Australian Senate
Community Affairs
Legislation Committee
Parliament House
Canberra
ACT 2600

Dear Sir/Madam

Re: Health Legislation Amendment Bill 2005

Thank you for inviting comments on this Bill. I write as a person with 40 years experience in nursing, education and health services management. While I am currently the CEO of SHine SA Inc., I write this response in a private capacity.

I wish to express my concern about the potential impact of this Bill, if passed, on women's health, well being and safety. As a student nurse in the 1960's, I was witness to the outcomes of backyard abortions performed on women. The emergency department of a regional country hospital was a busy one, with women admitted for complications associated with, backyard abortion. These included the ever forgettable clostridium welchi infection causing sepsis and systems shut down, severe blood loss, ruptured uterus and death. As a country and as a community of women, we cannot afford restrictions on access to safe medical abortion, as abortion is already restrictive enough (RU486 is a prohibitive import).

The issue of women's access to safe medical abortion has been on the political and media agenda again since 16th of March 2004 when Federal Health Minister Tony Abbott, speaking on the ethical role of a Christian politician at the Adelaide University, said the rate of abortion in Australia is a national tragedy, and should be curbed.

There is no evidence that these powers are necessary. For a politician to have the right to decide what type of services are or are not funded infringes the fundamental and basic right of women to access safe medical abortion when an unplanned and unwanted pregnancy has occurred, whatever the circumstances.

Prior to decriminalization of abortion in South Australia (1970), backyard abortion was the was the most common cause of maternal morbidity in South Australia. Restricting women's access to safe medical abortion through Medicare, will not reduce abortion. Indicators of a countries commitment to sexual and reproduction health outcomes for women include; cost, accessibility and quality of abortion services, legality of abortion and abortion mortality and morbidity. While Australian women currently have relative access to safe medical abortion and low levels of mortality and morbidity associated with medical abortion, backyard abortion in developing countries continues to be the number one cause of maternal morbidity

and mortality. This may be the consequence of restricting women's access to safe medical abortion.

Australian women have used abortion throughout the history of "white" colonisation [1]. Expert opinion given to a 1937 National Health and Medical Research Council enquiry into declining birthrates, found that one in three pregnancies ended in abortion, compared to one in four in the late 20th century [1]. Reliable statistics are not available for South Australia pre 1970 because of the "illegal" nature of abortion and no formal notification system existed in the State until 1970. Many Australian States and Territories still do not have an abortion notification system. The number of abortions in South Australia reduced by 5% between the 2002 and 2003 reporting periods, with the most significant reduction in abortions being to teenagers [6].

Prohibition of abortion is no longer accepted in South Australia (or Australia) as public policy [1] and all attempts to introduce new legislative restrictions on the availability of abortion services in this State since 1970 have failed. These attempts have been strategically linked to State elections, when lobbying of Government and Opposition members has been the most intense. The Right to Life and Festival of Light have spear headed the "pro-life" lobbying. The issue of abortion therefore, has always been more about religion and politics and not about women's rights, women's right to choose, women's health or wellbeing.

The outcome of the 2004 Federal election provides the vehicle for renewed debate about abortion at a national level, debate which the Minister for Health Mr. Tony Abbott commenced on a visit to the Adelaide University, March 16th 2004 when he stated that *"the rate of abortion in Australia is a national tragedy"(The Advertiser).* He rekindled the debate post election October 2004 when he stated that Australia was being gripped by an *"abortion epidemic (The Advertiser)".* Had the abortion debate been raised as an election issue, the outcome of the Federal election might have been quite different. A clever strategy?

At a State level Pastor Andrew Evans MLC, leader of the Family First Party, has suggested that limiting women's access to abortion would be a way of meeting South Australia's State Strategic Plan population targets by 2050, "*a major drop in abortion…would help our population problem, our ageing society" (ABC Radio 891 Monday 1st November 2004).* Evans is clearly planning a private members bill that will see women having to view an ultrasound of the foetus prior to termination. He is on record saying *"where they have used it in America, ….and when the woman sees that little baby, ….75% have …pulled out from aborting their children"* (Stateline ABC 2 Friday 5th November 2004). He advocates for the viewing of ultrasound by victims of rape because *"that number is very, very tiny"*(Stateline).

This paper examines some of the issues around abortion in South Australia.

1. The Legislation.

In Australia, law in regard to abortion is contained in each State's criminal code and is to varying degrees based on sections 58 and 59 of the United Kingdom's Offences Against the Person Act of 1861 [2].

