Victorian Women with Disabilities Network

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Submission to Law Reform Commission Law on Abortion

General Points

The responses of the Victorian Women with Disabilities Network are framed by our members' experience as people with disabilities and as women. We contend that women through the ages have been seen as objects to be owned and controlled, and in particular for their bodies to be owned and controlled. Our position is that all individuals should be free to practice agency over their own bodies and to make choices about what is best for themselves.

As women with disabilities we are particularly conscious of societal stereotypes of womanhood and of judgements imposed on particular feminine characteristics as either valued or scorned. Our experience is that disability is not valued in either men or women. But for women, physical beauty is narrowly defined and disability is seen to be outside the definition of beauty. Our comments with regard to the VLRC reference on abortion are informed by our experience of discrimination and debasing attitudes toward people with disabilities.

These judgements lead to questions of 'what sort of people should there be' and 'who should decide whose life is valuable?'[1] Our position on these questions is that diversity is critical to the vibrancy and creativity of a society. Furthermore, it is only the individual who must decide the value of their life and whether they find meaning and quality in their experience of life. These principles are the basis on which we have determined our response to the questions posed by this VLRC discussion paper on abortion.

It is important to note the following:

[1] Goggin G and Newell, C Disability in Australia: Exposing a Social Apartheid; UNSW Press, 2005

- There is stereotype that women with disabilities are unloved and unlovable. There is a lack of acceptance of the sexuality of people with a disability. When they inform people that they are pregnant the response is" this is ridiculous, you cant be" and they have problems in being believed and this can lead to delay in accessing abortion services.
- Pressure
  - There may be strong encouragement on the part of medical practitioners or family for an abortion if the woman or the foetus has a disability. There may also be difficulty in women with disabilities securing an abortion if the medical practitioner is of the view that a woman is not able to give consent. Stereotypes of women with disabilities mean practitioners may adopt a very conservative attitude and question women's capacity to make an informed decision where there is no reason to question her capacity. There may also be coercion from anti- abortion groups to continue with an unwanted pregnancy. Women with disabilities who are isolated and unsupported may be vulnerable to these forms of discrimination and coercion.
  - The parents of a pregnant woman who has a disability may use coercion to effect a termination if they cannot cope with caring for a grandchild.
  - Women with cognitive disabilities may live in community residential units with paid carer/ guardians. These carers may influence the decision to terminate. Sometimes the woman may not know what is happening to her, and it can be the easy option to say she is going to hospital for an operation.

- Support should be provided if a woman with a disability decides not to terminate the pregnancy. Depending on the Region, flexible care packages are currently not generally available to be used to care for the baby. They can be used for the woman, but if the child does not have a disability, the mother with a disability can't use her care package to help her to parent the child.
- Some women with cognitive disabilities are great parents.
  Research shows that women with cognitive disabilities may require tailored parenting education and support in order to develop parenting skills. VWDN

advocates for training to family support workers around the most effective parenting education strategies for women with cognitive disabilities.[2]

- Regional areas
  - Women are marginalised because they live in regional areas.
  - There may only be one doctor in the area, who may not provide abortion services.
  - There is a lack of education, and opportunities for employment. This creates financial problems.
  - There are not many counselling services and women may rely on telephone services. This is a problem if no TTY or similar service is available.
  - Women with disabilities in rural areas have the same transport problems as other women but this may be exacerbated by the inaccessibility of public transport and poverty.

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

- Abortion should be decriminalised.
- A woman has a right to choose.
- An important part of a woman's right to choose is informed consent. The decision needs to be based on the options available to her at the time.
- Information should be provided in a range of formats tailored to the needs of individual women. For example, written information should be in plain English. Web based information must be within the guidelines of internet access.
- Free choice must be free.
- There should be an offence that makes it illegal to harass a person entering an abortion clinic. People are harassed whether they are going for a termination or going for advice on contraception.

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

[2] [2] Burgen, B (2006) "Still not accepted: when women with intellectual disability choose to become mothers." Women against Violence **19** Melbourne 2007

- Consent should be taken into account in deciding if a termination is lawful. The consent must be informed consent meaning unbiased comprehensive information on the options available.
- All of the listed factors are basic and form part of informed decision making.
- A termination of pregnancy should only be legal if performed by a registered medical practitioner with appropriate gynaecological training.

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?

- There is no reason to have serious handicap as a separate ground for termination in legislation. A woman should have a right to choose and therefore there is no need for separate grounds.
- Including serious handicap as a separate ground can be used to coerce women to have an abortion, and it can be used to devalue people with a disability.
- It is a very emotive issue. Some women with acquired disabilities may say that foetal abnormality should be a ground for termination, because it imposes a burden on women. Some women with disabilities have suggested that including serious handicap infers that their lives have no value, and that their mothers never considered them a burden.

  There are also problems in defining serious handicap. Some may define serious handicap as a cleft palate, Down Syndrome or Cerebral Palsy. People with Cleft Palate, Down Syndrome or Cerebral Palsy contribute to society. Other people define serious handicap as anencephaly.
- The expectation from some is that you have failed if you haven't produced the perfect child.

