

**Paper for the Church re the South Australian Abortion Law Reform Bill 2018**

17 February 2019

Dear friends in Christ,

On 5 December 2018, the Greens introduced a radical abortion law reform bill into our South Australian parliament. We offer this paper to the Lutheran Church of Australia and beyond to foster greater understanding of the bill and its ramifications, and to offer Christian encouragement as to how we can respond.

The LCA has public teaching on abortion which holds that all unborn children are *‘human lives created by God and so entitled to the care and preservation which God’s command (‘Do not murder’) provides’*. As such the LCA already has a fundamental disagreement with the South Australian abortion laws as they stand. However, this new bill seeks to further liberalise the existing laws and so this document interacts with the specific issues involved therein.

**Overview**

The name of the bill in question is the *Statutes Amendment (Abortion Law Reform) Bill 2018.* It was introduced into Parliament by a Member of the Legislative Council, Tammy Franks.

The bill, if passed, will allow women to access abortion at *any* stage of their pregnancy and for *any* reason.

The bill also seeks to remove the right to conscientious objection and impose a “health access zone” to prevent people from communicating with others about abortion within 150m of abortion facilities.

The bill seeks to achieve both of its aims by amending the following legislation:

* *Criminal Consolidation Act 1935 (SA); and*
* *Health Care Act 2008 (SA)****.***

**What is the current law with respect to abortion in South Australia?**

Abortion in South Australia is currently regulated by the *Criminal Law Consolidation Act (SA).*

Under this regime, abortion is legal up until a (maximum) of 28 weeks’ gestation if two doctors are of the opinion:

* that the pregnancy poses a risk to the physical or mental health of the mother (taking into account her actual or reasonably foreseeable environment, including social and economic factors); [[1]](#footnote-1) or
* there is a substantial risk that, if the pregnancy were not terminated, the child would suffer from such physical or mental abnormalities as to be seriously handicapped.

Other requirements specify that the abortion must be performed by a medical practitioner in a prescribed hospital, and the woman must have resided in SA for at least 2 months (except if she is an international student).

Abortion is available after 28 weeks to preserve the life of the mother. The law also specifies that persons are under no duty to participate in an abortion if they have a conscientious objection (except in an emergency), and makes it a crime for anyone to conceal the dead body of a baby, whether the baby died in utero, or during or after birth.

Further, the law requires medical practitioners to certify their opinion that the termination is medically warranted for one of the aforementioned reasons, and also to report to the Director-General of Medical Services when an abortion has taken place. This required reporting forms the basis of a document produced by SA Health called ‘Pregnancy Outcomes in South Australia’. In 2018, SA Health produced statistics from 2016.

**Current abortion statistics**

The ‘Pregnancy Outcomes in South Australia 2016’ document includes the following table, which reveals the number of abortions that took place in 2016 and reasons for termination:

*Table 75: Reported reason for termination of pregnancy, South Australia, 2016* (p. 48)

|  |  |  |
| --- | --- | --- |
| **Reason** | **Number** | **%** |
| Mental health of woman | 4,153 | 95.6 |
| Congenital abnormality | 159 | 3.7 |
| Specified medical condition  | 31 | 0.7 |
| Pre-existing psychiatric  | 3 | 0.1 |
| **Total**  | **4,346** | **100.00** |

Of these 4,346 abortions, 3,920 (90.2%) occurred <14 weeks’ gestation, 306 (7%) occurred in between 14-19 weeks and 120 (2.8%) occurred after 20 weeks gestation (these are known as “late term abortions”). The main age bracket for woman accessing abortion was 25-29 (total of 1,000 abortions).

Of these 120 late term abortions, 58 were performed due to the ‘mental health’ of the woman, 52 due to congenital abnormalities, and 10 for specified medical condition of the woman (see page 49 of SA Pregnancy Outcomes 2016).

