



Professor Neil Rees
Victorian Law Reform Commission
PO Box 4637
GPO Melbourne
VIC 3001

8 November 2007

Dear Professor Rees

Re: The Law of Abortion

Youthlaw welcomes the opportunity to comment on the Victorian Law Reform Commission's Information Paper on "The Law of Abortion".

Our submission is attached.

If you have any queries, please do not hesitate to contact Tiffany Overall on (03) 9611 2422.

Yours sincerely

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1. About Youthlaw / Front yard

Youthlaw is a specialist community legal centre for young people up to the age of 25. In the 2006/7 financial year we provided legal information, advice and representation to over 500 young people from the inner city and from locations throughout Victoria through our legal clinic and by telephone and email.

Youthlaw is also co-located with 7 other youth services as part of Frontyard Youth Services at 19 King St, Melbourne. In the 2006/7 financial year, Frontyard Services assisted 1,832 young people and had 11,000 contacts with young people. Young people accessing Frontyard Services are mostly aged between 18 and 25 and are either homeless, experiencing significant family breakdown or deemed to be 'at risk'.

Youthlaw has consulted with staff of the Young People's Health Service (YPHS) which is also located at Frontyard services in regard to the legislation. The doctors and nurses of this outreach service of the Royal Children's Hospital Centre for Adolescent Health has had over 3,000 contacts with young people each year.

Recommendation 1- Youthlaw submits that Victoria should follow the Australian Capital Territory's lead in decriminalising abortion for the reasons articulated below.

2. Current laws are uncertain

2.1 Abortion laws

The current law is unclear and inhibits the ability of providers to address unintended pregnancy and abortion as a health matter rather than as a political and legal question.

Abortion is still regarded as a crime however it is legal to have an abortion if the abortion is performed by a doctor who believes that continuing the pregnancy and having the baby would lead to a serious danger to her life or physical or mental health and would be more harmful than having an abortion. The YPHS service regularly faces the difficulty of explaining the current law to young people who find it very confusing.

2.2 Young women and informed consent

Youthlaw recommends that informed consent of pregnant women of all ages be the primary basis for laws relating to abortion in Victoria, and this should ensure that women are provided with all-options and a full range of information open to them.

However the Young People's Health Service has observed a reluctance of doctors to provide termination service to young people under 16 years due to a lack of

clarity regarding not only the law of abortion, but also whether they have sufficient understanding and intelligence to understand fully what is proposed.¹

As a general principle of medical law, a young person is able to consent when he or she has sufficient maturity to understand what is being proposed. The Medical Practitioners Board of Victoria has developed a statement to clarify some of the legal, ethical and clinical issues for doctors involving Young People and Informed Consent.² Determining competence can be complex, and will lead to the health service provider having regard to the young person's maturity and their understanding of the relevant circumstances. There will be younger persons, in certain circumstances, who have attained sufficient competence (maturity and understanding) to make their own decisions. Conversely, there may be older teenagers who lack such competence. Health service providers will need to deal with each case subject to its circumstances

Youthlaw notes that even if the doctor determines that the young person is not *Gillick* competent to consent to termination procedures, the question of whether that young person possesses the maturity and understanding to decide that the information not be disclosed to her parents involves a separate assessment. Youthlaw emphasises that the law of abortion in Victoria must be guided by legal principles of privacy and must protect the right to privacy found in the *Charter of Human Rights and Responsibilities*. It may be that a child is mature enough to understand the privacy issue even if they are unable to understand the implications of having termination treatment (such that the doctor decides against providing such treatment).

2.3 Child destruction

The legal uncertainty about abortion is further increased by the offence of 'child destruction' in s10 of the Crimes Act. This offence applies to 'unlawful termination' late in pregnancy such as that caused by an aggravated assault to the woman when pregnant. However the situations in which the law applies are variable and uncertain. In Victoria, abortion in late pregnancy is said to be lawful if done in *good faith*, solely to preserve the mother's life. However the wording of s10 of the Crimes Act could be interpreted to include a woman unlawfully terminating a pregnancy via "normal" abortion procedures.

The balancing task required by s10 is overly complex and difficult for medical practitioners to implement their daily roles.

Recommendation 2: Youthlaw recommends that s10 of the Crimes Act be repealed.

3. Decriminalisation protects young women's human rights

Youthlaw supports young women right to access safe and legal abortions, and to be involved in and have control of decisions about their bodies. This means

¹ *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL).

² <http://medicalboardvic.org.au/content.php?sec=52>

ensuring they are not legally impaired or compromised and that they have equitable access to a range of reproductive health services, confidential and non judgmental counselling relevant to their particular medical, psychological and social situations. They have a right to access a wide range of accurate information to help them make informed choices about their health and reproductive lives. Youthlaw believes that if a woman wants a termination after counselling and in consultation with her doctor she should be able to access one that is safe, affordable and legal medical and surgical abortion methods, in an accepting environment.

3.1 Access to confidential and non judgmental counselling and other family planning services

The issue of unexpected pregnancies has major implications for the physical, social and emotional health and well-being of women, children, families and for the community as a whole.

YPHS staff noted that young people who are referred to and can access family planning services, particularly sexual health centres like the Action Centre in the city, the Pregnancy Advisory Service or the Women's Alcohol and Drugs Unit at the Royal Women's Hospital receive extremely good care, support and information.

The Action Centre has been running as part of Family Planning Victoria (FPV) sexual health centre in Elizabeth Street in the city, has youth services based at Box Hill and Shepparton and in the City of Melbourne, as well as outreach clinics in the City of Wyndham, the Youth Resource Centre Hoppers Crossing and from Casey Cardinia Community Health Service in Cranbourne. Around 10,000 young people attend per year in both the clinical and education setting. Young people who utilise the service range in age from 13 to 25 years of age. They have doctors, nurses and counsellors. Services are free to those young people under 18. The Action Centre also has youth educators who see young people, as well as train and educate health professionals.

However many young people do not know about or are not able to access these services for a range of reasons.

A. Culturally and linguistically diverse young women

Young people from multicultural backgrounds can find themselves in conflict with parents, family, community and peers. This can limit their access to appropriate information and support in sexual health matters. The access of young women to services is of particular concern as unplanned pregnancies can have a significant impact on the the future of these young women. They face judgmental services including many doctors who will not perform procedures. This can result in late term abortions. An example was a young women who turned up at YPHS who had been to five services (seeking an abortion) but received no productive assistance. She was quite clear she wanted a termination and finally with the health services assistance had one.

B. Rural and remote young women

Rural and remote women are significantly disadvantaged in their access of confidential and appropriate information in regard to pregnancy options due to

limited services. There may be only one doctor available in a rural area, who may not be willing to provide information and referral of all options to a young woman with an unintended pregnancy.

C. Lack of affordability

Many economically disadvantaged women are unable to afford the cost of termination of pregnancy services in private clinics. Other than those young people who get referred to Royal Women's services, private providers can be very expensive particularly for late term procedures.

A typical example is a young woman from a rural community presenting and requesting termination of her pregnancy at 8 weeks. A doctor may be sympathetic but unable to arrange surgical termination in a country hospital. She may then be referred to a private clinic hundreds of kilometres away at considerable costs.

Recommendation 3 - Youthlaw supports the position statement of Family Planning Victoria particularly to promote the provision of the range of services related to unplanned pregnancy delivered by the family planning organisation.

- Youthlaw supports the expansion of sexual and reproductive health clinical and education services in order to reduce the rate of unplanned pregnancy and abortions.
- Youthlaw supports the development of dedicated termination of pregnancy clinical service units regional hospitals for provision of services to young women under 25 years.