to show that because I'd have to take each one separately. Like if I ignore and say I prefer not to state an opinion, I don't get counted at all. If I said never for this reason that makes no sense. If I make the distinction myself then I'm saying the physical and mental health of the woman is different but if all I want to do is say the health of the woman should be the health of the woman, is there not some way I should be able to do that on that form?

A. **DR. DOYLE:** I think you can say prefer not to state an opinion and I think there is just -- there is a bit of a tension between two legitimate concerns. So, one is your legitimate concern articulated for not accepting that that distinction is valid and the other is the legitimate concern of there may be citizens who think that that distinction is valid and want to be able to reflect that distinction themselves on how they vote and I think the view that we took was for the purpose of exercise of deliberative democracy, that second concern was more important to take account of but I think beyond that it would be open for somebody who has your concerns to vote "prefer not to state an opinion" in respect of the ones where you think it's just something that you shouldn't have to vote on because it uses a distinction that you don't accept as valid and I think the report is going to have to -- the Stenographer's report will reflect the fact that this has probably been the issue on which there has been most discussion about today and reflect the concerns that were expressed by you and by others.

Q. **TABLE 3 - CITIZEN:** But it's very clear on that form, if someone has a distinction between physical and mental health, it is not at all clear if someone believes the two are

the same.

- Q. **TABLE 4 - CITIZEN:** I think the ballot paper can be left as it is to address the concerns of everyone but I think it will work if, for example, risk, excuse me now, I'm just thinking on the fly here, yes, with risk to physical health of the woman, Option 6, Option 7 or reason 6, reason 7 and reason 8. I believe that each member of the Assembly should only vote on one of these and for the other two they should prefer not to state an opinion and the reasons for this is that if you don't want to make a distinction regarding the mental health and the physical health of a woman, you would fill out row 8. If you only want to consider the physical health of the woman, you would fill out row 6 and state "prefer not to state an opinion" for row 7 and 8. If you want to only include the risk to the mental health of the woman, you would fill out that row which is row 7 and for row 6 and row 8, you prefer not to state an opinion. So I believe that the ballot paper will address everyone's concern here but that they should only fill out one of row 6, 7 and 8 and one of rows 3, 4 and 5.
- A. **DR. WALSH:** Can I just suggest. I think that might require us to change somewhat for the purposes of this ballot our understanding of what a spoiled vote it but I can see the logic in terms of what you're suggesting in responding to the concern there. So maybe that's something for us to consider.
- Q. **TABLE 14 - JORDAN:** Sir, I wouldn't share the same opinion as Mr O'Halloran from Table 4 but there does seem to be a distinction between serious in 3, 4 and 5 and without the word serious in 6, 7 and 8. There are also seems to be divided opinion in the room between just saying health and distinguishing between physical health and mental health. So I was wondering -- I propose that we see, by way of a show of hands, which or who in the room would rather delete 3, 4 and 6 and 7, to see who wants health as opposed to physical and mental being distinct. Does that make sense?
- A. **DR. DOYLE:** It makes sense. I understand the point. The reason that we hadn't wanted to do that is that that would allow the majority to prevent people expressing what their preference is and that seems, given what this is, that there's limitations as to what can be achieved through the ballot paper but in terms of deliberative democracy, exercises meant to provide people's preference as to the Oireachtas's policy options to take, that that's just not a wise thing to do.
- Q. **TABLE 14 - JORDAN:** Yes, I would agree with what you said earlier about that

members that are voting take every reason as a separate reason and vote on that individually. So, as such, reason one is an individual reason. Reason two is an individual reason. So that the members can vote on them individually as opposed to them being related.

A. **DR. WALSH:** Just following up on that, I think there was another aspect related to that in the question from Table 6 that we didn't quite capture in the answer at the time which was I think you were also asking whether you could have a different view as to gestational limits as you go down the category as between 3, 4 and 5 versus 6, 7 and 8 and I think the answer there is yes, you could. That could be a view substantively that you take as a citizen. There would be no reason that you would have to stick in the same column the whole way down if that didn't reflect your view.