Section 58 reads,*"Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent and whosoever, with the intent to procure the miscarriage of any woman whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term of not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement"* [2].

At the beginning of the Second World War and before the introduction of antibiotics, 22% of all maternal deaths in Australia were due to infections resulting from abortion [3]. Despite the introduction of antibiotics in the 1940's, complications associated with abortion continued to be the major cause of maternal deaths well into the 1970's. This and the continuing high rates of unplanned pregnancy, particularly in "young unmarried women' were precursors to legislative change in the late 1960's.

South Australia was the first state to achieve reform on abortion legislation. Although Labor Premier Don Dunstan had foreshadowed possible changes to the law given the changes that had occurred in the United Kingdom in 1967, it was the Liberal-Country League Coalition Government of Steele-Hall that carried out the legislative changes. In 1968 the Attorney General Robin Millhouse introduced a Bill to Parliament to change the SA abortion law. A Select Committee of the House of Assembly was established late 1968 to consider the proposed changes. Evidence given to the Select Committee by eminent obstetrician Professor Lloyd Cox estimated 4000 abortions per year in South Australia. The Abortion Law Reform Association of SA gave a conservative estimate of 5100 per year including 800 back-yard abortion; this evidence was corroborated by the Homicide Squad [4]. The Bill eventually passed through both houses of Parliament in December 1969. The new law came into effect January 1970.

The South Australian law on abortion is contained within sections 81, 82 and 82a of the Criminal Law Consolidation Act, 1935-80 (S.A.). Sections 81 and 82 are derived from sections 58 and 59 of the 1861 Act. In 1969 the South Australian Parliament enacted section 82a which sought to qualify sections 81 and 82 and define the circumstances in which an abortion would be lawful.

Section 82a(1) of the South Australian legislation states that an abortion will be lawful if it is

- performed by a legally qualified medical practitioner in a hospital

- the medical practitioner and one other medical practitioner are of the opinion, formed in good faith, after personally examining the woman, that the continuance of the pregnancy would involve greater risk to the life or physical or mental health of the woman than if the pregnancy were terminated.

This information is provided in detail in the "Certificate To Be Completed When An Abortion Is Performed Under Section 82a of the ACT".

Notification of abortion has been mandatory in South Australia since 1970. This has resulted in regular data collection and annual reporting. This is acknowledged as the main source of comprehensive information on abortion in Australia. Anecdotal evidence from doctors and nurses who worked in hospitals providing abortion services in the 1970's and early 1980's indicate that many doctors continued to fear prosecution for providing abortion services and as a result there was a lag in abortions being officially notified.

2. Attempts at restricting women's access to abortion services in South Australia since 1970

Despite the opportunities for more than adequate debate in and outside of Parliament before and during the passing of the Bill by both houses in 1969, the last 30 years has been littered with attempts to change the legislation and thereby restrict women's access to abortion. The women's right to choose groups have continued to defend what was "gained", while the right to life groups have continued their attempts to erode what was gained through moral and political persuasion. Like the issue of relationships and sexual health education in schools, abortion is a political and religious one in Australia, instead of the health, education and human rights issue it is in Western Europe and Scandinavia. However, abortion itself can be no more eliminated than the controversy surrounding it can be silenced. The key attempts at change include;

2.1 1972 – The McRae Bill.

Mr. T. McRae, Labor, introduced a Bill to reduce access to abortion only in cases of rape and the risk of serious deformity in the foetus. This Bill was defeated [3].

2.2 1988 – The Ritson Bill.

Dr. Robert Ritson, Liberal, introduced into the Legislative Council a Private Member's Bill to amend the 1969 legislation and restrict existing services by a number of ways including mandatory assessment by a psychiatrist if the abortion was being performed on psychiatric grounds. Dr. Ritson claimed that women were being pressured into having an abortion by their boyfriends or fathers and as a result the abortion rate was increasing [5]. The Bill was defeated 12 votes to 9 in March 1988 because of opponents including Dianna Laidlaw, Ian Gilfillan, Carolyn Pickles and Martin Cameron.

2.3 1990-91 – The Brindal Bill.

