Submission to

NSW Legislative Council's Standing Committee on Social Issues inquiry into the Reproductive Health Care Reform Bill 2019

From

The Presbyterian Church of Australia
In the State of NSW

PO Box 2196, Strawberry Hills, NSW, 2012

The Presbyterian Church of Australia in the state of NSW

Who we are

The Presbyterian Church in Australia in the state of NSW (PCNSW) consists of 186 pastoral charges spread through NSW. It is a community of about 35,000 people and has congregations from nine different non-English speaking cultures. Beyond its congregational ministries, the PCNSW operates schools, aged care facilities, pre-schools and provides social services and chaplaincy care in a wide range of communities in the state. The Presbyterian Church has been part of NSW society since 1803 and helped to form the Presbyterian Church of Australia in 1901.

This submission has been prepared by the Gospel, Society and Culture Committee of the PCNSW Assembly. For further information contact the convener of the committee, Rev. Dr. John McClean.

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Our Position

The Presbyterian Church recognise that there is a case for reform of on aborition law in New South Wales. However, the proposed Bill does not offer the reforms which are required. It reduces the protections for unborn children and opens the way for late term abortions, abortions for the purpose of sex selection and the destruction of children with disabilities. The Bill has no real requirement for provision of counselling for a woman considering terminating a pregnancy. It also fails to protect the freedom of conscience for medical practitioners.

We urge the Legislative Council to reject this Bill and to consider other approaches to reform of abortion law.

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Our Reasons

1. Christian convictions about life in the womb

Christians believe that God is the giver of life (e.g. Acts 17:25) and that he entrusts to our care the lives of the weak and vulnerable (e.g. Psalm 82:3). This includes unborn children.

The Biblical ten commandments (Exodus 20:1-17) are one of the great moral texts and provide a historical basis for our legal system. The sixth commandment forbids murder, the deliberate taking of innocent human life. This is the foundation for the value of protection of life that we find in our criminal code.

We are convinced that just as our society is rightly concerned to protect vulnerable lives, such as premature babies, the same principles should lead us to an equal concern for unborn babies.

In the Bible, conception is regarded as a precious gift from God, who is the giver of life. Repeatedly, the Bible tells of children as God's generous gift. It also refers to the wonder of life in womb. Most famously, King David writes: "For you created my inmost being; you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made" (Psalm 139:13).

Modern technology, especially ultrasound imaging, has helped to show how fully human the developing fetus is with formed organs and movement. The development of the fetus begins at fertilisation, and unless interrupted will proceed in a predictable sequence. At about 8 weeks gestational age, the fetus is recognisable as a human baby. By the end of the first trimester, all organ systems are formed. The point at which pain is first experienced is debated, but almost certainly it is by 20 weeks of gestational age or even earlier, when sensory receptors, and connections between the spinal cord and the thalamus (important in pain perception) are relatively complete. Invasive fetal medical procedures require anaesthesia to prevent the mounting of a physiochemical stress response from around 18 weeks. The point of viability (survival outside the womb within a neonatal unit) is at approximately 22 weeks gestational age but has been moving ever earlier with advances in technology. Clear responses to the mother's voice can be demonstrated in the third trimester, and even earlier. Even after birth, development continues; the brain's synapse density increases, while surplus connections are gradually eliminated during childhood and adolescence in a process referred to as pruning. Myelination, the insulation of nerve cells,

continues until the age of 25. Thus, all development forms a continuum, and points such as viability or sentience or even birth are somewhat artificial in delineating developmental cut-off points.

Most people are horrified by the thought of killing a new born child, but there is in fact no clear point at which a developing child becomes a child. In fact, every aspect of development is a gradual process. The more fully we understand the biology of human development, the more we realise the complexity of life in the womb and its continuity with life after birth.

2. Ethical complexities

There are, of course, occasions in which a mother's life is at grave risk because of a pregnancy. Where it is demonstrable or likely that this is the case it is permissible and even necessary to terminate the pregnancy. These are difficult decisions for mothers, fathers and medical staff. The law should recognise the need for such decisions in certain cases.

Beyond such cases, we believe that is very difficult to justify the destruction of an unborn life. The most awful cases, such as rape or sexual abuse, or when an unborn child is diagnosed with a severe disability which may not be compatible with life, do not justify ending another life.

Naturally, a pregnant mother is likely in these circumstance to feel that termination is a better outcome. There is no certainly, however, that she will continue to feel this way in the following years. Many women suffer from deep regret over terminations, even in difficult circumstances.