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

- ‘Serious abnormality’ is used as a criteria for late termination when a foetus would be deemed otherwise ‘viable’. However, there are other criteria that can be used to determine whether a late termination should be legal.

1. If on the balance of probability a foetus is unlikely to survive because of a serious health problem, this criteria provides a principle for termination after the gestation where a foetus would normally be viable, for example, post 23 weeks.
2. Where continuance of the pregnancy or early induction would cause a risk to the mental or physical health of the pregnant woman.

- The woman should have a right to choose at every stage. Drawing a line cuts across the woman’s right to choose.

Notification

- It may be useful to collect data for future policy development.
- Information should be de-identified and should not be released generally. It should not be used by either side as a political tool.

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

- The woman with the pregnancy.

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

Counselling

- Counselling should be available, but not compulsory.
- A doctor should give the woman an invitation to counselling, but the woman must be able to refuse.
- Some women do not require and do not want to attend counselling.
- A requirement that counselling be available, but not compulsory, should be mandated in legislation, as if it is not, counselling may not be provided. There are funding issues.
- Both pre and post termination counselling should be available.
- Counselling should be independent and allow the full range of choices to be considered.

- The counselling should be provided to assist the woman, not to push either agenda.
- Counselling services that are faith based are not able to provide information on all choices.
- Counselling does not need to be independent of the abortion provider in places like the RWH. The critical criteria are to ensure that there is no vested interest on the part of the counsellor and that counselling includes a full and objective exploration of the options. Tertiary hospitals such as the RWH offer both maternity and termination services. From this perspective there is no vested interest in the woman's decision.
- However, counselling should take place in a different part of the hospital to the termination.
- The counselling must take place somewhere safe and secure, and the woman given a range of options.
- If the woman feels more comfortable with off site counselling, that should arranged.
- Clear standards of practice should be established in counselling services.
- Termination counselling services should be required to be registered to ensure that they respect women's choice in their philosophy. Anti-choice services are not able to offer objective information about all choices.

- Counselling services should be funded and provided as part of other services, including as part of family violence centres.
- While the woman has a right to choose, it can be isolating to view her as single when she is in a stable relationship. The partner should also be offered counselling, when appropriate, and it may be helpful to the woman to include the partner in decision making when and if she so desires. However, women should always be seen initially alone prior to joint counselling. This should be mandatory as women experiencing violence may not be in a position to 'choose' to be seen alone.
- The woman should be given appropriate support during counselling, such as the ability for the woman to have someone, of her choice, with her when she attends counselling, or someone to support her with decision making. (see above point)

Information

- There should not be compulsory showing of pictures of the foetus.
- Women must have access to information about the outcomes of termination and continuing the pregnancy.
- Information must be accessible for women with a disability.
    - There is a need to make sure information is provided in a way such that the woman can understand what is happening to her.
    - The woman needs to know that she is pregnant, what that means, that she will have a baby. The woman must be given information about both carrying through with the pregnancy and termination.
    - Information may need to be provided in plain English or in alternative formats such as large print or pictograms.
    - There should be an opportunity to talk through the issues in a relaxed, informal, understanding situation.

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?

- It may not be workable to require doctors to give information about options, as it would be difficult to know if the woman would receive the right advice.
- If a woman is aware of her rights, she will go to a clinic or the internet, not a GP.
- It could be required that doctors give a referral to a counselling service that offers women information respecting her choice. ie that must provide objective information on a range of options. Services that have a stated anti-choice value position should not be a registered termination counselling service.

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

- The VLRC noted that s10 has only been used when a man has attacked his pregnant partner with intent to harm the foetus. In that situation, there should be a charge of criminal assault leading to death of the child.

Preferred Model

- Abortion should be decriminalised.

- Abortion should only be performed by a medical practitioner with appropriate gynaecological training.
- Informed consent should be taken into account in deciding if a termination is lawful. All of the listed factors are basic and form part of informed decision making.
- Serious handicap should not be a separate ground for termination in legislation.
- A staged approach should not be taken. However, if a staged approach is taken, the line should be drawn toward the third trimester and the rationale should be that the foetus is not viable ie not likely to survive post delivery because of serious health problems.
- Late terminations should be legal where the pregnant woman gives consent and
    1. Foetus is considered, on the balance of probabilities to be unlikely to survive
    2. The continuance of the pregnancy or early induction is a risk to the mental or physical health of the pregnant woman.
- Data on terminations should be collected for future policy development, but information should be de-identified and should not be released generally.
- The woman should have the final say in deciding to terminate.
- Counselling should be available, but not compulsory. A doctor should give the woman an invitation to counselling, but the woman must be able to refuse. Counselling should be independent and allow the full range of choices to be considered.
- Women must have access to information about the consequences of termination and continuing the pregnancy. Information must be accessible for women with a disability.
- There should be an offence that makes it illegal to harass a person entering an abortion clinic.
- See one page statement of WWD Victoria (VLRC has a copy).

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