Q. **TABLE 14 - CITIZEN:** Sorry, just what the other citizen said about being able to express your view that if you wanted to not distinguish between mental health and physical health, is it possible to interpret 8 and 5 in that way. So that if I wanted as my fellow citizen said, to just vote on not distinguish between mental and physical health and vote in that way, could I -- would it work if I sort of just preferred not to state an opinion on 3, 4, 6 and 7 and instead voted with 5 and 8. Would that be a way of expressing that opinion because I would be in a similar position to the citizen at the other table, in the way that I would like to vote?

A. **DR. DOYLE:** It seems to me, I think that's how I would understand it if I was reading a ballot paper where somebody had taken those options and I think that was the reason when we were redoing it, that in terms of five and eight, we didn't put in the words physical and mental and just referred to health.

A. **DR. WALSH:** The only thing perhaps to bear in mind is if you take that route and you exercise the prefer not to state an opinion option on 3, 4 and 6, 7, if your view as to 5 and 8 isn't in the majority, you'll have made the decision not to cast a vote essentially that will be contributing to the formation of the majority on 3, 4 and 6, 7.

Q. **TABLE 14 - CITIZEN:** Oh okay, thank you.

Q. **TABLE 13 - CITIZEN:** Hi, I was just wondering if it would be possible from questions 3 to 8 to include "prefer not to state in the formation of majority", meaning that if I decided to cast my vote on 5 and 8 and decided to tick "prefer not to say" on the other ones, that if the majority preferred not to state on 3, 4, 6 and 7, that it would mean that the majority

have chosen that they don't want it included and that they don't want to make a distinction?

- A. **DR. DOYLE:** I think that can be done. It does have the -- as well Rachael pointed out that there may be risks in terms of your overall preferences in doing that but that's a decision that we all have to make.
- Q. **TABLE 13 - CITIZEN:** But to like actually like actively include it in that if 50 people preferred not to state, that that would be a majority out of the 91 of us or the 90 whoever?
- A. **CHAIRPERSON:** We'd have to revise the rules, the voting rules.
- Q. **TABLE 3 - CITIZEN:** I'm sorry, just in that, could we just not group them clearly. Say 3, 4 and 5 put them together and if I've chosen that one option, serious risk to the health of the woman, that that's clearly a group that have chosen that option, that they do not want to distinguish and then 6, 7 and 8 group them as three together and if only one box is marked in those three that we are a group who are not distinguishing between physical and mental health. Would that require a revision?
- A. **DR. WALSH:** I think that comes back to the suggestion essentially in substance that was made over here. So the key thing there as I understand it is the current rules are that a vote is spoiled if an option is not selected on each line. So that would require a change to allow you to put nothing on two lines without spoiling the entirety of the ballot. So that would be I suspect --
- A. **PROFESSOR MADDEN:** I think what you were suggesting though was to actually express "prefer not to state an opinion" weren't you?
- Q. **TABLE 4 - MR. O'HALLORAN:** Yes, I think the issue of if you don't want to distinguish, for example, between physical health and mental health and this is getting complicated but we're trying to stay in the rules as they are devised now. If you don't want to make a distinction I'm going to put forward a little change in that you vote for all 6, 7 and 8 and that way your opinion is registered within the rules of the ballot presently. So, if you don't want to make a distinction between physical and mental health of the woman, you would vote in 6, 7 and 8. Now, it's getting complicated and similarly for the serious risk ones, if you don't want to distinguish between physical and mental health then you would vote for 3, 4 and 5. Alternatively the rules will have to be changed for the ballot and that we would only vote in either 6, as I originally suggested, in either 6, 7 or 8 and one of 3, 4 and 5.

A. **CHAIRPERSON:** But you want to vote in relation to 2, 3 and 4 and also 6 and 7.

A. **DR. DOYLE:** So, having a discussion among ourselves, a suggestion that we think hopefully might capture the concern would be a completely different approach but to add an additional question in a different form at the end of the ballot which would allow people to record the fact that they do not accept that there is a distinction between the physical and mental health and to record that as your view and then people can -- you can go about answering the other questions in whatever way makes most sense to you but would allow you to express that view.