3. Commentary on NSW abortion law and the proposed legislation

The law as it already currently stands fails to adequately protect unborn children and care for pregnant women in vulnerable circumstances. As current practice, access to abortion is relatively straight-forward and clinics operate freely in NSW. There is little oversight or power for authorities to investigate whether a doctor honestly and reasonably believes that a pregnancy, if interrupted, would result in serious danger to a mother's life, physically and mental health consistent with *R v Wald* and *CES v Superclinics*. The law

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should be amended to ensure better protection for unborn children in NSW and for vulnerable women.

The proposed Bill not only fails at both these points, but is in fact a step in the opposite direction. The Bill effectively *enables* the death of unborn children. If abortions are conducted prior to 22 weeks gestation with no reason given apart from the mother's consent, then this means that the law is silent (if not in denial) as to whether killing an unborn child is wrong. This must not be the case.

The adoption of 22 weeks gestation as a point of some increased limitations on terminations is arbitrary both morally and clinically. As noted above, there is no clear point in development at which we can identify the existence of a person with human rights. There is no particular reason to locate this at 22 weeks. Presumably this has been chosen because it is the current limit at which there is some possibility of a premature baby surviving. However, there is no reason to think that this may not shift in time.

To say that it is permissible to conduct an abortion without any reason is also inconsistent with the Bill itself. How can the House "oppose terminations for the sole purpose of gender selection" (see s 15) and yet allow for it to be a reason for termination upon enactment?

The proposed review after 12 months of enacting the Bill to determine whether terminations are being performed for the purpose of gender selection. A review may well show that sex selection is a common motivation for terminations — but it will be very difficult for parliament to change the legislation at that point. It is noteworthy that the House is silent on whether it opposes the killing unborn children with disabilities. We submit that protections must be offered to unborn children with disabilities and unborn children from sex selection.

Section 7 of the Bill reflects an important princioles. Counselling services are appropriate in supporting women who are considering abortions. However, it is unnecessarily, impractical and inappropriate to give medical practitioners the discretion to withhold information about them. The Committee cannot foresee any circumstances in which counselling service (or even the offer of counselling services) is not beneficial to a woman

carrying an unborn child, and also to the unborn child. Requiring a medical practitioner to be a gatekeeper of such information demeans the counselling profession, effectively saying either that their services are not beneficial, or that they are unable to provide information about their services with sensitivity. Even if there were such circumstances, how are medical practitioners better trained (if at all) to "assess whether or not it would be beneficial to discuss with a person...about termination" (s 7(a)?". The notion of "beneficial" is arbitrary and will vary from practitioner to practitioner. Furthermore, it is inappropriate to have a medical practitioner be the gatekeeper especially when there may be conflict of interest. While the Committee has the upmost respect for the integrity for the medical community and their ethical standards, there is no reason to put temptation before a rogue practitioner to withhold information about counselling services because it would mean they would have another client and a financial advantage to them.

Additionally, the requirement that information only be provided if and only if "the person is *interested* in accessing counselling" (s7(b)) does not reflect the reality of making life changing decisions. A persons' "interest" in a particular subject matter changes over time, especially when it comes to a decision like whether to carry a baby to full term. The requirement to provide information pursuant to s 7(a), *only* at the point of assessment by a doctor does not cater to the fact that a person's “interest” may change in the future, perhaps even in the next moment.

The Bill ought not to include medical practitioners as part of the process of having pregnant women access counselling services. Indeed, a counsellor such as a psychologist or physiatrist is better positioned and trained than a practitioner in surgical abortions in speaking to women who are considering carrying through the procedure.

Without limiting our overall objection of the Bill, we would suggest an alternative to s 7:

> 7 Requirement for information about counselling
>
> (1) Before performing a termination on a person under section 5 or 6, a **counsellor** must provide all necessary information to the person about access to counselling, including publicly-funded counselling.

It is worth noting that the above proposed section only requires that counsellors provide information. It does not coerce or require women considering abortions to go through

counselling itself. This prevents the improper administrative use of counselling services to unnecessarily delay access for women who are determined to receive an abortion.

In respect of s 9 of the Bill, the right of doctors to exercise a conscientious objection to referring a patient for an abortion or conducting the procedure should be unfettered given the moral seriousness and nature of the matter. The requirement that they refer the patient to a practitioner who will perform the abortion effectively nullifies the first practitioner's right to a conscientious objection.

The Bill fails to protect the lives of children aborted but born alive. The idea that a vulnerable child be left to die without medical care is one that our society would reject as abhorrent, yet this Bill allows the possibility that aborted newborns would be treated this way. It is our submission (again, without limiting our overall objection to the Bill) that provision must be made in the legislation to protect the lives of babies born alive, despite the attempt to end their lives through abortion.