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END THE CONFUSION

The case for the Decriminalisation of Abortion in Tasmania



Hobart Women's Health Centre



Family Planning Tasmania
sexuality education & clinical services

women's
legal
service
tasmania

Contents

Executive Summary	1
The Law in Tasmania Today.....	3
The Current Environment.....	3
Impact of the Current Environment	4
What is Needed?	4
Overwhelming Community Support	6
A New Piece of Legislation	6
What should be in the new legislation?.....	7
What Next?	9
Frequently Asked Questions (FAQs)	9
The Survey: What do Tasmanian’s really think?.....	11
Real Women, Real Experiences	11
What is the law in other States?	16
Statements of Support for New Legislation	20
Who are we?.....	22
Contact Us	23

Executive Summary

Family Planning Tasmania, The Hobart Women's Health Centre and the Women's Legal Service Tasmania believe that all women should have safe and legal access to abortions, or as we prefer, termination of pregnancy. This position is supported by a wide range of organisations and by four out of five Tasmanians.

It is our strong belief that terminations of pregnancy properly carried out by a medical practitioner should not be a crime and that the laws governing them should not be prescribed within the *Criminal Code Act 1924*.

The termination of a pregnancy is currently the only medical procedure governed under criminal law meaning Tasmanian women seeking one must depend on the opinions of medical practitioners rather than making their own maternal health choices.

With the support of many organisations and individuals we have lobbied Tasmania's Health Minister to take action to:

- Remove all mention of safe, professional abortion from the *Criminal Code Act 1924* (sections 134, 135, 164 and 165); and
- Install new legislation that sits apart from both health and criminal legislation to make the termination of pregnancy a permissible, accessible and safe alternative for unwanted pregnancies in Tasmania; and
- Make it illegal to interfere with those people working in or accessing clinics or hospitals providing pregnancy termination services; and

- Ensure that organisations or individuals who provide pregnancy counselling do so with any declared bias for or against the termination of pregnancy.

Research conducted by Family Planning in May 2012 revealed that Tasmanians strongly support the reform we are seeking. The same research revealed high levels of confusion as to the actual law surrounding the termination of pregnancy by medical practitioners.

Currently in Tasmania:

- Terminations of pregnancy are not performed in the public health system due to the legal risk they pose to medical practitioners and the staff assisting them. This creates a significant access and equity issue for Tasmanian women.
- The laws are out of step with modern societal values and they need to be changed to properly reflect the values of society, to remedy issues of access and equity and to end the confusion once and for all.
- When criminalised, terminating a pregnancy is positioned as a moral choice rather than one of maternal health.
- Women are prevented from choosing termination of pregnancy themselves and must depend on the opinions of medical practitioners to make that choice for them – a situation that does not exist for any other medical procedures.
- Under the current legislation access to termination of pregnancy is limited by

social and economic factors and can have severe consequences for individuals.

For example, rural women may not have access to the two medical practitioners required to gain referral to termination of pregnancy services, and access is limited for women who do not have the financial capacity to pay the gap for private termination services.

Our experience shows that the lack of access to pregnancy termination services in Tasmania creates a greater disadvantage for the young, poor, rural and less educated in our society.

Lack of access to termination of pregnancy and the current legislation governing it locks in the cycle of disadvantage for women who are not able to contemplate this option for an unwanted pregnancy.

New legislation governing termination of pregnancy procedures should be contained within one singular piece of legislation.

A single piece of legislation will provide the clarity and simplicity required to:

- provide total security to medical practitioners and their patients about the legality of safe pregnancy termination services; and
- make clear the right of Tasmanian women to choose pregnancy termination as an option to an unwanted pregnancy.

We believe that there are a number of key points that must be included or addressed in any legislative change. They are:

- Women make the decision
- No gestational limits
- An interference-free zone
- No mandatory information to achieve informed consent
- No mandatory counselling referral
- Conscientious objection clause

79% of Tasmanians 'strongly agree' or 'somewhat agree' that a fully informed woman should have the legal right to decide whether her unwanted pregnancy can be ended early

(FPT research May 2012)

The Law in Tasmania Today

Abortion is illegal in Tasmania.

To access a termination of pregnancy a woman must have at least two doctors certify that continuation of the pregnancy will cause more harm than if the pregnancy was terminated. In this way, the decision to terminate a pregnancy is currently that of the doctors and not the woman.

