

**Victorian Law Reform Commission Discussion Questions
Submission by the Victorian Women's Trust**

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

A Woman's Right To Choose

While there are many ethical and legal principles that could inform the law of abortion in Victoria, we believe the overarching principle should be a women's right to choose to access safe, legal abortion.

For many women, the decision to have an abortion is an enormous one, made with many considerations – their age, their life stage, financial status, the reality of positive future shared parenting arrangements are just a few issues that can influence a woman's decision. As Women's Health Victoria states in their 'Abortion Issues' Paper (2005), "unplanned pregnancies can have negative life consequences for the mother and child in terms of education, employment, financial security, and health".

Removal of sections 65 and 66 from the Crimes Act is an essential step to ensure women are able to legally exercise their right to choose. Consideration of abortion is a difficult enough process for most women without the additional potential guilt of 'criminality'.

It is every woman's right to obtain a properly regulated, medically performed abortion. It is inappropriate for the obtaining of an abortion to be a criminal offence. Criminalising abortion attaches stigma to it and can increase the distress many women feel when obliged by circumstances to terminate a pregnancy.

Equitable Access to Health Services

Ethically, Victorian women should have equitable access to the full range of reproductive health services (including safe legal abortion), with health professionals respecting a woman's right to choose to have an abortion.

Our particular concern in the current provision of equitable access to reproductive health services is for women who live outside of Melbourne. As Women's Health Victoria's 'Difficulties in Access to Termination of Pregnancy Services' Paper (2007) outlines, "no private clinics operate outside of metropolitan areas, access to terminations in public hospitals is limited or unavailable, privacy and confidentiality are less able to be ensured, and financial pressure is often increased". Accessing services is also incredibly hard for women if the only GP in town conscientiously objects to providing these services, and is reluctant or slow to pass on timely referral to other services.

We believe women who live in regional and rural Victoria should not have to face extra barriers in accessing safe legal abortion. We believe if abortion is

removed from the Criminal Code, and health practitioners who conscientiously object to the procedure are required to provide women with timely information about other services, this would improve the overall health conditions for women living outside of Melbourne.

For many regional women, there is no viable local access to abortion services and it is necessary for them to travel to Melbourne for the procedure. "Even where a service exists, women in rural and regional areas may travel elsewhere to access termination services to ensure privacy and confidentiality" (Women's Health Victoria, 'Abortion Issues Paper', 2005). There are much larger costs for regional women who decide to travel to the city for the procedure (overnight accommodation costs, childcare costs for existing children, travel costs). If they choose to access a private clinic, recent estimates have suggested some private clinics are charging up to \$120 - \$250 ex-Medicare rebate (statistics released by federal Member for Lalor Julia Gillard).

Conscientious Objection under the Current Law

While we believe it is the right of health professionals to retain the ability to conscientiously object to carrying out an abortion (except when a woman's life is at risk), such health professionals should be required to ensure appropriate (and timely) service referrals are made available to women. Currently, with abortion still part of the Crimes Act, some health professionals can use the excuse of the law not to provide appropriate referrals.

Respect for International Human Rights Obligations

All Australian states have legal obligations that arise from Australia's status as a signatory to the Convention on the Elimination of Discrimination Against Women (CEDAW), which provides in Article 12 that "State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning".

Timely Provision of Services and Information

We believe that as part of ensuring improved access to health care services for women in Victoria, sex education in schools would also be beneficial to the community. We know that planned pregnancies are positive to both women and society. We know that a high proportion of the small number of women who obtained late term abortions in Victoria (in recent years over half of which were for foetal abnormalities), were not aware that there are added constraints on obtaining abortions after 20 weeks gestation. "In at least 80% of cases, women seeking terminations later in their pregnancy did not realise they needed to request abortion until they were more than three months pregnant" (Women's Health Victoria, 'Termination of Pregnancy Post 20 Weeks' Paper, 2007).