What these statistics reveal to us is that ‘mental health’ is by far the greatest motivation for abortion, and that the women accessing abortion range in age from 15 – 40+, although the most likely age bracket is 25-29. The numbers also indicate that abortion is readily accessed in this state. This is consistent with the understanding that, in Australia, approximately 1 in 4 pregnancies are terminated.[[2]](#footnote-2)

**The proposed bill**

The proposed bill seeks to delete the aforementioned provisions from the *Criminal Act,*but does not seek to replace those provisions with any alternate form of regulation. This would create a vacuum in the law leaving abortion unregulated (except for any current clinical guidelines and standards that may pertain to the health profession).

Recently the South Australian Abortion Action Coalition (SAAAC), the group driving the change to the law, tweeted "no regulation" as the great virtue of the bill. The tweet reads: "New [#abortion](https://twitter.com/hashtag/abortion?src=hash) bill tabled in South [#Australia](https://twitter.com/hashtag/Australia?src=hash): no qualifications, no upper time limits, no abortion-specific regulations at all [@SA\_AAC](https://twitter.com/SA_AAC)".

As a result of this deregulation model, this bill would:

* allow abortion for *any* reason, including:
	+ sex selection abortions,
	+ disability discrimination or
	+ ‘changing one’s mind’ about wanting to follow through with a pregnancy.
* allow abortion with no doctor’s approval required
	+ This removes safeguards that help determine whether an abortion is medically indicated, and also whether the woman has been coerced to request abortion.[[3]](#footnote-3)
* allow late term abortion of viable babies.
	+ The neo-natal intensive care ward at the Women’s and Children’s Hospital cares for babies from as early as 22 weeks.
	+ It is noteworthy that, since Victoria decriminalised abortion in 2008, there has been a dramatic increase in late term abortion of healthy babies (including a 37 week old).[[4]](#footnote-4) This is true despite the fact that late term abortions also pose significant risks to women’s health.[[5]](#footnote-5)
* allow abortion to be carried out by other than qualified health professionals, without appropriate penalties.
	+ This runs contrary to Royal Australian and New Zealand College of Obstetricians and Gynecologists (RANZCOG) recommendations on ‘Workforce’, which reads: ‘A cornerstone of the provision of good health care is the availability of well-trained health professionals. Issues relating to termination of pregnancy should be included in the education of all health professionals, particularly those who are primarily involved in women’s health care.’[[6]](#footnote-6)
* allow babies born alive as a result of abortion procedures to be left to die, and their deaths to be concealed (by repealing the Concealment of Birth provision in the *Criminal Law Consolidation Act*).
	+ Since it decriminalised abortion in 2008, Victoria has also seen an increase in babies born alive following premature labour induction for foetal abnormality without intention to resuscitate.[[7]](#footnote-7)
* allow self-administration of high risk of complication abortion pills outside hospitals, including in rural settings:
	+ Allowing women to self-administer in rural settings runs contrary to RANZCOG recommendations which suggest: *‘Medical termination should not be performed in an isolated or an inaccessible setting which lacks ready access to emergency care from administration of mifepristone until TOP complete’.[[8]](#footnote-8)*
	+ No doubt this is because medical abortion has a 12 x higher complication rate than surgical abortion.
		- According to page 51 of the SA Pregnancy Outcomes document, in 2016 there were 173 complications resulting from abortion procedures.
			* Of these 173, 142 complications were result of medical abortion (i.e. abortion pills).
			* Of these 142 complications from medical abortion, 122 women had to have a follow up surgical procedure.
			* Retained product, which if undiagnosed can lead quickly to sepsis, and haemorrhage (another complication referenced in the document) are not complications one would like to face in a setting away from emergency medical care.
* remove the specific crime for forced abortion, meaning that if someone were to forcibly abort a woman’s unborn child they would be charged under assault causing harm rather than unlawful abortion, which carries lesser penalties.
* remove the requirement for doctors and hospitals to notify the Director General of Medical services that an abortion has taken place.
	+ This would mean that SA would have no statistics (i.e. no Pregnancy Outcomes statement as referred to above) to determine on abortion in SA, including: occurrence, reasons for abortion, complications etc. (essentially what is contained in the Pregnancy Outcomes Document). This information is essential to understand why abortions occur, best practice, and how to help reduce the rate of abortion by addressing underlying issues.
	+ This runs contrary to RANZCOG’s recommendation on ‘Monitoring and research’, which states: ‘In order to better understand the individual and public health impacts of termination of pregnancy, the College supports the monitoring and collection of statistics relating to termination of pregnancy, including the occurrence of complications of these procedures.’[[9]](#footnote-9)
* require no provision of pain relief for babies during abortion procedure, despite evidence that babies in the womb can feel pain from approximately 20 weeks’ gestation.
* require no pre- or post-abortion counselling for women, despite the fact that research indicates that women can suffer poor mental health outcomes as a result of abortion.
	+ In 2011 the British Journal of Psychiatry published a meta-analytic review of abortion and mental health. The results of this study, which was based on extracted data from 22 studies, indicate that abortion is associated with moderate to highly increased risks of psychological problems. The results revealed that women who had undergone an abortion experienced an 81% increased risk of mental health problems, with nearly 10% of the incidence of mental health problems shown to be directly attributable to abortion.[[10]](#footnote-10)
	+ Further, not requiring pre- or post-abortion counselling is contrary to RANZCOG recommendations that ‘A woman’s physical, social, emotional and psychological needs should be taken into account in the course of decision-making, and pre- and post-termination counselling by appropriately qualified professionals be made available.’[[11]](#footnote-11)