There is evidence of confusion among Tasmanian General Practitioners about the circumstances in which the termination of a pregnancy can be performed legally.

A survey by Marie Stopes International¹ found that while 78% of Tasmanian GPs surveyed believed they understood the State's abortion laws (compared to 63% of GPs nationally), in fact:

"...very few Tasmanian GPs were aware that an abortion may be legally performed if the woman will otherwise suffer serious social (25%) or economic (8%) consequences."

92% of Tasmanian GPs are unaware that an abortion may be legally performed if the woman will suffer serious economic consequences.

¹ Marie Stopes International, Quantum Market Research, *General Practitioners: Attitudes to Abortion*, November 2004, p. 9.

Confusion and misunderstanding about the legalities of abortion laws in Tasmania result in many GPs being unwilling to take the risk of being involved in a referral.

Currently a medical practitioner may make a conscientious objection to participate in an abortion procedure, but is not required to refer the client on to another practitioner or declare their objection to the patient.

The Current Environment

Terminations of pregnancy are not performed in the public health system and have not been since 2001 (except in the case of severe foetal abnormality/death *in utero*).

Current needs for surgical terminations in Tasmania are serviced by three private clinics, which operate around one day a week each. Most of the clinicians employed by these clinics fly in from interstate.

There can be backlogs of up to three weeks for appointments – a timeline that can be critical for determining the level of invasive procedures required and the necessity of interstate travel.²

The out-of-pocket cost to access these limited private services is between \$200 and \$320 and up to \$1000 for late term abortions as these are only accessible interstate.

There are very limited funding options available to assist those who require access to pregnancy termination services.³

² From conversation with staff at private clinic in Hobart. (May 2012)

³ Youth Health Fund (YHF) and Patient Transport Assistance Scheme (PTAS); neither of these is an ideal use of funds and

Examples of the burden imposed by the current environment on individuals are outlined in the real-life case studies included at the end of this package.

Impact of the Current Environment

In summary, the current situation:

- Creates an environment of confusion and reluctance among medical practitioners;
- Takes decision-making away from the patient;
- Inhibits coordination of services and ongoing professional development of health professionals;
- Deters medical practitioners from working in the area and prevents doctors being taught how to perform terminations of pregnancy safely;
- Precludes measurement of the quality and extent of the services provided to women;
- Compounds disadvantage for people who, for financial, societal or geographic reasons, are not able to access a service.
- Results in poor outcomes for the mental, physical, and economic health of individuals; and

both schemes are limited (the YHF is only for those under 25 years of age and PTAS is known anecdotally to be extremely difficult to obtain).

- Limits access by deterring open discussion about abortion services in Tasmania.

What is needed?

The impact of the current situation culminates in an acute need for:

1. **Legal protection and Clarity** for medical practitioners who are willing to perform terminations of pregnancy and their patients; and
2. **Acknowledgement** through legislative change that access to safe pregnancy termination services is a human right.

1. Legal Protection and Clarity

Both medical practitioners and patients deserve the protection of the law while performing/undergoing routine medical procedures such as the termination of pregnancy. This is not currently the case in Tasmania.

An environment of fear for clinicians

In 2001, a medical student who opposed the termination of pregnancy contacted police about procedures performed at Royal Hobart Hospital. As a consequence, doctors and patients were thrust into 'a climate of fear and rising concern that the State's antiquated abortion laws could be used to lay criminal charges.'⁴

Very limited changes in the legislation since that time have done nothing to prevent

⁴ Nicole Johnston, *Tasmania's antiquated abortion laws*, ABC Radio PM, Tuesday 4 December 2001 (<http://www.abc.net.au/pm/stories/s432589.htm>)

clinicians from feeling insecure when involved in a termination procedure and left many justifiably reluctant to take on risk that could result in criminal charges.

Medical practitioners are justifiably reluctant to take on risk that could result in criminal charges

Additionally, it is only in a protected and clear legal environment that the workforce capability and the skills and knowledge of doctors be enhanced.

Risk to the rights of patients

Patients especially have reason to be reluctant following the 2010 case in Queensland of a young couple in their 20s who were prosecuted under sections 225 and 226 of the State's *Offences Against the Persons Act 1861*.⁵ The couple was eventually found not guilty but not before every detail of the woman's gynaecological and sexual history was aired in court.

Gender equity being ignored

The current legislation regarding the termination of pregnancy is contrary to Australian legal principles of gender equity under the law. Termination of pregnancy is the only medical procedure in which the patient is not the one allowed to make a choice of their own to undergo it.