For some women who had late term abortions, the lack of the timely provision of service referrals was also an issue. We know that there are lower rates of abortion in countries with more liberal laws than Australia, and we believe timely access to abortion services, as well as more information on contraception (and abortion practices) in wider community sex education, would potentially reduce the number of abortions currently taking place. As Women's Health Victoria states in their Abortion Issues Paper (2005), "evidence demonstrates that comprehensive sexual and reproductive health education and access to a variety of effective contraceptive choices help lower the rate of unwanted pregnancies" (quoting the Australian Reproductive Health Alliance, 'Reducing the Abortion Rate Information Brief', 2004).

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

Access to Services

Access to reproductive health services, including screening and family planning information is integral to comprehensive health care for women in Victoria, regardless of where they live in the state. By removing abortion from the Crimes Act, and ensuring it is regulated like any other health procedure under the health system, will improve women's access to safe legal abortion.

As a women's organisation we place a lot of faith in a woman-centred health care model, which respects a woman's choice, provides timely and accurate information on family planning, as well as honouring the privacy needs of such a procedure.

Access to Counselling Services

We believe women who require an abortion should have access to supportive counselling, integrated with the health care system. This counselling should not be compulsory, but it should be actively encouraged, when the service providers consider that a woman undergoing an abortion would benefit from counselling.

Service Improvements for Regional Victorian Women

As time is of the essence for women choosing to terminate a pregnancy, we believe improvements must be made for regional Victorian women. As public services are severely limited regionally, we believe vast improvements could be made to improve access to safe, legal abortion. With the rise in the availability of RU486, which will presumably be administered by GPs, we believe this will improve access for some women in regional areas, particularly if relevant training regarding its use is made available to GPs and other health professionals. Health professionals who conscientiously object

should be required to provide women with referral services to those who do perform the procedure.

Health Practitioner Training, including Special Interest Groups

As RU486 becomes available, this will increase the likeliness of GPs administering the drug. We recommend that GPs (particularly in regional areas) undergo training so as to better inform women of their options, and to ensure GPs in regional areas are aware of reproductive health services in their area available to women. This is particularly critical if a health practitioner conscientiously objects to abortion.

Training and the dissemination of information for health professionals across the state for special needs groups, like young women, poor women, rape survivors and HIV infected women would also be beneficial.

Data Collection

Training should include emphasis on the need for ensuring privacy, as well as the accurate recording of procedures so as to help better inform future service delivery. According to Women's Health Victoria, "currently only South Australia, Western Australia and the Northern Territory collect accurate abortion statistics" (Abortion Issues Paper, 2005). We believe there is room to improve the accuracy of data collection in Victoria, provided appropriate measures to safeguard privacy are in place.

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

Women should not be made to jump through hoops to get an abortion. The 2003 Australian Survey of Social Attitudes revealed 81.2% of respondents agreed that a '*women should have the right to choose whether or not she has an abortion*'. We support the ACT's recent abolition of abortion from the Criminal Code, allowing for lawful abortion '*without restriction as to reason*'.

- a. Consent of the pregnant woman? Yes
- b. Threat to the life of the pregnant woman? No
- c. Her physical and mental health? No
- d. Social and economic factors when considering the physical and mental health of the woman? No
- e. Other factors?

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?

We caution against including special grounds for termination, including if the foetus is at risk of serious handicap. For women dealing with the prospect of having a child with serious handicap, their consent to terminate should be

treated as the same as women considering the procedure when not at risk of serious handicap.

If consent is the overarching factor taken into account in deciding whether a termination is legal, then including special grounds is irrelevant. A woman's request for an abortion should be the principal criterion taken into account in determining the legality of a woman's right to a termination.

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?

We caution against introducing a 'staged' model of determining whether a termination is lawful, as any 'staged' system is highly subjective, difficult to regulate and susceptible to being superseded by medical advances (i.e. the increasing capacity to keep premature babies alive).

We know that current clinical practice makes it very hard for a woman to have a late term abortion, as most health practitioners will not perform the procedure. We are not advocating a change to this current practice.

We believe that the small rate of late term abortions may decrease if:

(1) women are more readily able to access reproductive health services, which ensure screening procedures in a timely manner. It is also important to ensure that any future medical advances in screening procedures that provide the earliest possible detection for foetal abnormalities be made available to Victorian women. With women tending to have babies later in life (and therefore being at greater risk of foetal abnormalities), it is crucial that they have timely access to the best screening services available, so any decision to discontinue the pregnancy can be made in a timely manner. We believe women should have equal access to diagnostic tools and support early in their pregnancy, and be made aware of all their options.