CHAIRPERSON: So what are we putting in?

DR. DOYLE: So we're going to need to work on the wording of that but it will be something "I do not accept that there is a distinction between the mental health and the physical health of the woman" and we'll try to mirror the language as much as possible. So we'll come around to a show of votes on everything. So we'll add that in as something to vote on. The remaining issues, number 12, socio economic reasons, that has just been included in response to the suggestions made from a number of tables and then number 13, what we have done is just changed it to no restriction as to reasons, taking out the language "available on request." We think that this captures the value of autonomy, that people were referring to but it does it using language which is similar to that which has been used on the rest of the ballot paper and that can match up fairly easily with the other questions and also with the approach to gestational limits and I think that that's -- there's loads of different ways that you can express that and we think this is the way of expressing that concern, that value, that some people want to vote for in a way that coheres best with the rest of the ballot paper. So that's why that proposal was being made.

CHAIRPERSON: Very good. So, we'll vote on the proposed changes which are reflected in the revised ballot paper behind you and the first one is reason five and what you're voting on here is whether that reason goes into the ballot. In other words whether there is an additional reason included, serious risk to the health of the woman. So the issue you're voting on now is whether that goes into the ballot paper. So would you put up your hands if you are in favour of it going in? That definitely looks like a majority without a count but does anybody feel that we should do a hand count. All right, then the members want reason five to go in.

Now, we'll move on then to the next question which relates to reasons 6, 7 and 8 and as you know the word "serious" is gone and the question you have to vote on is whether you want the inclusion of 6, 7 and 8 with the word "serious" missing. If you do put up your hands. Sharon believes it is a majority. Is there any question about that. If so, we'll do a hand count? It certainly looked like a majority. All right, so paragraphs 6, 7 and 8 are going in and as Oran said in the report we will refer to the 1967 legislation and the terminology used in it. It will be a matter for the Oireachtas down the road to decide what terminology they are going to use but we will make that point in the report.

Then going on to number 12. What you have to vote on here is whether you are in favour of including reason 12 which is socio economic reasons. So, if you'd put up your hands if you were in favour of that. Well that certainly looks like a majority. Is there anybody who is a bit concerned that it isn't a majority because if so we'll do a hand count. All right. Very good. Then reason 12 goes in, socio-economic reasons.

Reason 13 is a very minor word change but I think it's a very useful word change and are you in favour of amending reason 13 to read "no restriction as to reasons". If you are put up your hands. All it does is it leaves out the request and quite frankly I think that was a good suggestion and we're going to add -- now, we'll be adding an additional reason, statement is it. It's going to have a number, no. There is a number to be added at the bottom of the ballot paper and the question is, well the introduction to the question is, "*there is no distinction between the physical and mental health of the woman*" and then you have three options. Yes, no, prefer not to state and if you're in favour of the addition of that question at the end of the ballot paper put up your hands.

Now, the next thing is do I have to make any change to the rules to accommodate that, no, no. All right, very good. Well we've got there at quarter to one. I think that's everything isn't it?

MS. FINEGAN: Yes. So I mean just procedurally what we'll do is we'll just have to print the ballot paper. We've already made most of those changes with the exception of putting that last one in. I suggest, given where we are time wise, that we cast our ballot and we'll see what people think, have your lunch and then come back for the result. I hope the hotel are okay with that. So I think it will broadly keep us, there's a question is there?

Q. **TABLE 14 - JORDAN:** I was just wondering could you print the ballot in landscape format because it seems to be quite dense if you print it. Even the draft ballot is quite dense when it's printed in portrait?

A. **MS. FINEGAN:** I'm not sure if it will all fit on one page in that circumstance. We've just been consulting with our experts as to the best way to put the ballot paper. You know from the point of view procedurally and so on. So, I think whatever works best we'll do, now that we've got that extra question to add in, in answer to that question. So I think you need to give us five or ten minutes to produce the ballot papers. Sorry, we've another question at the back?

Q. **TABLE 12 - CITIZEN:** As there has been so many changes made to the ballot paper, would it be possible to print a draft of it for our records as well?

