

Submission to the
Victorian Law Reform Commission

The Law of Abortion

YWCA Victoria
November 2007



1. YWCA Victoria

YWCA Victoria is a 125 year old membership based organisation that aims to improve the lives of women by ending inequality. Our vision is to deliver exceptional services focused on creating opportunities for women facing disadvantage and provide a powerful voice for women's equality. Operating out of six sites across Victoria, YWCA Victoria provides targeted programs and services to women.

2. Introduction

The purpose of our submission to the Victorian Law Reform Commission is to ensure the law acknowledges women have the intellectual and moral capacity to make decisions about their own fertility. This submission will argue that repealing abortion from the Victorian Crimes Act (1958) will recognise women as full equal human being capable of making their own decisions about reproduction.

As a women's organisation, YWCA Victoria would like to draw the Commission's attention to the provisions outlined in the Convention on the Elimination of Discrimination Against Women (CEDAW), in relation to the right to privacy, health and equality. In March 2000, the United Nations Human Rights Committee confirmed that 'gender equality is an overarching principle that applies to the enjoyment of all rights - civil, cultural, economic, political and social - and that the right to gender equality is not merely a right to non-discrimination'¹. Article 16 requires all State Parties to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. It requires Parties to ensure, on a basis of equality of men and women, 'the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights'.

YWCA Victoria sees the debate on abortion law reform in Victoria as long overdue and will suggest that to ensure justice and equity in the law and in the provision of health services, the only way forward is for Victoria to repeal abortion from the Victoria Crimes Act (1958).

3. Responses to discussion questions

Q1. What ethical and legal principles should inform the law of abortion in Victoria?

YWCA Victoria believes that abortion is not a crime and the circumstances in which a woman can obtain an abortion should not be regulated by the State through legislation. Abortion is a health issue between a woman and her doctor.

YWCA Victoria believes that it is essential that women are free to make decisions regarding their fertility without pressure from others, that their privacy is respected and that they are not made to feel guilty or detrimentally judged when making these decisions.

¹ The United Nations High Commissioner for Human Rights, 'Working for women's human rights and gender equality', www.unhchr.ch/women/focus/html.

It is the right of every woman to control her own body and to make decisions regarding fertility, including planned or unwanted pregnancies, based on her individual life situation, personal views and beliefs, and with regard to her physical and mental health. The current legal position is one that undermines this fundamental right of a woman to control such a critical decision.

YWCA Victoria believes that abortion should be accessible, safe and legal, including availability to women regardless of their geographical location, age, marital or relationship status or income and should have the right to access abortion services without fear of reprisal, both for herself and her doctor.

Q2. What should be the policy objectives of any law of abortion? Are these currently met in Victoria?

The policy objective of any abortion law must prioritise women's capacity to make moral judgements about their own reproduction. YWCA Victoria believes this policy objective should be promoted by bringing the law and public policy into line with current practice and public opinion. Independent studies consistently show more than 80% of Australians support the right to choose. The 2003 Australian Survey of Social Attitudes found that 81% of those surveyed believed a woman should have the right to decide whether or not she has an abortion.²

We believe that access, equity and quality service provision must underpin any policy objectives around the law of abortion.

Q3. What factors should be taken into account in deciding if a termination is lawful?

YWCA Victoria believes the only factor that should be considered is the consent of the women entering the process. We disagree with the implication that there are, or should be other factors considered to determine the lawfulness of a termination because the choice of the woman should be paramount.

Q4. South Australian legislation includes specific groups for termination if the foetus is at risk of serious handicap. How should this issue be considered in Victoria?

YWCA Victoria believes that this issue should not be considered in Victorian abortion legislation. We believe the provisions in the law should adequately deal with this possibility, as ultimately it should be a woman's choice to terminate, regardless of the circumstances. A woman's own personal situation and/or foetal abnormalities can be considered in this context and does not require legislative exclusion.

The inclusion of specific groups, such as those who abort for reason of "serious handicap", may give rise to societal judgement of women who abort for other, equally valid, personal reasons.

Q5. In some jurisdictions, legislation contains different conditions for lawful termination, depending on the stage of the pregnancy. What are the advantages or disadvantages of this approach? Should Victoria take this approach?

² The Australian Survey of Social Attitudes (2003), Australian Survey of Social Attitudes, Australian National University: ACSPRI Centre for Social Research.

YWCA Victoria believes that conditions for lawful termination depending on the stage of pregnancy should not be applied under Victorian legislation. There should be no minimum or maximum gestation period for lawful abortion.

Q6. If a staged approach is taken, on what basis do you determine a point in time in the pregnancy?

YWCA Victoria does not believe a staged approach should be taken. There should be no minimum or maximum gestation period for lawful abortion.

Q7. What should be the role of the medical practitioner in decision whether a termination is lawful and can proceed?

YWCA Victoria sees the lawfulness of a termination to be determined by the woman seeking an abortion, and as such, see the role of the medical practitioner as being to provide information and treatment, and to support the choice of a woman.

Q8. Who should have the final say in deciding if a termination should take place?

YWCA Victoria believes that like any other medical treatment, this decision should rest with the woman who is ultimately affected by the outcome.

Q9. Should access to lawful termination be conditional upon attendance at counselling and information sessions? If so, what sort of counselling and information?

YWCA Victoria believes that access to abortion should not be conditional upon attendance at counselling sessions. Information, regarding the procedure and associated risks, can be provided by the attending medical practitioner, and further information may be provided information on all three options (abortion, adoption, or parenthood), for information only rather than coercive purposes.

Q10. 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?

YWCA Victoria believes there should be no such provision under the law. Doctors are required, by means of their own commitment to their profession to provide adequate, unbiased medical services. If a patient asks for advice or treatment, then their doctor is obliged to provide it, regardless of any personal beliefs. Specialist service delivery and a doctors' willingness to undertake any medical procedure should be provided for in Health Principles and Practice Frameworks, not State legislation.

Q11. Does the offence of child destruction need to be changed in anyway? If so, how?

YWCA Victoria believes that the law of child destruction unnecessarily complicates the understanding of lawful terminations in Victoria and needs to be modernised. This statute has never been tested and will potentially create confusion when the law of abortion is repealed. Any changes to this legislation should clarify that the offence of child destruction does not relate to abortion, where there was consent by the woman.

Q12. Having considered the questions above, what are the key elements you would like to see in any new law of abortion in Victoria?

YWCA Victoria supports the removal of Sections 65 and 66 from the Crimes Act in their entirety. This will ensure that the rights of women are paramount when it comes to her own reproductive health and will bring Victoria in line with the provisions outlined in the Convention of the Elimination of Discrimination Against Women. YWCA Victoria opposes the inclusion of any aspects of the Menhennit ruling being introduced into Victorian legislation.

4. Contact Details

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