

## **CASA FORUM – LAW OF ABORTION SUBMISSION**

The current abortion laws in Victoria are unclear and complex. This has caused confusion for women, their doctors and health care providers over the past 40 years. This confusion has encouraged the minority of people totally opposed to abortion to harass women seeking a termination, and their health care providers, in a manner bordering on illegal. This level of intimidation of women is unacceptable in any society and will hopefully be less acceptable with the abolition of the offences of unlawful abortion in the Crimes Act 1958 and in the common law.

There is majority support for safe, legal and accessible abortion. The 2004 Australian Institute of Family Studies study reported that 96 % of Australians did not consider abortion to be wrong. The 2003 Australian Survey of Social Attitudes found that 81% of those surveyed believed women should have the right to decide whether or not to have a termination.

It is time that the poor, geographically isolated and disadvantaged women are given access to safe, competent, locally based services. Currently, due to the actions of the pro-life lobby and the ambiguity of the abortion legislation, many women in rural and remote areas are unable to access affordable terminations. Very few public hospitals and rural GPs offer terminations. This situation should improve with the removal of the risk of criminal prosecution.

In reality we are not dealing with the absence or existence of abortion. Women have terminated pregnancies for centuries. We are dealing with a public health issue and the right of a section of the community to access safe public health care. It is probably that access to legal termination without barriers is likely to enable women, particularly those in rural and remote areas, to access a termination earlier than under the current system.

Along with the decriminalization of abortion should be a commitment to sex education in schools, researching safe effective contraceptive methods and increasing access to sexual health services.

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

The law of abortion should be informed by issues of individual rights and obligations, confidentiality provisions and the separation of Church and State. The new legislation should be clear, written in plain English and lead to as simple a system for dealing with terminations as possible. In addition, it should also take into account individual rights to make choices about their body.

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

The policy objectives of any law of abortion should be to provide a clear direction in relation to terminations that does not discriminate against poor women, women with a cognitive impairment or women living in rural and remote communities. Currently these objectives are not met by the current legislation which is subject to legal challenge. The possibility of legal challenge is likely to act as a deterrent to medical practitioners to provide safe, accessible terminations in small communities causing discrimination against women unable to travel to major metropolitan centres.

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

Up to 24 weeks a termination should be available with no restriction. Women find the decision to terminate difficult. This is not a decision taken lightly by the majority of women. It is demeaning to require a woman, already dealing with a crisis in her life, to have to justify herself to a panel or a medical practitioner.

After 24 weeks there should be a panel of 6 people, including 2 doctors, 2 allied health professionals and 2 non-health professionals, to receive submissions in relation to late stage terminations. The reasons for these should be predominantly, but not exclusively, medical.

The size of the panel is to spread the decision making and responsibility. One of the reasons for this suggestion is concern that the pro life lobby will continue their targeting of individuals who are pro choice.

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?

Whilst accepting that the disability lobby will find such a provision offensive, it is for the woman who is carrying a child to decide what is a 'serious handicap'. It is, of course, impossible to predict how a family or mother will cope with a handicapped child but it is essential that the wish to not bear a child with a 'serious handicap' is respected. This issue needs to be faced rather than ignored. Women, with the financial capacity to do so, will obtain a termination in another State if they are denied the capacity to terminate a pregnancy when there is the risk of a 'serious handicap'. This leaves yet again the financially disadvantaged with a less accessible system of health care.

It is difficult to know whether defining 'serious handicap' is a useful measure or whether it is better left to the individual and ultimately the judiciary to decide this matter if it were to be challenged. This unfortunately does not sit easily with making the law clear and straightforward.

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?

Women should be able to obtain a termination without restriction up to 24 weeks. After 24 weeks there should be a requirement for a panel of 6 to be involved in the decision making process as detailed in Question 3.

The period of gestation is difficult to gauge due to advances in medical science being able to keep younger and younger fetuses alive. However, just because medical technology can achieve an end does not always mean that it should. Neither is it the same to desperately want a long awaited pregnancy of 24 weeks to end successfully and be willing to trade quality of life for a much wanted baby than to find it unacceptable for a myriad of reasons to bear a seriously handicapped child.

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

This is a difficult consideration. It is not useful, with the advances in technology, to purely rely on a gestation period that allows a child to be born alive and exist independent from its mother if that independence relies on massive medical intervention and complex machinery to maintain life. Twenty-four weeks is a time when women are usually conscious that they are pregnant. It also allows for the many tests that are available to ascertain whether there are disabilities present to have been conducted.

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

If the suggestion to make terminations lawful up to 24 weeks were accepted the role of the medical practitioner would be to carry out the termination. After 24 weeks the medical practitioner would need to have whatever document the panel issues to ensure that they were engaging in a lawful procedure.

The medical practitioner should not be required to notify the health department or similar body. Collecting statistics in relation to terminations is more likely to be used to disadvantage women than to support any of the preventative measures that should be put in place to keep the rate of abortion stable or bring about a reduction.

8. Who should have the final say in deciding if a termination will take place? Up to 24 weeks the woman. After 24 weeks the panel in consultation with the woman.

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

No. It should be conditional upon a woman being less than 24 weeks pregnant. Information should be given following a termination on contraceptive methods and voluntary counseling available if a woman wanted to attend.

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 medical practitioners do not want to perform terminations for religious or moral reasons they should have to make this clear and put arrangements in place to ensure that their patients are not disadvantaged in anyway.

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

Insert the proviso in the English statute that the offence of child destruction was not committed if the act was done in good faith with the intention of saving the life of the mother.

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

- Simplified legislation that takes away any ambiguity or possible encouragement of the pro life lobby to behave in an oppressive and intimidatory manner towards women and health professionals.
- Legislation in plain English
- Termination up to 24 weeks without recourse to counselling unless requested.
- Women to have the final say over their medical treatment in this instance.
- Termination requests after 24 weeks to be considered by a panel within a timeframe that does delay the procedure.
- Terminations to be available for 'serious handicap'.
- Clients to be identified by a number to avoid discrimination and identification for panel consultation.

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