**Conscientious objection**

In addition to deregulating abortion, Tammy Franks’ bill seeks to delete the express right to conscientious objection that is currently contained in the *Criminal Consolidation Act 1935.*

Section 82A(5) of the Act says that 'no person is under a duty ... to participate in any treatment... to which has a conscientious objection'. Section 82A(6) follows on saying that this right does not apply in an emergency i.e. 'to prevent grave injury to the physical or mental health, of a pregnant woman.'

We believe the retention of this current provision is critically important. No person ought to be forced to perform a procedure they deem not to be in the best interests of the patient(s). Of course, as subsection (6) points out, assisting in an emergency is another matter entirely, and so the law is right to ensure doctors participate in such circumstances.

In our own Church numerous doctors, nurses and other health care professional value their right to conscientious objection which enables them to refrain from involvement in abortion procedures. This right should be protected.

**Health Care Access Zones**

Franks' bill also inserts new provisions relating to 'health access zones' into the *Health Care Act*. These provisions would essentially create a 150m access zone around abortion facilities, and penalise anyone who engages in 'prohibited behaviour' within that zone.

On first glance, this law may seem to make sense. No one wants women approaching abortion facilities to be threatened or harassed.

However, we believe this is a non-issue. There is no evidence of inappropriate behaviour outside abortion clinics in SA. While we are not personally associated with 40 days for life, we understand they have peacefully coexisted with the Pregnancy Advisory Centre in Woodville for years.

Further, the law defines 'prohibited behaviour' so broadly as to include 'intimidating' a person or even 'communicating with a person about abortion.' What does it mean to 'intimidate' or 'communicate' with another person about abortion?

Could it mean handing a woman a pamphlet about services available to support her through her pregnancy and after birth? Could it mean putting up a pregnancy support poster on a shop window? A peaceful, non-invasive prayer meeting? A spouse offering support following a change of heart?

There have been convictions in other states on similar grounds. In Franks' bill, the maximum penalty for engaging in 'prohibited behaviour' is 2 years’ imprisonment. This is true irrespective of whether or not the woman who sees the ‘prohibited behaviour’ is distressed by, or even grateful for it. Does the punishment really match the 'crime', if it ought to be a 'crime' at all?

