



A Road Map to Abortion Law Reform

Conversations with the some of the key organisations and individuals involved in
the campaign for abortion law reform in Victoria, Australia

Melbourne and Hobart, Australia

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Introduction

Following a long and committed campaign by abortion law reform advocates in Victoria, Australia, the Abortion Law Reform Act was passed in October 2008, bringing the law relating to termination of pregnancy into line with existing clinical practice and community attitudes in the state¹. The Act:

1. Removes abortion from the Crimes Act 1958;
2. Outlines the grounds on which abortion may take place; and
3. States the obligations of registered health practitioners with a conscientious objection to abortion.

The grounds for termination of pregnancy are that any woman who is no more than 24 weeks pregnant can obtain an abortion from a registered medical practitioner. After 24 weeks, the abortion can be performed only if the medical practitioner reasonably believes it is appropriate in all the circumstances, that is, having regard to all relevant medical circumstances and the woman's current and future physical, psychological and social circumstances. They must also have consulted at least one other medical practitioner who also believes it appropriate.

The reform of Victoria's abortion law was considered an outstanding achievement for women's health as well as women's sexual and reproductive rights. It was the result of the work of many groups and individuals with an interest in women's sexual and reproductive health from a wide range of sectors including women's health advocates and advocacy groups, service providers, academics, politicians, and lawyers. Several other Australian states have also reformed, or are in the process of reforming their laws concerning abortion. Australian Capital Territory (ACT) legalised abortion in full in 2002, and was the first Australian state to do so. Western Australia achieved partial decriminalisation in 1998.

Abortion Law Reform in Victoria

The process and outcome of abortion law reform is undoubtedly largely determined by the specifics of the law, and the political and social environment, of the place in which law reform is desired. However the similarities in the legal, clinical and social context of abortion in Australia and New Zealand mean that may be much to learn from the success of abortion law reform campaigns undertaken in some Australian states.

This paper presents a summary of conversations held by Women's Health Action in May 2010 with some of Victoria's abortion law reform campaigners. Our conversations included academics, service providers, clinicians, women's health advocates and politicians. Informants were:

- Dr Louise Keogh, Research Fellow, Key Centre for Women's Health in Society, University of Melbourne
- Annarella Hardiman, Manager, Pregnancy Advisory Service, Royal Women's Hospital
- Zeynep Yesilyurt, Pregnancy Advisory Service, Royal Women's Hospital

¹ Women's Health Victoria Women's Health Issues Paper No.6 'Women and abortion' May 2010

- A senior advisor from Royal Women's Hospital
- Dr Jo Wainer, Director, Gender and Medicine Research Unit, Monash University
- Candy Broad, MP for Northern Victorian Region

In conducting these conversations we were interested in the catalysts for reform; features of the campaign; key messages; factors that contributed to a successful outcome; funding sources for campaigns; evidence requirements; how to deal with concerns about losing ground; and outcomes of decriminalisation.

This paper is also informed by the perspectives of two other individuals who were instrumental in the reform process and who presented on the topic at the Australian Women's Health Network Conference held in Hobart, Tasmania in May.

- Marilyn Beaumont, Director, Women's Health Victoria
- Dr Chris Bayly, Melbourne abortion clinician

We have collated the information gathered during the course of these conversations, and through our attendance at the Australian Women's Health Network Conference, and our findings are presented below.

What were the catalysts for reform?

There was a series of catalysts over a number of years for abortion law reform in Victoria that were context specific for the region. Informants described a snowball effect and emphasised the need to maintain momentum as this process took several years. Political leadership was considered very important, as was the referral of the issue for consideration by the Victorian Law Reform Commission.

- An increase in the number of women MPs who tended to be more sympathetic to the issue².
- A crisis situation. A high-profile case in 2000 at Melbourne's Royal Women's Hospital related to a late term abortion for fetal abnormality. The case resulted in the suspension of clinicians, staff resignations, and extensive media scrutiny. The case involved coroners, the Medical Practitioners' Board and politicians, and revealed contradictions in understanding about the legal status of abortion, particularly late term abortion. This resulted in concern amongst medical practitioners that they were acting outside the law in performing abortions³.
- In February 2006 a private members bill successfully overturned the decade long ban on RU486 (Mifepristone) which meant potential for service development in regards to early medical abortion.
- A Private Member's Abortion Reform Bill was brought by MP Candy Broad in July, 2007. While this Bill itself didn't go anywhere it raised abortion law reform as a political issue. Candy Broad played an important role as an activist within her party to lobby for support for the issue.