A. **MS. FINEGAN:** Of course, yes.

Q. **TABLE 8 - CITIZEN:** Just a thought. I was wondering do we really need number 8 on the ballot sheet because we have already covered mental health and physical health. So could maybe the medical field suggest giving an example of what would that cover, number 8?

A. **CHAIRPERSON:** Inclusion of it has been voted on by a show of hands.

Q. **TABLE 8 - CITIZEN:** Well could the medical profession maybe give an example of what would that entail, what would that cover?

A. **DR. FORAN:** I think it was put like that -- that the main part of the discussion this morning has been about keeping together or keeping them separately and that's the reason why it is there, so that people have both options. It's not really to do with any medical distinction. It is to do with whether you want mental and physical health together or separate and that's what that's there for.

CHAIRPERSON: If you look at the question we're posing on the back of the ballot paper now or the bottom of the ballot paper, there is no distinction between the physical and mental health of the woman, the question is and you have three options, yes, no or prefer not to state. So that's what you're being asked. So that highlights the concern that was expressed. That we shouldn't be distinguishing between physical health and mental health. That's what this was to capture.

TABLE 8 - CITIZEN: Okay, thank you.

MS. FINEGAN: Okay, we'll proceed to that and we'll give you a copy. We'll distribute you one to all the tables and then they'll be available for voting.

Folks, if I could just have your attention please. Just while the papers are being printed. I just wanted to draw to your attention the wording that we're going to use and the way in which it's going to appear on the ballot. So, the second question, the additional question that we agreed in the session we've just concluded, just in terms of the structure of the ballot paper, it works best to include it as a separate part, on a separate page, just in terms of how it will fit and so on and the language that we're using is

"a distinction should not be drawn between the physical and mental health of the woman."

And you have three options. Agree, disagree or prefer not to state an opinion with a clear instruction above it as to how to express that view. So, just to say those ballots are being printed. They'll have two pages. The first page is the revised ballot paper that we have agreed and it will have a small amendment at the top which it says 13 reasons as opposed to eight across the top there and so there'll be two pages and what we'll also be doing, just for your own records, is giving you a copy of the ballot. It will be on a different colour paper and it will be watermark draft just for the purposes of absolute clarity, that additional ballots can't be cast by more than one person. So, that will be with you any moment and we'll begin the voting process then. Thanks for your patience.

CHAIRPERSON: It initially was to take an hour. So will we aim to be back here at quarter past two or is that unrealistic?

MS. FINEGAN: Yes, we have to cast the vote and then count it.

CHAIRPERSON: After the count?

MS. FINEGAN: Yes, I mean I think we're talking probably 45 minutes of a count and 45 minutes of a vote probably, depending on how long. So, I think if we're voting until two and then probably coming back by half two, quarter to three. So, apologies, that's where we are unfortunately. Just where we've gotten to today. I mean the most important thing obviously is to cast your vote and obviously we're prioritising getting the ballots printed asap, to allow you to do that and maybe you'd just be courteous to your

fellow citizens who may need to get for train connections and so on, to allow them to express their preference first. Just if you could organise that amongst yourselves that would be great. Thanks.

I'll just draw your attention to your form about ancillary recommendations. It's a good opportunity now not to waste the time and delay you further, to look at that document. So, you've all been provided with it. So it now is a good opportunity I think to start filling that in. There is an envelope on your table to slot that into when you've completed it. So just not to lose sight of that, given especially some of the comments that have come from the floor this morning about particular issues that you want to see captured on that. So, just drawing your attention to maybe start working on that at the moment, okay, thanks.

VOTING

MS. FINEGAN: Okay folks, as voting has now concluded, we are going to go into private session and we should resume at about quarter to three for the announcement of the results. Thanks.

BRIEF ADJOURNMENT

THE [MEETING] CONTINUED AFTER A BRIEF ADJOURNMENT

MS. FINEGAN: We are ready to go so just to have your attention as we put everything up on screen.