Further, are there not laws currently in place (*Criminal Act, Summary Offences Act, Police Powers Act* etc.) that would enable police to deal with instances of genuine harassment?

One might also ask why the parliament ought to single out abortion facilities and not any other location which represents controversial policy decisions? By making it a criminal offence to offer support or communicate alternative views regarding abortion, the bill benefits the abortion industry, which has a financial conflict of interest in women undergoing abortions.

**Summary**

If passed, this bill will:

* allow abortion for *any* reason, including sex selection abortions, disability discrimination or ‘changing one’s mind’;
* allow abortion with no doctor’s approval required;
* allow abortion to be carried out by other than qualified doctors, without risk of penalty;
* allow late term abortion of viable babies;
* allow babies born alive as a result of abortion procedures to be left to die, and their deaths to be concealed;
* allow self-administration of high risk of complication abortion pills outside hospitals, including in rural settings;
* remove the specific crime for forced abortion, meaning that if someone were to forcibly abort a woman’s unborn child they would be charged under assault causing harm rather than unlawful abortion, which carries lesser penalties;
* remove the requirement for doctors and hospitals to notify the Director General of Medical services that an abortion has taken place, meaning that SA would have no statistics;
* require no provision of pain relief for babies during abortion procedure, despite evidence that babies in the womb can feel pain from approximately 20 weeks’ gestation;
* require no pre- or post-abortion counselling for women;
* Remove the express right to conscientious objection, potentially forcing doctors to engage in practices they deem not to be in the best interests of their patients;
* Create “health access zones” on dubious grounds, stifling freedom of movement and expression on a highly controversial issue of public policy.

This is a dangerous, ill-conceived law that ought to be rejected in its entirety. It is bad for women, bad for babies, and bad for society generally.

**How can we respond?**

We encourage all members of our Church to pray that this bill is defeated, and that our society is moved to the conviction that all life is sacred and so in need of protection. We are convinced this movement against life in our culture is far deeper than politics and legislation and involves what the Scriptures call ‘spiritual forces’ (Eph 6:12). Our main weapon in a spiritual battle is prayer, and so please pray.

We also encourage those who feel able to call, visit or write to South Australian politicians and simply, clearly and politely expression your concerns about this bill. Lutherans for Life are able to provide assistance with this if needed. The focus at this stage is on Members of the Legislative Council as this is where the bill will be voted on first.

On a more personal level, a bill like this is also an opportunity for spiritual reflection for all of us. Does it lead us to repentance for our lack of respect for God’s gift of life in various ways? Does it lead us to reach out to that single mother in our congregation or on our street to offer a helping hand? Does it simply lead us to deeper gratitude for the gift of life that are our own children and grandchildren? We encourage you to consider another paper we have produced, entitled ‘Culture of Life: 10 Steps the LCA and its members can take to help reduce the incidence of abortion.’ This is available on our website: [www.lutheransforlife.lca.org.au](http://www.lutheransforlife.lca.org.au)

**Conclusion**

We offer this response to the Church in the spirit of Jesus’ words to his disciples that we are ‘the salt of the earth and the light of the world’ (Matt 5:13-16). Let us not lose our saltiness or hide our lamp when it comes to protecting life. At the same time, we know that by our own human strength we can accomplish nothing, and so we look to Him who is the one true ‘light of the world’ (John 8:12). Our risen and ascended Lord Jesus reigns and ultimately is our only hope.

Let us pray.

