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10 September 2013

The Hon. Greg Smith SC MP  
Attorney General and Minister for Justice  
Level 31 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Attorney

**Caution against foetus protection proposed laws**

We wish to raise concerns about the potential implications which could arise from the *Crimes Amendment (Destruction of Child in Utero - Zoe's Law) Bill 2011* which is being considered by the NSW Parliament.

Australian Lawyers for Human Rights (**ALHR**) understands the NSW Parliament's consideration of this law includes criminalizing the harm of a human foetus. The proposed law will make it an offence to intentionally or recklessly cause grievous bodily harm to a foetus of at least 20 weeks or if this cannot be reliably determined, has a body mass of at least 400 grams. Rather than being an injury to the pregnant woman, this will be considered an injury to the foetus. If the law passes, it will be the first time legal personhood is granted to a foetus in NSW.

There are two exceptions, which say the law will not apply to medical procedures or anything done by or with the consent of the pregnant mother. It is not clear how these exceptions will be interpreted.

ALHR urges NSW Parliamentarians to consider any such law changes carefully, to ensure they do not subject women to unwanted scrutiny or an invasion of their privacy when they have lost their foetus as a result of a criminal act.

ALHR understands that the existing NSW criminal law already extends the scope of grievous bodily harm to recognise that an injury to a pregnant woman as a result of a criminal act can include the destruction of a foetus. Such harm carries a maximum prison sentence of twenty-five years. So the law is already able to deal with situations where a person has attacked or injured a woman which has caused a miscarriage. The need for additional laws is not clear.

We also understand that, in 2010, a review into laws surrounding criminal incidents involving the death of an unborn child (by Michael Campbell QC) concluded the current law was sufficient.

ALHR was established in 1993, and has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia. ALHR is a network of nearly 3,000 Australian lawyers, barristers, judicial officers and law students active in practising and promoting awareness of international human rights. ALHR has National, State and Territory committees through which it conducts training,

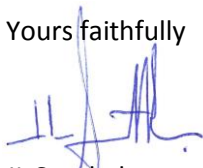
information dissemination, submissions and networking related to human rights both within, and external to, the legal profession.

ALHR would like to make this letter available through our website. This is a standard practice for all our work, wherever possible. If you do not want this letter to be made publically available, please can you advise us within 10 business days of receipt of this letter.

If you have any questions regarding this submission, please contact ALHR's President John Southalan, at [john@southalan.net](mailto:john@southalan.net)

A copy of this letter will be sent to Members of the NSW Parliament.

Yours faithfully



JL Southalan  
President  
**Australian Lawyers for Human Rights**

**Copy (by e-mail)**

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Minister for Women ([office@goward.minister.nsw.gov.au](mailto:office@goward.minister.nsw.gov.au))

Shadow Attorney General ([Liverpool@parliament.nsw.gov.au](mailto:Liverpool@parliament.nsw.gov.au))

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