²J. McCulloch. 'Parliamentary glass ceilings: cracked not shattered'.

<http://www.pol.mq.edu.au/apsa/papers/Refereed%20papers/McCulloch%20%20Parliamentary%20Glass%20Ceilings-%20Cracked%20not%20Shattered.pdf>

³ De Crespigny, L. Savulescu, J. 2004 'Abortion: time to clarify Australia's confusing laws', Medical Journal Australia, Vol 181, No 4, pp. 201 – 203.

- A change in political leadership. The Catholic Premier of Victoria Steve Bracks was replaced by a more progressive Premier John Brumby in July 2007. The new Premier supported abortion law reform and referred the issue to the Victorian Law Reform Commission.
- The Victorian Law Reform Commission's final report was considered a great document and is considered to have been instrumental development in the law reform process in Victoria⁴. The report was tabled in parliament on the 29th May 2008 and presented three options to the government for the decriminalisation of abortion in Victoria. By October the same year government legislation was passed.
- A major conference: 'Abortion in Victoria: Where are we now? Where do we want to go?' was held in Melbourne in November 2007 by the Key Centre for Women's Health in Society, the University of Melbourne, Royal Women's Hospital, Family Planning Victoria and Women's Health Victoria. While the conference was held relatively late in the picture it demonstrated united support amongst clinicians/providers, academics and non-government organisations for law reform which was very reassuring for politicians. The conference resulted in the 'Abortion in Victoria – The Melbourne Declaration' endorsed by the participants of the conference⁵.

What were the major levers/arguments for decriminalisation?

Informants described the need for very solid arguments, aimed at politicians, to justify why abortion law reform was a necessary or important political issue. This was about identifying levers that would appeal to politicians.

Better services

- Informants suggested a focus not on law reform for its own sake but rather law reform as a necessary means for ensuring better services, particularly for women facing access issues related to their geographical location eg. rural women. They described the need to focus on the gains to be made in terms of developing and expanding services.
- The argument to politicians was that the current situation gives permission to service providers to not provide a good service nor address access issues.
- Decriminalisation on the other hand assists service improvement by removing barriers and addressing lack of coordination of services.
- The issue of conscientious objection was also a useful lever with politicians. The argument to politicians was that the current legal situation provided anti-choice health professionals an opportunity to hide behind the law and not refer women for abortions on the basis of their personal beliefs.

⁴Victoria Law Reform Commission, 'Law of Abortion: Final Report'.
<http://www.lawreform.vic.gov.au/wps/wcm/connect/justlib/law+reform/home/completed+projects/abortion/lawreform+-+law+of+abortion +final+report>

⁵ 'Abortion in Victoria – The Melbourne Declaration'
[http://www.kcwh.unimelb.edu.au/_data/assets/pdf_file/0019/83305/Abortion in Victoria Declaration V1.pdf](http://www.kcwh.unimelb.edu.au/_data/assets/pdf_file/0019/83305/Abortion+in+Victoria+Declaration+V1.pdf)

Workforce Issues

- Abortion law reform is important to address legal uncertainty for health professionals in terms of the legality of providing abortions.
- Resolving this uncertainty is important for ensuring a stable workforce to provide these important health services.

Cultural Shift

- Decriminalisation will help address the stigma faced by both health consumers and clinicians that results from uncertainty about the place of abortion in law.
- In the long term, decriminalisation contributes to a cultural shift in attitudes about abortion.

Modern and Innovative Legislation

- The government needs to modernise legislation and be innovative; ensuring legislation is in line with community attitudes and existing practice.

What were the key messages of the campaign?

Informants described the need for wide based alliances of policy makers, lawyers, activists, politicians, academics, health service workers, and for a range of different spokespeople from these various sectors able to deliver the same or similar message. Informants also insisted on the need to keep the message simple, to stay away from moral and ethical issues, and to focus on abortion as a health issue. Key messages were:

- Abortion is a health issue and it should be provided as a health service. It should be removed from the Crimes Act.
- Abortion is a necessary women's health service.