*Almighty God and Father,*

*We thank you for creating, redeeming and sanctifying each one of us, and for sharing with us the abundant life your Son has brought. Forgive us our sins against your command ‘Do not murder’, and lead us to true repentance. Have mercy on us and on our whole society here in South Australia and around our nation. Move the hearts and minds of people to everywhere to cherish your gift of life at every stage. Provide for those fathers and mothers who struggle with unexpected pregnancies and open them to the gift of life you give. Give our political leaders and representatives clarity and courage to affirm life in our legislation and laws. We pray in Jesus’ name, Amen.*

Yours in Christ,

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1. In *CES v Superclinics* (1995), Kirby J ruled that a doctor could consider danger to the mother’s physical or mental health not just during pregnancy but also ‘**after** the birth of the child, e.g. due to the very economic and social circumstances in which she will then **probably** find herself.’ [↑](#footnote-ref-1)
2. See ‘Australian Abortion Statistics’, Children by Choice: <https://www.childrenbychoice.org.au/factsandfigures/australian-abortion-statistics> and also ‘Real Information’ by ‘Not Born Yet’ https://notbornyet.com/real-information/ [↑](#footnote-ref-2)
3. See R Wong, ‘Abortion Coercion: The NRL still has a long way to go in its treatment of women’: <http://www.onlineopinion.com.au/view.asp?article=18914>. See also Pallito CC, Garcis-Moreno C, Jansen HAFM, Heise L, Ellsberg M & Watts C (2013) ‘Intimate partner violence, abortion, and unintended pregnant: results from the WHO Multi-country Study on Women’s Health and Domestic Violence’ *Int J Gynecology Obstetrics* 120:3-9. [↑](#footnote-ref-3)
4. See ‘Victorian Late Term Abortion Figures Released’, Real Choices: http://realchoices.org.au/2014/07/victorian-late-term-abortion-figures-released/ [↑](#footnote-ref-4)
5. See, for example, Priscilla K. Coleman, ‘Late Term Elective Abortion and Susceptibility to Posttraumatic Stress Symptoms’ , *Journal of Pregnancy,* Aug 2010: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3066627/ [↑](#footnote-ref-5)
6. [See RANZCOG statement: ‘Termination of Pregnancy’, para 4.6, July 2016.](https://www.ranzcog.edu.au/RANZCOG_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20Gynaecology/Termination-of-pregnancy-%28C-Gyn-17%29-Review-July-2016.pdf?ext=.pdf) [↑](#footnote-ref-6)
7. See ‘Victorian Late Term Abortion Figures Released’, Real Choices: <http://realchoices.org.au/2014/07/victorian-late-term-abortion-figures-released/> [↑](#footnote-ref-7)
8. [See RANZCOG statement: ‘The use of mifepristone for medical termination of pregnancy’, Feb 2016.](https://www.ranzcog.edu.au/RANZCOG_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20Gynaecology/Use-of-mifepristone-for-medical-termination-of-pregnancy-%28C-Gyn-21%29-Amended-February-2016_1.pdf?ext=.pdf) [↑](#footnote-ref-8)
9. [See RANZCOG statement: ‘Termination of Pregnancy’, para 4.5, July 2016.](https://www.ranzcog.edu.au/RANZCOG_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20Gynaecology/Termination-of-pregnancy-%28C-Gyn-17%29-Review-July-2016.pdf?ext=.pdf) [↑](#footnote-ref-9)
10. Priscilla Coleman, ‘Abortion and mental health: quantitative synthesis and analysis of research published British Journal Psychiatry’ (Issue 3, Sep 2011). See also Fergusson D.M., Horwood L.J. and Boden J.M. (2008), Abortion and mental health disorders: evidence from a 30-year longitudinal study, The British Journal of Psychiatry Vol 193, No 6, p 449. [↑](#footnote-ref-10)
11. [See Recommendation 2 of RANZCOG’s ‘Termination of Pregnancy Statement’, July 2016.](https://www.ranzcog.edu.au/RANZCOG_SITE/media/RANZCOG-MEDIA/Women%27s%20Health/Statement%20and%20guidelines/Clinical%20-%20Gynaecology/Termination-of-pregnancy-%28C-Gyn-17%29-Review-July-2016.pdf?ext=.pdf) [↑](#footnote-ref-11)