⁵ <http://www.theage.com.au/opinion/society-and-culture/abortion-case-proves-need-for-law-change-20101017-16p0u.html>

2. Acknowledgement of Human Rights

Access to safe pregnancy termination services is a human rights issue.

International obligations

As part of the Australian federation, Tasmania has an obligation to ensure women can access safe pregnancy termination services.

The mission of the United Nations Population Fund (UNFPA), to which Australia is a major donor country,⁶ is to ensure that

*"Every pregnancy is wanted, every birth is safe, ... and every girl and woman is treated with dignity and respect"*⁷

The 2004 World Health Organisation statement declares the **highest priority** in relation to unsafe termination of pregnancy is the prevention of unplanned pregnancies and that:

*"... this can be achieved by improving access to quality family planning services, followed by improving the quality of abortion services ..."*⁸

The UN's Millennium Development Goal 5 - to "*improve maternal health, promote gender equality and reduce poverty*" - includes providing "*access to safe abortion*".

Current Tasmanian legislation is out of step with its UN obligations.

⁶ <http://www.unfpa.org/public/home/about>

⁷ <http://www.unfpa.org/public/home/about>

⁸ WHO, 2004

“...Tasmania has an international obligation to ensure women can access safe abortion services.”

Overwhelming Community Support

It is time to end confusion and allow Tasmanian law to catch up with societal beliefs and values.

Changes to Victorian laws governing termination of pregnancy were legislated in 2008 after Premier John Brumby announced, "our existing laws are out of step with community sentiment."⁹

That time has also come in Tasmania, as demonstrated by the EMRS research survey commissioned by Family Planning Tasmania Inc.

The results of this survey showed overwhelming support (86%) for abortion being treated as a health issue between a woman and her doctor rather than as a criminal matter.

Nearly four in five Tasmanians (79%) “strongly agree” or “somewhat agree” that a fully informed woman should have the legal right to decide whether her unwanted pregnancy can be ended early (up to 14 weeks).¹⁰

⁹ Peter Ker, The Age Newspaper, *Brumby takes stand on abortion*, August 21, 2007

(<http://www.theage.com.au/news/national/brumby-takes-stand-on-abortion/2007/08/20/1187462178132.html>)

¹⁰ EMRS Omnibus May 2012, *Family Planning: Abortion*, p. 1.

All results were consistent across age, gender and location of the respondents.

A New Piece of Legislation

New legislation governing termination of pregnancy procedures should be contained within one singular piece of legislation.

A single piece of legislation will provide the clarity and simplicity required to:

- provide total security to medical practitioners and their patients about the legality of safe pregnancy termination services; and
- make clear the right of Tasmanian women to choose pregnancy termination as an option to an unwanted pregnancy.

Medical practitioners must be readily able to refer to it and have a clear understanding of what is and is not permitted in the provision of safe pregnancy termination services in Tasmania.

The rights and obligations of these medical practitioners must also be clear.

Tasmania needs stand-alone legislation that is simple, succinct and easy to find

What should be in the new legislation?

We believe that there are a number of key points that must be included or addressed in any legislative change. They are:

Women make the decision

Currently women need two medical practitioners to agree for her to terminate a pregnancy.

We believe women should make the decision whether or not to terminate their pregnancy.

No gestational limits

The majority of submissions in the Victorian Law Reform Process were opposed to including gestational limits in any new law of abortion for a range of reasons¹¹.

Currently, in circumstances where the termination of a pregnancy is permissible, Tasmania has no gestational limit.

Determining the gestational limits:

- is arbitrary;
- does not have adequate medical justification;
- lacks flexibility to deal with exceptional cases;
- impedes a woman's right to choose;
- leads to continuing controversy;
- requires constant legislative review in line with evolving medical technology.

The Australian Institute of Health and Welfare found that throughout Australia 94.6% of abortions occur before 13 weeks gestation, 4.7% between 13 and 20 weeks, and 0.7% after 20 weeks.

Terminations that occurred after 20 weeks were for psychosocial reasons and foetal abnormalities. A second trimester ultrasound scan is performed for the identification of foetal abnormalities at 18-20 wks. Only 10% of women choose to terminate their pregnancy when informed of a foetal abnormality.¹²

Some testing conducted around the 18-20 week time period in Tasmania has to be sent to the mainland for results. Women should be afforded the extra time to make any decisions, which might arise after receiving test results.