Royal Women's Hospital and academics countered the concern that abortion law reform would lead to an increase in the number of abortions with the message that:

- Legalising abortions won't increase the rate of abortions – the rate has remained constant over time.
- Decriminalisation won't increase abortion but it will change patterns of access/distribution of services.

What evidence was needed to support the campaign?

Informants identified the need for both qualitative and quantitative evidence to support the campaign.

- Qualitative case studies which demonstrated how the current situation affected women's access to and experience of abortion services, as well as clinicians practice and perception of providing abortion services. Women's and provider's stories were a powerful resource for the campaign⁶.
- Quantitative studies which were able to demonstrate statistically that rates of abortion don't change over time and that there is a consistent need for these services.
- Informants described the need to collect evidence/data from women and clinicians about the issues faced by women in rural areas, as rural access issues were an important political driver for abortion law reform.

What about the fear of losing ground?

Informants acknowledged the realistic fear of losing ground in the current status of abortion laws when they became involved in the campaign and described strategies or rationales for how they addressed this fear.

- A strong discourse amongst informants was the need to acknowledge the fear and go with it anyway because of the importance of the issue and the potential gains for women's health.
- Informants argued that it was time to move past reactive defense of abortion services and get proactive in setting the agenda ourselves rather than having it set by anti-choice activists.
- Informants focused on the potential gains to be made from decriminalisation in terms of service development.
- Informants described the circumstances that led to partial decriminalisation in Western Australia. The outcome in Western Australia was considered to be the result of the successful influence of anti-choice campaigners in the reform process. The major lesson here was to accept no amendments to legislation.

Building a campaign

- Informants stressed the importance of making sure you have a great team of women working on the issue and work together – collaboration was very important. Collaboration in Victoria included some large and respected organisations: Women's Health Victoria, Reproductive Choice Australia, and the Planned Parenthood Federation.
- Informants described the process as a long term commitment and that once underway you needed to be prepared to see it through. One activist described, "You're in it for the long haul, however long it takes and there's no way out".
- Informants described the need to have everything together early, to think long term and to strategise.

⁶ Key Centre for Women's Health in Society, 'Understanding women's experiences of unplanned pregnancy and abortion', Melbourne School of Population Health, The University of Melbourne, 2009.

- Perhaps most importantly informants described the need to take care of yourselves and each other, and stressed the importance of strong relationships.
- It was discussed that in an abortion reform campaign you need to remember that men have an interest in women's health too and this is a good way to engage men in issues related to sexual and reproductive health.
- Informants stressed the importance of the need to resource campaigns. They suggested developing links with the philanthropic sector, and in particular sympathetic women within this sector.
- They encouraged the development of funded roles – make abortion law reform campaigning a legitimate women's health activity.

What were the major activities of the campaign?

Informants described the need to target advocacy. The campaign in Victoria maintained a high-level focus on political lobbying rather than a community campaign as the main activity as this was essentially a political rather than a community issue.

- Pro-choice Victoria was a very instrumental group and ran a promotional campaign to support MPs who supported the Bill⁷. This was considered by informants as a very important activity. Pro-choice Victoria was also very successful in securing funding.
- Encouraging people to lobby their politicians was also considered a key activity.
- The best way to support this activity was to develop an email-stream with key messages about what to send to your MP.

What were the major factors for success in Victoria?

Informants described aspects of the campaign that they felt contributed to a successful outcome in Victoria.

- Friendly politicians were very important. Informants described the need to have women in parliament behind this and of the importance of cross party support. Informants suggested that it would be very useful to invite key women politicians from Australian Labour Party to talk to Labour women here in New Zealand.
- Good information for politicians was vital. Women's health groups were responsible for this. For example Women's Health Victoria position papers were very useful⁸.
- The activist group 'Pro-choice Victoria' played a really important part. It worked to bridge women's health experts and politicians. They formed something like a buddy system so that politicians had a contact person who they could go to, to help them with responses and difficult questions.

