

Submission to the Victorian Law Reform Commission on the Laws Governing Pregnancy Termination in Victoria

Prepared by Children by Choice Association Incorporated

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1. What ethical and legal principles should inform the law of abortion in Victoria?

The key principle that should inform abortion law in Victoria is a woman's capacity and right to make autonomous decisions in relation to her reproductive health, including whether to continue or terminate an unwanted pregnancy.

The law of abortion in Victoria should be free of any stated or implied opinion in relation to the morality and/or ethic of abortion. The decision to terminate a pregnancy should be made by the pregnant woman, and guided by her own moral/ethical values and not those of law makers, medical practitioners or interest groups.

The weight of Australian and international research and best practice evidence that demonstrates women's health and lives are negatively impacted when they do not have the right to access lawful and safe abortion services.

2. What should be the policy objectives of any law of abortion?

- To affirm the pregnant woman as the ultimate decision-maker in relation to pregnancy termination. The pregnant woman is best placed to determine how the continuation or termination of pregnancy will impact on her life and her family.
- To create a legal framework that ensures a woman who decides to terminate an unplanned and/or unwanted pregnancy can access safe and lawful abortion services regardless of her socio-economic status, health status, or where she lives.

Are these currently met in Victoria?

No

3. What factors should be taken into account in deciding if a termination is lawful?

Pregnancy termination should be regulated like other medical procedures. Informed consent should be the key consideration, along with safety and privacy.

There is no need for grounds for termination (e.g. mental and physical health) to be included in any legislative regime. If there is a requirement for the determination of the grounds for pregnancy

termination, it will transfer the decision-making power to the medical practitioner and/others and remove it from the pregnant woman herself.

4. South Australian legislation includes specific grounds for termination if the foetus is at risk of 'serious handicap'. How should this issue be considered in Victoria?

There is no need for legislation to specifically refer to grounds for eligibility for termination of pregnancy services, including foetal abnormalities that may result in disabilities following the birth of the child or cause death in utero. It is impractical and unhelpful to create specific laws in relation to particular medical conditions, and such laws would create legal confusion.

It should be the pregnant woman who ultimately makes the decision to

- a) Undertake pre-natal screening
- b) Continue or terminate the pregnancy on the basis of any diagnosis of the medical condition of the foetus.

The law should not impede all Victorian women who are pregnant from having timely access to high quality pre-natal screening for foetal abnormalities and pregnancy termination services. Services should also ensure that women and their families are offered non-judgemental genetic counselling and emotional support at this time.

5. In some jurisdictions, legislation contains different conditions for lawful termination, depending on the stage of the pregnancy. What are the advantages and disadvantages of this approach? Should Victoria take this approach?

A woman-centred approach should inform any laws in relation pregnancy termination and a staged approach to the law comprises this imperative.

The staged approach based on gestation of the pregnancy can endanger women's health and well-being by denying her access to health services.

Over 90% of pregnancy terminations occur in early pregnancy i.e. before 14 weeks gestation.

Terminations after 19 weeks are in such small numbers it seems unnecessary to make specific regulations for terminations that the latter half of the second trimester. Women who seek them are often in very difficult personal situations or may have extenuating circumstances that have delayed their decision-making and seeking of services. These include sexual assault, age, change in relationship circumstances, a negative change in health status, substance abuse and access and affordability issues.

There is evidence that denying abortion to woman with an unwanted pregnancy who has decided to terminate has long term negative consequences for her health and the resulting unwanted child.

6. If a staged approach is taken, on what basis do you determine a point in time in the pregnancy?

If a gestational limitation is to be placed on women and medical practitioners' autonomy in relation to pregnancy termination, it should be no lower than 24 weeks. This would allow time for prenatal testing to be conducted, results produced and interpreted; and for women and their families to have time to make an informed decision.

Any laws creating gestational limits should be included in the Health Act, rather than the Crimes Act.

7. What should be the role of the medical practitioner in deciding whether a termination is lawful and can proceed?

Medical practitioner should be satisfied that a) woman is capable of giving informed consent and b) ensure the woman has given informed consent to the medical procedure

• Should these decisions be made by one or more practitioners?

No.

Requiring a woman to consult multiple medical practitioners/services in order to access a low risk procedure such as termination of pregnancy is unnecessary and discriminatory. A single medical practitioner is able to provide a woman who is seeking abortion with the information and services she requires.

Requiring a woman to seeking approval from a panel of medical practitioners, or multiple medical practitioners/services or a specialist Obstetrician and Gynaecologist would create barriers to service access, particularly for women in rural and regional areas. Such a requirement would place difficulties on timeliness of access to abortion services, particularly when there is a shortage of O&Gs outside metropolitan areas and long waiting times for appointments. There are also significant waiting times for appointments with 'bulk-billing' Medical Practitioners. The out of pocket cost implications for women if they are required to consult multiple practitioners would discriminate against women of lower socio-economic status.

Requiring a woman to consult and/or seek approval from more than medical practitioner implies that all women are incompetent to make a decision about the future of a pregnancy and their life. No other medical procedure requires a patient to consult multiple doctors prior to being eligible to access a service. The provision of surgical abortion should only involve the woman providing informed consent to the medical practitioner/s undertaking the procedure.

Requiring multiple medical practitioners to be involved in the consultation/approval process for pregnancy termination would place unnecessary burdens on an already overstretched Australian public health system, in particular public hospitals. It would lead to an over-servicing of Medicare and increased pressure on public health services for no real purpose.