ANNOUNCEMENT OF RESULTS, CONCLUDING REMARKS AND REFLECTION FROM THE CHAIR:

CHAIRPERSON: Thank you for all being so patient and waiting so long. It was a fairly complex task. It's hardly surprising because it was so complex that we are finishing more than two hours after we had expected to finish, but in any event I am going to take you through the results of Ballot 4. It was Ballot 4B but it's now Ballot 4. I am going to deal with each, with each of the reasons sequentially.

The first reason is Reason 1. That reason was real and substantial physical risk to the life of the woman. The number of eligible voters were 88. The number of votes cast, 88, invalid votes, 1. My understanding in relation to all of the invalid votes, we had none up to now, but apparently there was no X marked opposite a particular reason and that was the invalidity in relation to that particular reason. Then the total valid poll accordingly is 87.

Then just looking at the result, you will notice that if you take B1, B2 and B3 together the total vote is 82. Then if you breakdown B1, B2 and B3 the high line is B3 with no restriction as to gestational age and that vote is 76%.

In relation to the other votes, never for this reason, only one, and up to 12 weeks gestation only, eight, that's 10%, and up to 22 weeks gestation only, 12 votes, that's 15%. In relation to the 'prefer not to state an opinion', the total number of votes under that category was four.

So we will move on to the next reason which was Reason 2, real and substantial risk to the life of the woman by suicide. The number of eligible voters again, 88. The number of votes cast, 88. Invalid votes, one, and total valid poll 87.

Then as regards the votes, B1, B2 and B3 categories totalled 79 votes, that's 95%. Again the high line was with no restriction as to gestational age and that's 48 votes or 61%. The other B Categories up to 12 weeks, nine votes, 11%. Up to 22 weeks, 22 votes, 28%. 'Never for this reason', four votes, and 'prefer not to state an opinion', four votes.

So then we will move on to Section 3. I take it you are all able to follow this? Thank you. Section 3, again the same number of eligible voters and votes cast and the total valid poll again this time was 87 votes. When we look at the result the B Categories aggregated 76 votes or 93%. The highest number of votes in that category went to B3 with no restriction as to gestational age and that was 43 votes or 57%. Then up to 22 weeks, 21 votes, 28%. Up to 12 weeks, 12 votes, 16%. Then on the other categories, 'never for this reason', six votes, and 'prefer not to state an opinion', five votes this time.

Moving on to Reason 4, serious risk to the mental health of the woman. Again the voting is similar. The eligibility and the votes cast. The total valid poll was 87. Now looking at the result, again I will look at Categories B1, B2 and B3 in aggregate and they achieved 74 votes or 90%. The highest subcategory was B3 with no restriction. That was 35 votes or 47%. Up to 22 weeks was 24 votes, 32%. Up to 12 weeks, 15 votes, 20%. The 'never for this reason' eight votes, and 'prefer not to state an opinion', five votes.

Then moving on to Ballot 4, serious risk -- sorry, I am moving on to Reason 5, sorry. Serious risk to the health of the woman. No invalid vote this time so the total vote was 88. The three B Categories aggregated 77 votes or 91%. The breakdown of that was B1 -- sorry, B3 was the highest vote with no restriction. That was 40 votes or 52%. B2 up to 22 weeks, 25 votes or 32%. Up to 12 weeks, 12 votes or 16%.

Then in the other categories, 'never for this reason', eight votes, and 'prefer not to state an opinion', three votes.

Reason 6, risk to the physical health of the woman. Like most of the votes the total valid poll on the usual basis was 87 votes. Then the result, again looking at the B Categories in aggregate, they aggregated 66 votes or 79%. The highest in that category was B3 with no restriction, 28 votes and 42%. Then up to 22 weeks, 26 votes, equivalent to 39%, and up to 12 weeks, 12 votes, 18%. On this ballot 'never for this reason' secured 18 votes, and 'prefer not to state an opinion' secured three votes.

Reason 7, risk to the mental health of the woman. Again the eligible and cast votes are the same and one invalid vote so the total valid poll was 87. Now in this category or for this reason I look at the B1 Category first. The three B subcategories aggregated 63 votes or 78%. The highest vote was for up to 22 weeks. You will see that that was 31 votes, 49%.

