



26 August 2013

The Hon. Greg Smith
Attorney General, and Minister for Justice
By email: office@smith.minister.nsw.gov.au

Dear Attorney General,

Crimes Amendment (Zoe's Law) Bill 2013

We write to you to express concerns about the Crimes Amendment (Zoe's Law) Bill 2013 introduced by Reverend the Hon Fred Nile. Our concerns relate to the inconsistency of this law with other laws in NSW as well as the inappropriate granting of legal personhood status to a foetus. This contravenes women's health and reproductive rights. We believe there is sufficient scope in the current wording of the *Crimes Act 1900* (NSW) to respond appropriately to all criminal incidents involving the destruction of a foetus.

Women's Legal Services NSW (WLS NSW) is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.

Relevantly WLS NSW has assisted many women who report experiencing domestic violence either during a pregnancy or because of the pregnancy. We have also been involved in a number of cases where women have experienced the destruction of a foetus after physical assaults by current or previous partners in circumstances where there was a clear intention by the offender to cause the termination of the pregnancy.

WLS NSW is extremely concerned about the harm done to women including their foetuses, particularly in situations of domestic violence. However, we do not consider the proposed amendment is necessary or appropriate as it is based on an incorrect assumption that a foetus has a separate human personality capable of being the subject of a crime of violence.¹

Consistency in laws

Grievous bodily harm is currently defined at section 4(1) of the *Crimes Act 1900* to include "the destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm". This same definition is used in section 18 of the *Victims Rights and Support Act 2013* (NSW). This definition means the loss of a foetus is consistently interpreted as an injury to the pregnant woman.

¹ See the UK case of *Attorney General's Ref (No 3 of 1994)* [1996] 2 WLR 412 (Court of Appeal) and [1998] AC 245 (House of Lords). See also discussion of this case in Savell, K., "Is the 'Born Alive' Rule Outdated and Indefensible?", *Sydney Law Review* (2006) 28(4), *Austlii*, <http://www.austlii.edu.au/au/journals/SydLawRw/2006/28.html> (accessed 23 August 2013).



The Crimes Amendment (Zoe's Law) Bill 2013 proposes to abolish this definition and replace it with proposed clause 41AA "harm to or destruction of child in utero". We submit such an amendment will result in inconsistent laws in NSW; and is both unnecessary and inappropriate.

We refer to our submission on 23 July 2010 to the review of laws surrounding criminal incidents involving the death of an unborn child undertaken by the Honourable Michael Campbell. In that submission we outlined how the *Crimes Act 1900* at that time had sufficient scope to respond appropriately to all criminal incidents involving the destruction of a foetus. A copy of this submission is attached.

Legal personhood

We disagree with the term "child in utero" and view this as incorrect and emotive. Pregnancy involves a zygote and then an embryo in the early stages, which develops into a foetus. Upon live birth the foetus becomes a child.

We note the status of "child" is also conferred on a stillborn foetus in certain circumstances.² We see this as a respectful way of acknowledging significant loss and not as a conferral of legal status with any associated rights beyond registration of the birth.

It is our position that a foetus only becomes a person after it has been born and when at least one of the indicia of independent life is detected as discussed in cases such as *R v Iby*.³ Prior to birth the foetus is "connected to, and a part of, the body of its mother".⁴ It is acknowledged that a foetus in the later stages of a pregnancy may be viewed as a more viable form of potential life. However until the foetus achieves an independent existence it must not be granted legal personhood in its own right.

Additionally, notwithstanding the current exemption in the definition of "grievous bodily harm" in the *Crimes Act 1900* for medical procedures that result in the destruction of a foetus, we remain concerned that any further award of personhood status to a foetus may affect the lawfulness and accessibility of abortion in NSW, particularly for procedures carried out later in a pregnancy.

WLS NSW considers that reproductive rights are essential human rights and we are opposed to legislative change which elevates the impact of any action on a foetus over the rights of the woman.⁵

We urge you not to support this Bill.

If you would like to discuss this further, please contact Carolyn Jones, Senior Solicitor on 8745 6900.

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
Principal Solicitor
Encl: WLS NSW Submission, 23 July 2010

CC: All members of NSW Parliament

² See the definition of stillbirth in section 4 of the *Births, Deaths and Marriages Registration Act 1995* (NSW).

³ *R v Iby* (2005) 63 NSWLR 278.

⁴ Savell K., "The Legal Significance of Birth", *University of New South Wales Law Journal* (2006) 29(2), *Austlii*, <http://www.austlii.edu.au/au/journals/UNSWLawJl/2006/23.html> (accessed 23 August 2013).

⁵ See the *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 16(e) which provides that women should be free of discrimination in exercising "rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights".