



## Women's Electoral Lobby

The Hon. J. A. Gardiner M.L.C. BBus  
Parliament House  
Macquarie Street  
Sydney, NSW, 2000

30 October 2014

Ms Gardiner

**Re: Crimes Amendment (Zoe's Law) Bill 2013 (No. 2).**

I am writing to express the deep concern of the Women's Electoral Lobby Australia regarding the *Crimes Amendment (Zoe's Law) Bill 2013 (No. 2)*, known as "Zoe's Law". This Bill has been passed by the NSW Legislative Assembly and has been introduced to the NSW Legislative Council by the Hon. Marie Ficcaro on 26 November 2013. The Bill is set to lapse on 25 November 2014. A conscience vote has been allowed on this Bill.

The explanatory note outlines the purpose of the Bill:

The object of this bill is to amend the Crimes Act 1900 *to recognise the separate existence of the foetus of a pregnant woman that is of at least 20 weeks' gestation* (as a living person) so that proceedings for certain offences relating to grievous bodily harm may be brought against an offender who causes the unlawful destruction of or harm to any such foetus as proceedings for grievous bodily harm to the foetus rather than proceedings for grievous bodily harm to the pregnant woman. In the case of the unlawful destruction of a foetus of less than 20 weeks' gestation, the Bill retains the existing provision that enables proceedings to be brought for grievous bodily harm to the woman.

(Emphasis added)

As Australia's leading independent advocacy organisation for women, WEL is concerned that this Bill is unnecessary legislation and would have unintended consequences for women in NSW. The current statutory framework has adequate provisions to deal with the offences addressed by this Bill. The Bill does not add any greater protection for pregnant women and does not create a greater sentence for such offenders.

As you would know, this legislation was drafted by Rev Fred Nile in response to a tragic motor vehicle accident which led to the stillbirth of Ms Brodie Donegan's baby in 2009. More recently Ms Jacqueline Sparks tragically lost her daughter in a motor vehicle accident in 2013. The loss of a pregnancy at any stage can be a terrible experience for parents, and the circumstances under which Ms Donegan and Ms Sparks lost their babies are tragic. The Bill is a well-intentioned response to such circumstances as those facing Ms Donegan and Ms Sparks. However the Bill will, for the first time in Australia, introduce the notion of prenatal personhood into our statutes.

This Bill will attach legal rights to a foetus thereby giving a foetus over 20 weeks or 400g the rights of a person. S 2 (a) of the Bill clearly outlines this shift:

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(2) For the purposes of an applicable offence:

- (a) **an unborn child is taken to be a living person despite any rule of law to the contrary, and**
- (b) **grievous bodily harm to an unborn child is taken to include the destruction of the unborn child.**

(Emphasis added)

WEL is deeply concerned about the ramifications of the Bill and the impact it will have on the lives, health and choices of NSW women and their families.

WEL is joined in these concerns by relevant expert bodies such as the Australian Medical Association, the NSW Bar Association, Royal Australian and New Zealand College of Obstetrics and Gynaecologists (RANZCOG) and MDA National (Medical indemnity insurer).

### **The NSW Bar Association**

In his 2013 letter to the Hon. Chris Spence MLA, the President of the NSW Bar Association Phillip Boulten SC expressed his concerns about the Bill:

*[T]he Bar Association believes that legislative acceptance of the principle on which the Bill is premised – that a foetus which satisfies the definition of an 'unborn child' is to be treated as a 'person' under New South Wales criminal law – is very likely to lead to further changes to that law'.*

*Once legislation is enacted which provides that 'an unborn child', as defined in the Bill, 'is taken to be a living person' for the purposes of some offences, it will be very difficult to resist comparable changes to other offences, including murder and manslaughter.*

*Adoption of the principle in this Bill would have obvious implications for late term abortions, notwithstanding the explicit limitations in the Bill relating to medical procedures.*

*Acceptance of the principle that some foetuses which satisfy the definition of an 'unborn child' are to be treated as 'persons' would necessarily call into question the 'medical procedure' exception.*

(Emphasis added)

### **The Australian Medical Association**

In a 2013 position statement the President of the (NSW) Australian Medical Association, Associate Professor Brian Owler, outlined the AMA's position on the Bill:

*The view of the AMA (NSW) is that the current extended definition of Grievous Bodily Harm under the Crimes Act 1990 is sufficient and should not be amended. Any further extension of the legislation, to create a charge of grievous bodily harm for a child in utero, in our view, would have unintended consequences and flow on effects in other areas of medicine and, indeed, the law. Further AMA (NSW) objects to any legislative amendment or creation of a criminal offence which recognises an unborn child as a legal entity independent of its mother. Our immediate concern is that such recognition would create unnecessary complications across many of our member's specialties, such as genetics and obstetrics.*

(Emphasis added)



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### **The Speakman amendment**

An amendment was made to the Bill by Mr Mark Speakman SC MP to the effect that:

[N]othing in this section creates a criminal offence in respect of an unborn child in circumstances which, prior to the commencement of the Crimes Amendment (Zoe's Law) Act 2013, did not constitute a criminal offence in respect of the mother of that unborn child.

WEL recognises the good intentions of this amendment. Unfortunately the amendment does not go to the core issue of this Bill – that legal rights will be attached to a foetus for the first time in Australia and that abortion remains in the *Crimes Act* in NSW. Relevant legal expert bodies such as the NSW Bar Association are concerned that Speakman's amendment does nothing to legally ensure protection and does not genuinely address the fact that the Bill *does* create a new criminal offence. The Bill will continue to attach rights to a foetus thereby creating prenatal personhood.

If passed this Bill will have a dramatic effect on the legal understanding of the rights of a foetus. The granting of rights to a foetus will put women's capacity to access abortions under threat. At the last federal election a clear majority of both Liberal and Labour voters support *unrestricted* access to abortion. The 2013 Australian Election Study by the Australian National University showed that 61.2% of respondents wanted unrestricted access to abortion and 27.9% think women should be able to access abortion under special circumstances (which is consistent with the current legal framework).

WEL would appreciate your public support on this issue. Over the upcoming weeks we will be featuring MLCs who are voting against this Bill on our website. We would welcome a short note from your office to indicate your consent to being listed on our website for this purpose.

The Women's Electoral Lobby Australia would greatly appreciate the opportunity to meet with you to discuss this issue further.

Yours sincerely,

Melanie Fernandez

Chair

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### **Other organisations opposed to this Bill**

A raft of other relevant organisations have expressed their concerns about the unintended consequences of the Bill and that the current provisions of the *Crimes Act (NSW) 1990* adequately address grievous bodily harm to a foetus, carrying a maximum sentence of 25 year. Some of these organisations include:

- Children by Choice
- Community Legal Centres NSW
- Destroy the Joint
- Equality Rights Alliance
- Family Planning NSW, Rape and Domestic Violence Services Australia (formerly NSW Rape Crisis)
- The F Collective
- The Law Society
- Multicultural Centre for Women's Health (VIC)
- National Foundation of Australian Women
- Women's Abortion Action Coalition
- Women's Health NSW
- Women Lawyers NSW
- Women's Legal Services NSW

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