Then next B3 with no restriction, 20 votes equivalent to 32%. Then B1 up to 12 weeks, 12 votes, that is to say 19%. 'Never for this reason' secured 18 votes, and 'prefer not to state an opinion' secured six votes.

Now Reason 8, risk to the health of the woman. Again 87, the total valid poll was 87 votes and that was on the same basis as the earlier reasons. Looking at the result, looking at the B Category in aggregate the B Categories secured 65 votes or 78%. The highest number of votes in the subcategories was for B2 up to 22 weeks, 30 votes and 46%.

Then B3, no restriction. That was 25 votes or 38%. Then up to 12 weeks, ten votes and 15%. The 'never for this reason' secured 18 votes, and 'prefer not to state an opinion', four votes.

Then we come to Reason 9 which is pregnancy as a result of rape. In this case there were 86 total valid votes. The number of eligible votes again was 88 and the number cast was 88. There were two invalid votes. The total valid poll, as I've said, came to 86 votes.

Then when we look at the result, we look first of all at the B Category. The aggregate for B1, B2 and B3 was 73 votes or 89%. Now when we look at the breakdown we see that there is an element of equality here in that B2, that's up to 22 weeks, secured 25 votes or 34%. Similarly B3, no restriction, secured 25 votes up to 34%.

Then B1, up to 12 weeks, 23 votes and 32%. There were nine votes 'never for this reason', and the number of votes for 'prefer not to state an opinion' was 4%. Now because of the equality in this particular case I have to exercise my casting vote. I am going to exercise my casting vote in favour of B2, up to 22 weeks. So the total number of votes in that category now are, the total number is 26. The percentage will have to be worked out separately. So that's that vote.

Then Reason 10, the unborn child has a foetal abnormality that is likely to result in death before or shortly after birth. Again the voting, the number of votes, the number of eligible votes and votes cast, invalid votes just one, so the total valid poll is 87. So that's the same as the count for the previous reasons.

Now when we look at the result of this vote we see that looking at Category B in the aggregate we see that there were 77 votes for Category B. That's equivalent to 89%.

The breakdown, the highest number of votes was for no restriction, 53 votes or 69%. Then 22, up to 22 weeks, 18 votes or 23%. Then up to 12 weeks, six votes or 8%.

In relation to the other categories 'never for this reason', ten votes were secured, and then in relation to 'prefer not to state an option', there was no vote for this particular reason in that category.

Reason 11, the unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth. In this case there were two invalid votes, so the total valid poll was 86 votes. In relation to the result, again I look at Categories B1, B2 and B3 and they aggregate 66 votes or 80%. The breakdown, the highest number of votes was for B2, up to 22 weeks, 32 votes, 48%. Then no restriction, 25 votes, equivalent to 38%. Then 12 weeks, up to 12 weeks, nine votes, that's to say 14%.

In relation to the other two categories, 'never for this reason', there were 17 votes cast for that. Then 'prefer not to state an opinion', three votes were cast.

Then Reason 12 which is socioeconomic reasons, the total valid poll this time was 87 votes. There was only one invalid vote. Looking at the result Categories B1, B2 and B3 aggregate 60 votes which is equivalent to 72%. When you break that down the highest vote was for up to 22 weeks, that was 30 votes or 50%. Then up to 12 weeks, 24 votes and 40%. Then with no restriction, six votes and 10%. The other categories, 'never for this reason', 23 votes, and 'prefer not to state an opinion', four votes.

Reason 13 which actually is the last reason and this is the no restriction as to reasons. The total number of votes in this category was 87. There was one invalid vote. Looking at the result Categories B1, B2 and B3 aggregated 52 votes or 64%. The breakdown was as follows; up to 12 weeks, 25 votes or 48%. Up to 22 weeks, 23 votes or 44%. No restriction was four votes, that's equivalent to 8%. The other categories (a) 'never for this reason, 29 votes, and (c) 'prefer not to state an opinion', six votes.