(2) information about the process of abortion (including the medical preference for terminating first trimester foetuses) is included in sex education, particularly for young women. Sex education content (in schools etc) could be better regulated in Victoria so as to provide young women with information about abortion (including termination procedures, and privacy issues), as well as covering the range of contraceptive options.

Unfortunately, late term abortions will remain a reality for some women for the foreseeable future. With better sex and contraceptive education, and with better access to services (particularly for regional women), we would hope to see the instance of late term abortions decrease in Victoria.

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

Again, we caution against the introduction of declaring a ‘staged’ point in a woman’s pregnancy lawful, as this is, and will remain a contentious arbitrary issue.

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

We believe a woman considering a termination should be the key decision maker, but in practice, the reality is that this decision is a combination of (1) the woman’s decision and (2) the medical practitioner willing to undertake it.

Panel systems that operate in states like Western Australia create extra-complicating layers for women wishing to terminate a pregnancy, and ultimately take control of choices concerning women’s reproductive systems away from them. We believe the whole of society benefits when women feel in control of their bodies, capable of making informed choices about their health and their lives, supported by their doctor and accessible counselling services. We recommend that Victoria does not adopt a panel-decision making model.

Practitioners should be required to notify the Health Department or other designated body which is charged with the requirement to keep data in relation to abortions when a procedure has taken place. It is critical that data collection respects the privacy of women, and data should be recorded in a non-identifiable accurate way.

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

As surveys consistently show that the majority of Australians (over 80%) believe a woman should have the right to choose whether or not she has an abortion, a woman should have the ultimate say in deciding if a termination will take place.

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

No. Counselling for women accessing termination should not be made compulsory. However, access to competent counselling should be available to women in a timely manner who are considering the procedure, and/or have had it. This counselling could canvass information about the procedure itself, the possible emotional effects a woman can face post-termination, follow-up services (including ongoing counselling), as well as providing information on the latest full range of contraceptive and family planning information.

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?

Yes. We respect a health professional’s right to conscientiously object to the procedure, even if termination is no longer part of the Crimes Act. However

such health professionals should be obliged to provide a woman with timely referral to a service that does not object to the procedure.

In the case of a woman's life being at risk unless she has a termination, health professionals who would normally object to the procedure should be required to perform it by law where there is no reasonably practicable alternative practitioner available to perform the procedure during an appropriate time.

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

The Women's Trust's initial understanding of this law was that it was used to cover instances in which violence against a woman had resulted in injury or death of a foetus. However following consultation with the Law Reform Commission, our new understanding is this law was historically used for cases when a termination takes place during birth.

With the Offence of Child Destruction (section 10) no longer in use, it is questionable as to why the offence should be retained. However, if retained, we believe section 10 needs to be clarified, with the intent of this clause made explicit. If sections 65 and 66 of the Crimes Act are repealed, it must be made clear that the offence of child destruction cannot be used as a loophole for the prosecution of abortions.

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 key elements to reforming the law of abortion in Victoria should be:

- a. the abolition of sections 65 and 66 from the Crimes Act,
- b. a clearer definition of the use of section 10, with more focus on how the law is intended to be used,
- c. ensuring the primary factor taken into account is a woman's right to choose to have an abortion,
- d. ensuring women have timely access to safe, legal abortion through reproductive health services, regardless of where they live in the state,
- e. ensuring women have access to the latest contraceptive and family planning information, with scope for wider community sex education
- f. ensuring health professionals respect a woman's right to choose to have a termination,
- g. where health professionals exercise their right to conscientiously object, that they be required to offer timely referral services
- h. that health professionals are required to terminate a foetus if the woman's life is at risk where there is no reasonable practicable alternative practitioner available to perform the procedure during an appropriate time

- i. that information regarding procedures is recorded accurately and in a non-identifiable way, so as to better inform future service delivery.
- j. Implementation of changes to the law be accompanied by resources for information, training and service development.

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