

CLA

CIVIL LIBERTIES AUSTRALIA (ACT) -

MEDIA RELEASE

PROPOSED NEW CRIMINAL OFFENCES OFFENDS BASIC LEGAL PRINCIPLES

Civil Liberties Australia (ACT) has today welcomed moves by the Government to protect pregnant women, but has criticised an aspect of the Government's *Crimes (Offences Against Pregnant Woman) Amendment Bill 2005*, saying that it departs from basic legal principles and contains a presumption of guilt, not innocence.

Spokesperson for CLA(ACT), Mr Anthony Williamson, said that "CLA(ACT) had no objection to the creation aggravated offences against pregnant women, but such offences must conform with basic legal standards."

"The provisions of this Bill, namely the proposed new section 48A, do not"

"The Bill provides that a person is guilty of committing an aggravated offence against a pregnant woman even though that person did not know, and could not reasonably be expected of knowing, that the woman is pregnant."

The explanatory memorandum accompanying the Bill acknowledged that this provision may offend basic legal principles. It says that "The effect of subclause 4 is that a person may be found guilty of an aggravated offence although the person does not know the victim was pregnant. This element may be considered to trespass unduly on personal rights and liberties and engage the right to be presumed innocent under section 21 of the *Human Rights Act 2004*"

"The Bill effectively removes the need for the prosecution to prove a "mens rea," otherwise known as a fault element, which has been a feature of the criminal law for hundreds of years."

"It also offends the principle of innocent until proven guilty because it is presumed that an assailant knew the woman was pregnant, and that did not have to be proved by the prosecution, nor was the accused allowed to disprove it"

Mr Williamson said that although a similar Bill tabled by Opposition Police Minister Steve Pratt MLA on this issue was fraught with difficulties, it was better insofar as it required that an accused person "... knows or ought reasonably to know that the woman is or may be pregnant".

"Although acts of violence against women are heinous and deplorable, that is no reason to throw fundamental legal principles out; indeed, other crimes such as murder are heinous, but a civilised system such as ours requires that these fundamental principles be upheld."

“Although CLA(ACT) supports the general thrust of this Bill, we call on the Government to reconsider those sections that operate harshly and offend basic legal principles” Mr Williamson said.

25 November 2005

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