Finally the question that was added on this afternoon and the question was based on this statement:

"A distinction should not be drawn between the physical and mental health of the woman."

In relation to this there were 88 valid votes. There was no invalid vote. The response was that 60 of the voters, that is to say 72%, agreed with that statement. 23 voters or 28% disagreed with the statement and five voters preferred not to state an option. So that is the result of all of the ballots.

They will remain up on --

MS. FINEGAN: We will get them up online as soon as possible.

CHAIRPERSON: Oh they are not online yet, are they not,

MS. FINEGAN: Not yet. They are in the process of going up.

CHAIRPERSON: Very good, yes. We will have hard copies available for the members as well shortly. As they say as gaeilge, I have a cúpla focail to say before we separate. Again I regret that you were detained here for so long but there was no way of avoiding it because of the complexity of the voting and the complexity of the counting. So I will just proceed, as they say, with my cúpla focail.

This weekend we have reached a conclusion of sorts as you, the members, have fulfilled the first task that the Houses of the Oireachtas asked you. Having comprehensively considered Article 40.3.3 as set out in the constitution, you have made your recommendations known. These recommendations at a minimum have called for a change to the status quo. I will now for the purposes of absolute clarity and posterity take the room through these recommendations.

First of all there is the results. In Ballot 1 the members voted by a majority that Article 40.3.3 should not be retained in full. To be clear, to act on this initial recommendation a constitutional referendum will be required. In Ballot Number 2, 56% of the members of the assembly voted that 43.3.3 should be replaced or amended.

This result brought us to Ballot 3. In this vote 57% of you recommended that Article 40.3.3 should be replaced with a constitutional provision explicitly authorising the Oireachtas to address termination of pregnancy, any rights of the unborn and any rights of the pregnant woman, in other words it would be a matter for the Oireachtas to decide

how to legislate on these issues.

This morning you were asked to make recommendations by ballot to the Oireachtas about what should be included in the legislation, specifically what reasons, if any, what were the reasons, if any, for which termination of pregnancy should be lawful in Ireland as well as any gestational limits that should apply. I have just read out the results of that ballot and I would like at this stage to express the gratitude, my own gratitude and the gratitude of the secretariat and the members to John Fitzpatrick and his team for the great job they did in advising us first of all and then actually doing the counting of the vote. It has achieved absolute transparency for us and accuracy.

The recommendations you have made certainly have called for a change to the status quo, and in fact I think there will be a lot of analysis of this. I haven't done the analysis because like you I have only seen the results, but I think they have provided a clear map for my report to the Houses of the Oireachtas. The members will certainly know, I think, what way this assembly is recommending that legislation be enacted to deal with termination of pregnancy, any rights of the unborn and any rights of the pregnant woman.

Now, I have mentioned several times throughout this weekend about ancillary recommendations and I am going to mention them again because I think they are important. Further to these definitive balloted recommendations, you recollect that we asked you to provide earlier through the reflective written exercise certain recommendations. I know that I can be prone to repetition on the matter of how well informed you are as a group of people on this topic and I make no apologies for that as I have seen how hard you have worked throughout the process and I remain convinced of the merits of capturing as much information from you as we can. Therefore the consensus issues which come through the process will have a home in the report. I believe they will be of benefit to those who will be tasked with considering the report and indeed tasked with a very, very difficult job of legislating in this difficult area. I hope you have furnished your recommendations. Have they been collected?

MS. FINEGAN: They have, yes.

CHAIRPERSON: Thank you very much. Now, there is obviously, there has emerged in this process some dissenting voices. Though I talk now of majorities and consensus I wish to acknowledge that those whose perspectives or opinions did not emerge in the

final vote, we will have regard to them. This is an exercise in deliberate democracy and your vote remains important because of the very fact it captures that other perspective, that dissenting voice, the different interpretation. I wish to assure you that your votes and voices will be recorded and will have a valuable place in the report.

Now a few words about the process and a short reflection on this weekend and how we reached the recommendations. Since we have come together on this topic, we, and I think probably this goes to you more than to me, have challenged experts, each other and indeed ourselves to find answers to deeply complex questions. This weekend was not without its moments of tension and was often fraught with the pressure we all felt.