We believe that if a gestational limit is determined to be necessary that Tasmania should follow Victoria and other overseas jurisdictions at 24 weeks.

Interference free zone

We believe that there should be a sizeable zone around clinics or hospitals providing termination services so that women accessing the clinics and hospitals and employees of the same can enter them without interference or protest.

No mandatory information to achieve informed consent

There is a difference between information provision and counseling that needs to be preserved in the proposed legislation.

¹¹ Victoria Abortion Reform Review (p78)

¹² (ref 43 Vic report)

The general standard of disclosure by a medical practitioner embodies the principle that doctors must provide information that a patient would consider relevant before deciding to undergo a particular medical procedure.

This includes the nature, risks, and benefits of any medical procedure and availability of alternatives¹³. It is inappropriate for legislation to mandate information given to women.

An appropriately qualified medical practitioner, rather than legislators, is best positioned to determine relevant information for each patient, taking into consideration the questions asked and concerns raised.

Current law governing medical procedures is sufficient to ensure informed consent in the case of pregnancy terminations.

No mandatory counseling referral

The Victorian review of laws concerning termination of pregnancy shows strong consensus regarding the importance of good quality, non-directive counseling, however, views diverge about the definition of counseling. Attempting to regulate counseling by law remains highly contentious.

Counseling in consultation with the woman, is a clinical matter best left to professional judgment based on each individual's particular circumstances rather than as the subject of legislation.

Conscientious objection clause

Under current legislation there is no requirement for a medical practitioner with a conscientious objection to termination of pregnancy to disclose this to the patient.

This means practitioners can limit the options of patients because of their own undisclosed personal beliefs.

While every medical practitioner has the right to have a conscientious objection to this procedure, it is wrong for them to make that choice for their patient.

New Tasmanian legislation should include a conscientious objection clause that acknowledges that some practitioners have the right to object but also impose the obligation to declare this to the patient and refer them to someone who can provide them with the full range of legal and safe options for ending an unwanted pregnancy.

We also believe that counselors or counseling services should be bound by a conscientious objection provision as well. Counselors are in a position where they can persuade a vulnerable woman to make a decision based on their own beliefs and there must be safeguards against this.

¹³ (Ch8, ref 48 report)

What Next?

We want to see the following changes to ensure that Tasmania's termination of pregnancy laws are finally equitable and clear:

1. The removal of all mention of safe abortion/termination of pregnancy from the *Criminal Code Act (Tas) 1924* (sections 134, 135, 164 and 165);
2. The amendment of the *Criminal Code Act (Tas) 1924* so that it is a criminal offence for an unqualified person to perform or assist in performing an abortion in any circumstances;
3. Pass pregnancy termination-specific legislative change acknowledging that the procedure is a medical service subject to existing health legislation; and
4. Inform GPs and health professionals about the new laws.

Organisations with expertise in the area publicly support the proposed changes. We are relying on the tools of rational argument and positive outcomes to support our position.

We know that public sentiment throughout Tasmania strongly supports the type of change we are advocating, resulting in positive outcomes for women, the health sector and putting Tasmania in line with other states and territories such as Victoria and the ACT.

Frequently Asked Questions (FAQs)

Why does the current law need change? Didn't the 2001 amendment make the termination of pregnancy legal?

The intent of the legislators in 2001 was to make access to terminations legal and safe. However although there are provisions for legal terminations - the law still sits in the *Criminal Code Act 1924* and Abortion is still essentially illegal.

If abortions are allowed under some circumstances, why does it matter if they remain in the *Criminal Code*?

Because the termination of a pregnancy is a medical procedure and when carried out by a medical practitioner in a safe environment it should not be a criminal matter. There are no other medical procedures within the *Criminal Code Act*.

Does changing the law actually make any real difference?

Firstly, research has shown that doctors think they know the law but when asked about details or specific aspects of the law it is clear they are confused. This confusion is also shared in the general community.

Secondly, the confusion is such that the procedure is not available within public hospitals and services because of the perceived risk of performing the only procedure remaining in the *Criminal Code Act*.

Thirdly, there is a stigma associated with a medical procedure which is treated differently from all other medical treatments.

So, in summary, the framework in which the law currently sits creates confusion for doctors and their patients about what is legal. We need to end that confusion.

Is the procedure currently covered by Medicare?

