

# VICTORIAN ABORTION LAW REVIEW: TOWARDS IMPROVING THE STATUS OF WOMEN

When we talk about women's rights, we can get all the rights in the world ... and none of them means a doggone thing if we don't own the flesh we stand in, if we can't control what happens to us, if the whole course of our lives can be changed by somebody else that can get us pregnant by accident, or by deceit, or by force (Luker, 1984:97).

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The Menhennitt Ruling in May 1969 came in the wake of the state Liberal government being increasingly squeezed between its need for Democratic Labor Party preferences for re-election on the one hand and a community overwhelmingly in favour of liberalisation of abortion laws on the other. Ken Davidson, a competent medical practitioner who had been charged with procuring an abortion, was acquitted of all charges after Justice Clifford Inch Menhennitt instructed the jury that an abortion was lawful under particular circumstances. The carefully crafted Menhennitt Ruling provided a common law defence for medical practitioners acting in good faith and, in the process, gave the government an excuse to avoid the 'hot potato' of abortion law reform. Control over decision-making was confirmed as the professional province of the physician, with women having to appeal to the sympathy of their doctor in order to secure an abortion.

Nearly 40 years later, abortion remains a crime under Section 65 of the Crimes Act – punishable by up to 10 years jail – with women's access to abortion in Victoria still under the protection of the Menhennitt ruling.

*That the medical profession's power to decide who should have an abortion, who should perform that abortion and when and where it should occur has gone largely without challenge masks the essentially political nature of much of the decision-making process regarding abortion (Gregory, 2004, pp.230-1)*

Victorian Labor MP Candy Broad chose to challenge women's exclusion from control over reproductive decision-making on 17 July this year when she introduced a private member's bill into Victorian Parliament. The purpose of the Crimes (Decriminalisation of Abortion) Bill 2007 was to amend the Crimes Act 1958 in order to repeal the offences of unlawful abortion, and to ensure the provision of safe and competent health services to women having abortions by restricting the right to perform an abortion to a medical practitioner or someone acting under

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their direction. According to Jo Wainer, the Broad Bill 'placed the responsibility and authority to make the decision with the pregnant woman, where it belongs, and the decision to provide that service with her doctor, where it belongs' (Wainer, 2007). One of the major differences between the Broad Bill and anything that came before it is that she has framed it in terms of women's control over reproductive decision-making and the right of the medical profession to exercise clinical judgement. Ms Broad had the full support of women's health services for this thoughtful and important move.

On 21 August 2007 Ms Broad withdraw her bill, after newly-appointed Premier, John Brumby, announced a review of abortion laws by the Victorian Law Reform Commission (VLRC). The VLRC have been asked to advise the Government on options to remove abortion offences from the Crimes Act 1958 and to clarify the existing operation of the law in relation to terminations of pregnancy. This is likely to lead to a redrafted bill 'to modernise and clarify the law, and reflect current community standards, without altering current clinical practice' (VLRC, 2007).

However, Women's Health West are interested in more than a change to the way that the law is presented; we also want changes to current practices that improve women's reproductive health services and improve the status of women. As long time pro-choice campaigner, Dr Jo Wainer, said, the best way to make improvements to women's reproductive health services is to 'trust women and to safeguard doctors'. (Hilder, 2007).

One of the rumoured-to-be-popular options for removing abortion offences from the Crimes Act 1958 is to regulate abortion via the Health Act. This option might protect medical practitioners – and quell the loud minority that oppose abortion – but it does not tackle the question of women's right to control over reproductive decision-making. While women have greater access to abortion than we did in the 1960s, we are no closer to gaining real control over our bodies – with actions such as China's one-child policy and reports of forced



Kerrilie Rice, Policy Officer, Women's Health Victoria; the Hon. Candy Broad MP, State Member for Northern Victoria Region; Dr Jo Wainer, Abortion Law Reform Association (Victoria) - at Parliament House, Victoria, immediately after the withdrawal of the bill on 21 August 2007

Photo: Robyn Gregory

abortion demonstrating that it is not the availability of abortion alone, but control over reproductive decision-making, that is crucial to women's equality within any society, making the 'right to decide' an important aspect of social, political and economic freedom (Gregory, 2004: 319).

Regulating abortion under the Health Act would shift control over reproductive decision-making from individual doctors to an expensive and bureaucratic state-sanctioned body and does not acknowledge women as autonomous political and moral agents, does not question access to real social power and does not challenge the social relations between women and men – either symbolically or practically. Nor will this impact on abortion rates. The greatest method for reducing the rate of abortion remains improving the status of women. When women have – and believe they have – control over when and whether to engage in sexual intercourse; control over when to use, or demand that their partner use, contraception; freedom from discrimination and violence; and access to the material and social conditions that currently

constrain individual women's ability to bear and rear children; then, the rate of abortion will decrease. Legislating to remove barriers to women's control, is a first step in affecting real change and a significant step towards improving the status of women.

The VLRC released an Information Paper in September, calling for written submissions by 9 November 2007. The Commission's report is due in March 2008. Women's Health West prepared a submission in response to the information paper, which is available on our website at [www.whwest.org.au](http://www.whwest.org.au).

## References

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**The road to women's control over their own reproductive decision-making is hardly a smooth one.**