⁷ <http://prochoicevic.com/node>

⁸ Women's Health Victoria, 'Women and abortion', May 2010.
http://whv.org.au/static/files/assets/8caa639d/Women_and_abortion_issues_paper.pdf

- The role of “The Women’s” (the Royal Women’s Hospital Victoria Australia) was really important. They were able to claim expertise as “women’s health specialists” and produced submissions and opinion pieces against mandatory requirements. The hospital took a formal up front role. Clinicians (public and private) came together in support of decriminalisation. It is important to have the support of the medical establishment and even better a women’s health hospital.
- Informants stressed that the support of medical professional groups was absolutely key. Medical professional groups successfully argued the clinical autonomy angle and the importance of reducing the legal risks and uncertainty faced by health professionals.
- It was universally agreed that the Victorian Law Reform Commission report was a vital development in the law reform process in that it gave government a good platform to work from in drafting legislation. It was considered that the review had great terms of reference which helped shape a highly regarded final report. The terms of reference included determining current community attitudes and clinical practice. The law review process was open and transparent, and tested everyone’s evidence which contributed to the quality of the report.
- In terms of the actual legislation, informants felt that a government bill rather than a private members bill will get you the best legislation possible. Again they stressed that it was extremely important to accept no amendments.
- Public education didn’t play such a big role in the Victorian campaign. Informants described that this was a higher level campaign driven by clinicians, academics and women’s organisations.
- Informants pointed out that decriminalisation was more legally complex than just the removal of abortion from the Crimes Act and that the campaign needed good lawyers.
- Media strategy: need to explain to young women that abortion services aren’t legal eg. young women journalists. This is a powerful strategy.
- Informants suggested the use of human rights mechanisms where appropriate⁹.

Dealing with the anti-choice lobby

Informants acknowledged the strain of dealing with the anti-choice lobby and described some strategies they employed:

- There is a need to keep your eyes and ears everywhere when you are running an abortion law reform campaign.
- Also of the need to source all the information out there and take the time to counter it.
- Don’t react – keep on message, the key message being “Abortion is an important health issue and belongs in health services’.
- Be as evangelical or passionate about the issue as anti-choice activists are.
- Complain to advertising standards authorities where appropriate – know the codes related to advertising standards.
- Set about myth busting.

⁹ Center for Reproductive Rights, ‘Bringing Rights to Bear: abortion and human rights’
<http://reproductiverights.org/en/document/bringing-rights-to-bear-abortion-and-human-rights>

- Log and document any abuse – keep track of it and make sure you debrief staff.
- Ensure abortion units have a 'difficult and abusive persons' policy.

What were the big wins from the campaign?

Informants described some aspects of the legislation in Victoria that they considered “big wins” for the campaign:

- The conscientious objection clause: campaigners managed to ensure that doctors still have to refer regardless of whether they object to abortion on the grounds of conscience. This was deeply contested in Victoria and was considered an excellent outcome.
- Pharmacists/nurse practitioners can perform abortions.
- Gestational limit 24 weeks: the need for two doctors to consult after 24 weeks wasn't seen as an issue as it reflected current practice.

What is the impact or outcomes of decriminalisation?

While informants valued abortion law reform as an enormous achievement they were realistic about the outcomes of decriminalisation and were clear that the work to ensure high-quality and accessible abortion services for women did not end with decriminalisation. However informants described the immediate relief experienced by abortion providers and their belief that decriminalisation would have a legitimising and destigmatising effect that would aid service development and ultimately improve women's experience of abortion.

- Abortion law reform is not an end in itself and there has been no overnight improvement. In a way decriminalisation is just the start and you need to be very active to get and keep women's sexual and reproductive rights on the health agenda.
- Decriminalisation assists the development of a more organised approach to service delivery. However while this was a victory over the hearts and minds of politicians, the health bureaucracy now needs to catch up. This is taking time to filter through.
- There are on-going issues with data collection meaning difficulty with monitoring abortion numbers. Therefore campaigners haven't been able to demonstrate their claim that law reform won't lead to an increase in abortions.
- Legitimising effect: decriminalisation is not the solution to everything but it is a start. It is having a big impact on health professionals/providers through the relief that they are not breaking the law. Women can also feel confident in the knowledge that they are not doing anything wrong.
- Ultimately you need to remember that the reason for it all is improving clinical care and service delivery, and therefore the agenda is the same before and after law reform.