It is covered by Medicare, but the rebate from Medicare will not cover the entire cost so for those without private medical insurance the cost is a significant barrier to access.

Will the public hospitals offer terminations if the changes are made?

Not necessarily, but it will mean a number of options for the provision of the services may be available without stigma and with more equitable access in a timely and therefore safer manner.

In clarifying the law and removing the confusion there is far less risk of prosecution for medical practitioners who might have broken the law unknowingly or due to a false understanding of the law.

If the law changes, does that mean the number of terminations might rise significantly?

The changes which are proposed under the legislation are very similar to changes made in Victoria in recent years and although precise figures are not available** there is no evidence which shows an increase. In fact with a clear legal framework women may seek assistance earlier enabling a safer medical procedure.

*** The figures are generally collected from Medicare data which are inaccurate*

because the category for this also includes procedures on women who are not pregnant for other health reasons. Other procedures are performed in private clinics but these figures are not available.

It might be a medical procedure but isn't it a moral and/or a religious issue too?

For some people it is. For some the decision to have this medical procedure will never be an option due to their own personal beliefs. For others however, to not offer the procedure under circumstances which threaten a woman's health and wellbeing would be contrary to their moral principles.

The changes sought are based upon legal principles, not any particular moral or religious framework, but they consider and make provision for both points of view.

Some doctors and other health professionals may have a conscientious objection to the procedure but the changes we are suggesting will take this into account, making provision for the medical practitioner's own personal beliefs while ensuring those same personal beliefs are not a barrier to a woman's access to a procedure for her continuing needs.

Much of what is being sought is in line with various frameworks of medical colleges and medical code of ethics in this regard.

The Survey: What do Tasmanian's really think?

In May 2012 Family Planning Tasmania commissioned a survey through Enterprise Marketing and Research Services (EMRS).

1000 Tasmanian adults were surveyed between 9th and 13th May 2012 on a wide range of issues commissioned by a number of organisations.

Of those surveyed 500 were from the south, 280 from the North and North East and 220 from the North West and West Coast of Tasmania.

Those surveyed were asked two questions regarding early term abortion (up to 14 weeks). Those questions were:

“Do you believe that a fully informed woman should have the legal right to decide whether her unwanted pregnancy can be ended during that period?” and

“Current Tasmanian law defines the termination of a pregnancy as a legal issue. Would you support abortion being treated as a health issue between a woman and her doctor rather than as a criminal matter?”

Those surveyed were asked to indicate if they “strongly agree”, “somewhat agree”, “somewhat disagree” or “strongly disagree”. They could also indicate that “it depends” they were “unsure” or they could decline to answer.

The survey found that of those surveyed:

86% showed support for termination of pregnancy being treated as a health issue between a woman and her doctor rather than as a criminal matter.

And, of those, **68%** “strongly” supported termination of pregnancy being treated as a health issue between a woman and her doctor rather than as a criminal matter.

And **79%** - almost one in five Tasmanians - “strongly agree” or “somewhat agree” that a fully informed woman should have the legal right to decide whether her unwanted pregnancy can be ended early term (up to 14 weeks).

The results of the EMRS survey show that Tasmanians overwhelmingly believe that termination of pregnancy is a health matter for a woman and her doctor, not the criminal justice system.

It is clearly time to end the confusion.

Real Women, Real Experiences

Below are a number of case studies. They are real stories as told by real women.

They demonstrate that women who seek to terminate their pregnancies do so for many different reasons but that the decision is never easy and it is never taken lightly.

Case Study 1¹⁴

Age: 16

When I found out I was pregnant I felt horrified. And pretty helpless.

And I really didn't know what to do.

And I knew that I wanted an abortion but they are expensive and I didn't have any money.

But before I had kind of realised that I could get an abortion I told myself that if I couldn't get an abortion I'd have to kill myself.

I tried to induce a miscarriage not instead of an abortion, but because I didn't have enough money for an abortion, and I didn't know how I could do it without letting my parents know. And so it was kind of the cheap and easy option.

I felt really lucky that I had the choice and the opportunity [to have an abortion], and I kind of thought a bit about the countries where it's not an option, and the women that don't have that option, and I just felt so incredibly sorry for them.

To just not have...not be able to make the decision. I think it's so unfair.

... I knew that I wouldn't be able to continue my education, and I probably wouldn't have quite the career I wanted, and I thought my social life would kind of fall apart and that all just meant too much to me.