• What sort of practitioners? GPs? Obstetricians and gynaecologists?

General Practitioners with specific training in the provision of termination of pregnancy currently provide the majority of pregnancy termination services in Australia. While Obstetricians and Gynaecologists (O&G) provide termination of pregnancy to their patients and should continue to do so, women should not be required to consult an O&G nor seek approval for the procedure from an O&G.

• Should the practitioner be required to notify the health department or similar body that the procedure has taken place?

Any information that may be provided must be de-identified to ensure the privacy and confidentiality of the woman and her doctor.

8. Who should have the final say in deciding if a termination will take place?

The woman seeking the pregnancy termination should be the final decision-maker.

9. Should access to lawful termination be conditional upon attendance at counselling and information sessions? If so, what sort of counselling and information?

No. Mandatory counselling assumes that all women are incompetent and unable to make the decision about whether to be a parent or not.

Mandatory counselling is an oxymoron. Effective counselling can only be voluntary, in which the counselling client voluntarily engages and commits to the process. Mandatory counselling requirements would be an unnecessary legal addition.

Proposing mandatory counselling implies that the experience of abortion will produce a negative mental health outcome for women. The research evidence is clear that abortion will not negatively affect the long term mental health of the vast majority of women.

As with a legal requirement to consult multiple medical practitioners before a woman can be eligible for pregnancy termination services, mandatory counselling will create problems for timely access to abortion services, particularly for women in rural and regional areas. In some regional areas, pregnancy termination services may only provide services to 12 weeks gestation. If woman's pregnancy is confirmed at 10 weeks, she makes the decision to terminate the pregnancy at 12 weeks and then has undergo mandatory counselling and consult multiple medical practitioners, she will be no longer be able to access the abortion service nearest to her. She will then need to find the resources and support to travel further to access a service and the out-of-pocket cost may be higher and out of reach for her.

Those groups wishing to impose mandatory counselling and information giving, also seek to limit women's access to abortion on the basis of ideology rather than in the interests of women's health and well-being. Many of these organisations operate "counselling and information" that provide false and misleading information to women about the risks of abortion. On a weekly basis Children by Choice receives calls from women (including Victorian women) who are confused and/or distressed by the misinformation they have received. In particular false assertions that abortion is a risk factor for breast cancer; future fertility is significantly compromised by abortion; abortion will result in long term depression and relationship breakdown. None of these assertions are medically evidenced. Being provided with misinformation also delays women from seeking timely abortion services, as they become unnecessarily fearful of the procedure.

In Victoria, informed consent must be gained from the patient before a medical or surgical procedure can proceed. The patient must agree that they understand any risks and consequences involved in the procedure. Pregnancy termination services are no different, and additional laws around mandatory counselling and information giving are not required.

Non-judgemental, professional counselling services that to refer for all three options with an unplanned pregnancy should be available to women at no charge, if a woman is seeking assistance with her decision-making and access to services.

10. Should the law state that a medical practitioner has no duty to perform or assist a termination unless a woman's life is at risk?

No. If a medical practitioner is unable or unwilling to perform or assist with a pregnancy termination the law must ensure that he/she facilitates the women's access to a medical practitioner or health service that will provide pregnancy termination services to the woman upon her request.

11. Does the offence of child destruction need to be changed in any way? If so, how?

The Child Destruction Offence creates legal confusion for medical practitioners providing pregnancy termination. Section 10 should be removed or redrafted to ensure that medical practitioners can lawfully perform pregnancy termination services without concerns that this Offence may be applicable to a medical procedure.

12. Having considered the questions above, what are the key elements you would like to see in any new law of abortion in Victoria?

The laws should ensure that both surgical and medical termination of pregnancy services can be lawfully provided. No prescription of special premises or approval should be included within any new abortion law in Victoria. Unlike surgical termination of pregnancy, medical termination of pregnancy in the early stages of pregnancy does not need to occur in a facility that provides surgical procedures. Pharmaceutical drugs for medical pregnancy termination can be provided in rooms of a General Practitioner, the medication can also be administered at home and the termination of pregnancy can safely occur at home. A protocol to ensure a woman can access medical care out-of-hours i.e. emergency obstetric facilities in case of any complications should be established, however this is not required to be codified in the Criminal or Health Acts as it would be included in any best practice guidelines.

As well, the response to Question 2 remains relevant. Any laws on abortion in Victoria should:

- Affirm the pregnant woman as the ultimate decision-maker in relation to pregnancy termination. A woman, often in consultation with her partner and/or family, is best placed to determine how the continuation or termination of pregnancy will impact on her life and her family.
- Create a legal framework to ensure a woman who decides to terminate an unplanned and/or unwanted pregnancy can access safe and lawful abortion services regardless of her socio-economic status, health status, or where she lives.

Is there any thing else you would like to tell us?

No waiting periods should be legislatively imposed – they are unnecessary, delay timely seeking of services and in some cases deny women access to abortion where gestational limits are also imposed.

Waiting periods were introduced into Australian Capital Territory (ACT) law in 1998. They were an abject failure. The unique situation of twin cities of Canberra and Queanbeyan on the ACT/NSW border allowed for a clinic to be established in Queanbeyan that was easily accessible for women living in the ACT. This situation could not occur in Victoria, as the distance is much greater between Melbourne and the NSW border. The ACT laws were repealed in 2002 as they were unworkable and unnecessary.

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