The New Zealand context

The decriminalisation of abortion in some Australian states is contributing to a renewed focus on the place of abortion in New Zealand law. The grounds for abortion in Aotearoa New Zealand remain in the Crimes Act. Under the Contraception, Sterilisation and Abortion (CS&A) Act passed in 1977, abortion is legal so long as it is performed only in licensed premises and women obtain approval from two certifying consultants that they meet the grounds for abortion under the Crimes Act 1961. In 1977 and 1978, the Government amended the Crimes Act to provide a definition of the grounds for legal abortion. Under sections 182 – 187A of the Act, an abortion is permitted during the first 20 weeks of pregnancy on the grounds that: (a) continuance of the pregnancy would result in serious danger (not that normally attendant upon childbirth) to the life or to the physical or mental health of the women; (b) if there is a substantial risk that the child, if born, would be so seriously abnormal as to be handicapped mentally or physically; (c) if the pregnancy is the result of incest or of sexual intercourse with a girl under care or protection; or (d) if the pregnant woman is severally mentally “subnormal”. Women must establish that they meet the grounds for abortion as laid out in the Act in order to legally access an abortion. Ninety percent of abortions in New Zealand are authorised on the grounds that proceeding with the pregnancy would pose serious threat to the women’s mental health. The fees payable to consultants for meeting these requirements exceed \$3, 000 000 per year.

For the most part, despite the restrictive legislation, New Zealand women can access safe and legal abortion services. However, the timeliness of access to services, access for women in rural areas, and choice of abortion method are all ongoing challenges. Silva et al¹⁰ in their recent study of the timeliness of first trimester pregnancy termination services in New Zealand found that women are subject to lengthy delay while seeking these services. On average women waited almost 25 days between the date of the first visit with the referring doctor and the date of their termination procedure. This meant that over half of the women in the study had their pregnancy terminated at ten weeks or above¹¹.

A recent study of geographical access to termination of pregnancy services in Aotearoa New Zealand found that services were difficult to access for over one-sixth of the women in New Zealand. Women with no services in their areas must travel considerable distances to access abortion services. Of particular concern from a health inequalities’ perspective was that women in three of the regions with the highest Maori population are required to travel some of the longest distances to access services, which presents an additional burden to an already stressful event and an already disadvantaged population¹². The authors note:

The increased provision of medical abortion as a safe and acceptable method of pregnancy termination could potentially broaden the service access points to some of the areas where there is no surgical service available.

¹⁰ Silva, M. McNeill, R. Ashton, T. 2010 ‘Ladies in waiting: the timeliness of first trimester pregnancy termination services in New Zealand’, Reproductive Health, Vol 7, No 19.

¹¹ The risk of complications from abortions increases with the gestation of pregnancy.

¹² Silva, M. McNeill, R. ‘Geographical access to termination of pregnancy services in New Zealand’, Australian and New Zealand Journal of Public Health, 2008, Vol 32, No 6, pp. 519 – 521.

The most recent Abortion Supervisory Committee annual report (2009) identified concerns with New Zealand's abortion services, particularly in relation to access to services and choice of method in abortion¹³. The Committee identified a lack of access to abortion services before nine weeks gestation in some areas, and the limited availability of medical abortion in many parts of the country. Medical abortion has been established as a safe, effective and acceptable alternative to surgical abortion and is being used widely overseas both in hospital environments and in the community. New Zealand's legislation relating to abortion has been identified as a constraint to the delivery of early medical abortion services. At the time the legislation was written, surgical abortion was the only established method. The legislation thus only catered for a procedure that would necessarily take place in a hospital environment¹⁴.

Conclusion

The process of abortion law reform in Aotearoa New Zealand will be specific to our particular social, political and legal environment however there are many lessons to be learned from the success of the campaign to reform abortion law in Victoria as we consider undertaking the journey here. Our grateful acknowledgement of Dame Margret Sparrow who helped us make contact with abortion law reform campaigners in Victoria and of course to the campaigners themselves who gave generously and enthusiastically of their time and their experiences.

¹³ Abortion Supervisory Committee Report for the year ended June 2009 http://www.parliament.nz/en-NZ/PB/Presented/Papers/3/0/d/49DBHOH_PAP19205_1-Abortion-Supervisory-Committee-Report-for-the-year.htm

¹⁴ Shand, C. Rose, S. Simmons, A. Sparrow, M. 2005 'Introduction of early medical abortion in New Zealand: an audit of the first 67 cases', Australian and New Zealand Journal of Obstetrics and Gynaecology, Vol 45, pp. 316 – 320.