The Bannon Labor Government only retained office at the November 1989 State election with support of two Independent MP's. When the new Parliament convened in early 1990, the Deputy Leader of the Opposition placed a Notice of Motion which said: 'That this House strongly opposes the concept of stand-alone abortion clinics in South Australia, demands that the government halts its plans to establish the Pregnancy Advisory Centre at the Mareeba Complex" [5]. The establishment of the PAC had been recommended in the 1986 SAHC published "Report of the Working Party to Examine the Adequacy of Existing Services for the Termination of Pregnancy in South Australia". The complex was to be located at Woodville as a stand-alone unit of the TQEH. Spence had a new Labor Member in Michael Atkinson who told the House of Assembly that the PAC should not be established at Mareeba and that he would support a Private Members Bill.

Mark Brindal, Liberal, introduced a Private Member's Bill in the House of Assembly late 1990 to effectively restrict abortion services in South Australia. The reason for the Bill was to make stand alone clinics like the PAC subject to Parliamentary approval rather than by the Minister of Health, effectively preventing the establishment of the PAC. In December, Michael Atkinson crossed the floor and voted with the Opposition.

When Parliament resumed in February 1991 the Minister for Health, Dr. Hopgood, spoke against the Bill:
"as a blatant and clumsy attempt to undermine termination of pregnancy services in this State, to stop the PAC from going ahead and to make gains for the anti-abortion lobby by undermining the intent of the 1969 legislation" [5].

With debate adjourned until April 1991, Mark Brindal did not move to proceed to the Third Reading, so the Bill lapsed. The PAC opened in April 1992.

3. Provision of abortion services in South Australia

Abortion services are available from designated Metropolitan public (including the Pregnancy Advisory Centre) and private hospitals and some country hospitals. Section 82a of the Criminal Law Consolidation Act determines where the treatment of a termination of pregnancy can be carried out in South Australia.

4. Pregnancy options

A woman who is faced with an unplanned pregnancy, health risks or foetal abnormalities, can seek assistance from medical practitioners or agencies such as SHine SA, women's health, community health, Child and Youth Health for example, about pregnancy options. Professional support will be offered to explore the options available and assistance will be given so that the **woman can make a decision** that is in their best interest given their particular life circumstances. This approach is a part of the professional service provider's duty of care and is guided by the various codes of professional practice (medical, nursing, social work, and psychology). The

main options are, continuing the pregnancy and keeping the child, continuing the pregnancy and having the child adopted or fostered and termination of the pregnancy. **Women are NOT pressured into having an abortion despite the claims made by groups such as the Right To Life and the Family First Party.**

5. Accessing an abortion in South Australia.

The Criminal Law Consolidation Act, section 81, 82 and 82a permits a registered medical practitioner to authorise under certain circumstances a termination of pregnancy in South Australia. **There is no abortion on demand in South Australia, and the laws that exist are already restrictive in nature.**

A woman who is faced with an unplanned/unwanted pregnancy can access information about pregnancy options through registered medical practitioners, agencies such as SHine SA, women's health, a community health, outpatients/primary care departments.
In South Australia a woman can access an abortion service through:

- Referral to a designate private or public hospital (including PAC) by a registered medical practitioner in private practice, or by a registered medical practitioner employed by an agency such as SHine SA, women's health, a community health, outpatients/primary care departments.
- Self-referral to the PAC.

In all circumstances the provisions in the Criminal Law Consolidation Act apply. Women are offered counselling that is appropriate to meet the needs of each individual.

6. Does Restricting Abortion Access Reduce Demand?

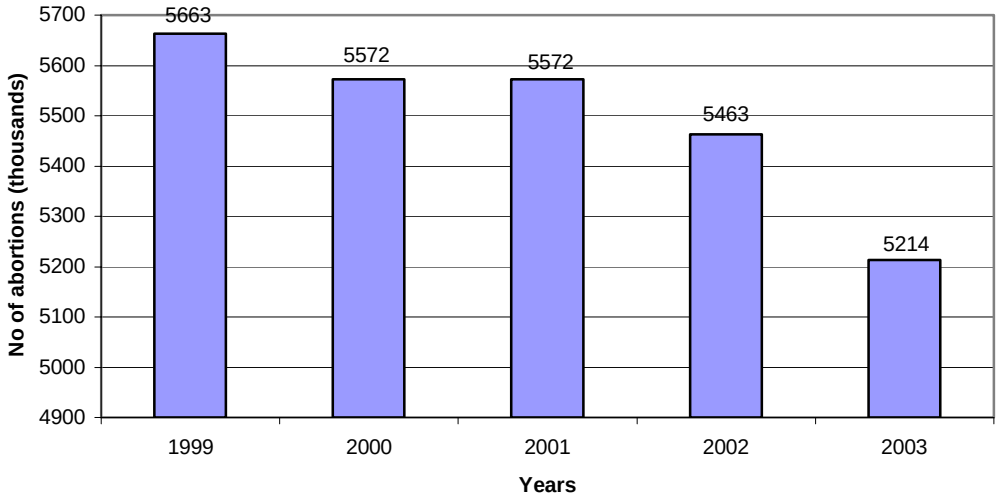
The 1996 NHMRC "Information Paper on Termination of Pregnancy in Australia" [1] found evidence that the law does not alter the incidence of abortion; women seek abortions and have them irrespective of the legal status of the procedure. While restrictive abortion laws are not effective in reducing the number of abortions, they do affect the circumstances in which abortion occurs. When legal abortion services become difficult to obtain women will seek abortion through illegal means, placing themselves in the hands of unskilled and unscrupulous providers with all the serious health hazards including maternal mortality. Alternatively women will try to access the services in another State or Territory. The Australian Capital Territory is a good recent example of this.