I think this was an entirely reasonable response and every sentence deserved to be passed to the extent that it was, and I have come to expect nothing less from this forum than to be required to do so. I was heartened to see, and I mean this, how the spirit of collegiality ultimately prevailed. The atmosphere today was certainly much more benign than yesterday. I am grateful to the citizens for adopting that approach because I do know this is very, very difficult for the vast majority of people who have to address these issues. I want to say that your work alone has allowed so much new information into the public sphere and your respect and willingness to listen to one another may have set a new tone.

I want to thank those who have contributed to the assembly. In the room every weekend we have had an incredibly bright and enthusiastic team of facilitators and note takers. I think they may have parted, departed, but in any event I do want to record our appreciation to them. Their work involves a very special skill and we benefited immensely from their presence, also the expert advisory group who have also been an immense support to the secretariat and to me throughout the process. I say I am very grateful for all their work and I mention immense support. Those words do not represent my real feeling about the expert advisory group. I think the epithet I used on previous occasions was invaluable. The work and the assistance I got from the expert advisory group was really invaluable, and the amount of time and effort they put into assisting the secretariat and assisting me and sort of the long term assisting the public was immense. I am very, very grateful to them.

Before I leave the expert advisory group, we had great assistance from Adrienne, Dr. Adrienne Foran today. I am very, very grateful, as I said this morning I am very grateful to her for at short notice assisting us. Again the epithet that springs to mind is invaluable. Thank you very much, Adrienne.

I want to thank those who helped us to provide you with information, with the information you needed to come to this weekend's recommendations. As I have said before we were very fortunate to be able to withdraw from the more polarising perspectives and begin with the facts. I said that yesterday and I repeat it today. Over the course of this assembly you heard from 25 experts across medical, ethical and legal fields and I believe that their contributions provided us with a solid foundation to go forward. If I may also say I do believe that they should provide great assistance to the Oireachtas Committee and to whoever is dealing with the drafting of legislation in the fullness of time. I think they will derive great benefit from the papers that we got from the experts. I am very glad that we put that effort into obtaining all of this information.

If any of you read the summary of what happened at the earlier meetings you will probably like me have been, if I may use the word, gobsmacked when you looked back on the amount of material we got. The secretariat did a fantastic job in procuring all of that information. It's there, it's on the website and it is to be of benefit I am sure to the Oireachtas Committee.

I don't want to leave out the advocacy groups. They played an exceptionally important role in the process as well. I wish to extend my gratitude to all those groups who came before us to share their perspectives. This is also true of all of those individuals representative groups and organisations who made submissions to the assembly on the topic of the 8th Amendment. As you know there is a colossal volume of submissions and they have provided us with a further impetus to our work on this process.

Just to remember seven weeks ago, it's hard to believe it's seven weeks ago, I want to say thanks to the women whose voices reverberated around this room as they recalled their own experiences of the 8th Amendment. I want to once again repeat my heartfelt gratitude to them for their contribution.

I am not forgetting the members. I mean we wouldn't be here if we didn't have the

members. I know from the information I get from the secretariat that many of you have made some very major sacrifices to be part of this process and you have all given up your time and energy. Each weekend, and this weekend in particular, involved an incredible degree of concentration and evaluation. You were pushed and pulled and you never flinched. It was September 2016 when most of you were initially approached to participate in the process and it is very important now towards the end of April 2017 that we recognise your continued dedication to the process.

My cúpla focail are coming to an end you will be glad to hear. I just want to tell you briefly of the next steps. You have made your recommendations known through a rigorous voting process and it is now up to me to fulfil the next step in the terms of reference, and that's to say to do the final report. I will endeavour to finalise this report and furnish it to the Houses of the Oireachtas by late June. The secretariat and I will communicate the contents of the report and the date will be submitted to the Houses -- sorry, the date, it is to be submitted to the Houses. You will be informed of it in advance. Go raibh míle maith agaibh. With that I call our weekend to a close. Thank you very much.

THE [MEETING] CONCLUDED