In 1998 new legislation passed in the ACT placed certain duties on the medical practitioners to "properly, appropriately and adequately" provide women with certain advice about the medical risks of abortion and about continuing with the pregnancy. This included providing the woman with information approved by an Advisory Panel set up under legislation, pictures/ drawings, anatomical and physiological characteristics of a developing foetus at 8, 9 and 14 weeks of gestation at the time information about abortion is sought. Additionally a 72 hour "cooling off" period was

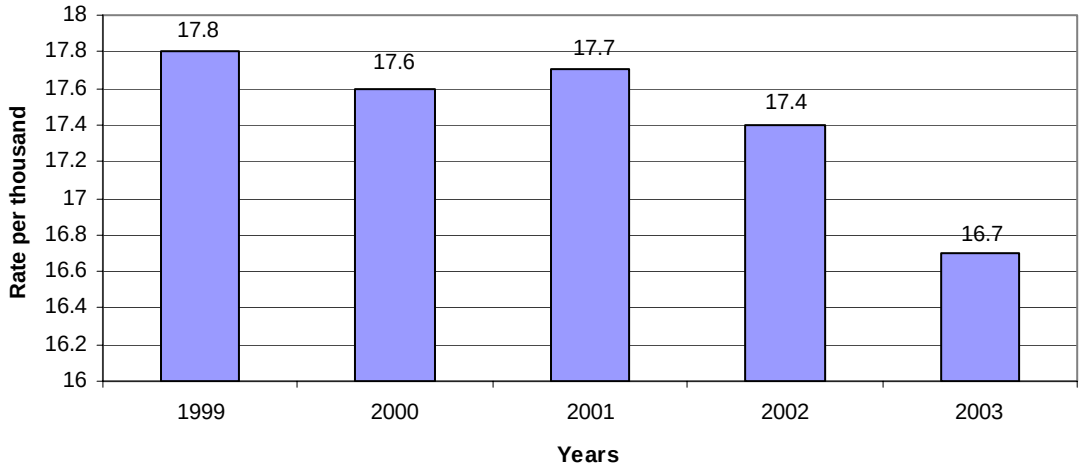
introduced between being shown this information and being able to access an abortion [Department of Health ACT information to patients and doctors 1998]. The aim of this legislation was to reduce the abortion rate in the ACT. The interesting twist to this is that an enterprising group of private medical practitioners have now set up an abortion service, just over the border in NSW!

7. Abortion Statistics [6]

No. of notified abortions – South Australia 1999 – 2003



Abortion Rate per 1000 women – South Australia 1999 – 2003



8. Reducing Unplanned and Unwanted pregnancies

Women seek abortions and have them irrespective of the legal status of the procedure or the hoops they have to jump through (viewing ultrasound or foetal photographs, mandatory counselling) to access a termination. There is however, ample research evidence about strategies that do reduce the rate of unplanned pregnancy. These strategies do require an investment in early intervention, prevention and education and include; [7, 8, 9,10]

1. Comprehensive, school based sexual health and relationships education programs for young people before they become sexually active
2. Population based health promotion programs targeting communities with high rates of unplanned pregnancy
3. Access to affordable contraception and personal information about contraceptive use where people live
4. Access to affordable Emergency Contraception where people live
5. Access to condoms in a range of settings not just retail outlets
6. The promotion of contraceptive use for women and condom use for men to reduce unplanned pregnancy (and sexually transmitted infections including HIV/AIDS)
7. Programs that address the communities capacity to talk openly and frankly about sexual health and relationships issues, including negotiation for safer sex

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Yours sincerely

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