I think I just thought people would judge me so much ... I knew that I'd never be seen the same by anyone ever again.

¹⁴ Taken from transcripts for the short film *Piercing Silence*, by Ninna Milikin.

Case Study 2¹⁵

Age: 32

I remember looking at my partner and realising that we weren't going to stay together. And that we weren't going to make it work, and I worked through what the worst-case scenarios would be, so that if the worst stuff happened what would that be like for a child.

I'd been juggling health things on and off for over ten years, and this came right in the middle of me finally being able to face those things. So I guess it was that decision about myself and really about what would be best for a child.

Because I think if you ... I think it can be such an important moral choice not to have a child.

... I felt like I wasn't ending the life of a baby, that it wasn't a foetus, but that I had the choice of whether I was going to create a child and a life for that child and whether I would be able to care for a child and give a child absolutely everything that a child deserves and the best life and not brought into the world in a completely wrong time and ...

So it was with this potential child in mind that I made the decision, as much as what was happening in my life and it was a choice that was only ever going to have all those factors surrounding it at that time, you know?

¹⁵ Taken from transcripts for the short film *Piercing Silence*, by Ninna Milikin.

Case Study 3¹⁶

Age: 32

I had missed a period and so thought I would take a pregnancy test just in case before going along to the doctor to make sure nothing was wrong. I was horrified to discover I was pregnant.

It didn't make any sense. I was on the pill. How could this happen?

So I went along to the doctor and took another test just to be sure and sure enough I was still pregnant. After explaining I was on the pill and discussing my health over the last few weeks I remembered the tummy bug. It would seem throwing up can have an impact on the effectiveness of the pill.

Now I had thought long and hard before seeing the doctor and had a few sleepless nights considering my options. I had very recently broken up with my boyfriend, the father. It had been a messy break up and there was no way I was going back to that relationship. And I knew having to negotiate parenting with him would be an absolute nightmare for everyone involved.

So I asked the doctor to refer me for an abortion. He refused immediately and proceeded to tell me it is against the law in this state and what kind of an immoral evil woman I was for considering it.

As you can imagine I was stunned, then the tears flowed and I rushed out of the doctor's surgery. I spent the next couple of days in a daze not knowing where to turn. In desperation I rang a help line knowing I could remain anonymous and was relieved to discover I could in fact have a termination

and no I wouldn't go to gaol. I also realised not everyone is judgemental.

I did have a termination and have no regrets it was the right decision to make at that point in my life. What still annoys me to this day is if the doctor had kept his judgements to himself and referred me to another doctor who would have provided a referral to the termination clinic I might have had the procedure sooner and it would have saved me a lot of distress. I have no idea what would have happened if I hadn't rung the help line. All I know is I was in a bad way and not thinking rationally.

Case Study 4¹⁷

Age: 16

When I found out I was pregnant I freaked out. I had been desperately trying to believe I couldn't possibly be. I realised I had been lying to myself that my periods just weren't regular yet. I really didn't know what to do or who to turn to.

I knew I didn't want a baby. I could barely look after myself and I was terrified my parents would lose it. I wanted an abortion but didn't want to talk to our doctor.

I had heard somewhere about getting in a hot bath and drinking gin. So I tried it and all I got was a rotten hangover and busted for drinking alcohol.

I was so messed up I was thinking all sorts of crazy things. I thought about running away, having the baby without anyone knowing and leaving it on a doorstep or killing myself.

¹⁶ Provided by a southern health service.

¹⁷ Provided by a southern health service.

I knew an abortion was what I wanted but I didn't have the money. I thought about stealing it but where would I go to get one. I was desperate.

Eventually Mum realised something was up and hassled me until I lost it and told her. In the end Mum was great but because I had waited so long to tell anyone I had to go to Melbourne to have the abortion.

Mum had to get a loan from a friend so Dad wouldn't know and now I have got a part time job to pay it back.

I am glad I had an abortion but I haven't told anyone - only Mum knows.

Case Study 5¹⁸
Age: 15 (now 33)

When I was 15, I was pretty wild. I was drinking heavily and I was not living at home due to problems with my parents.

As it turned out I was in the early stages of what would be a rather large mental health breakdown and which would eventually see me spending nine months in rehab.

I was at a party with some friends and had been drinking a lot. I ended up sleeping with one of the guys from my school. Although it wasn't exactly one of my smartest decisions ever, it was consensual – and as it turned out part of a pattern of increasingly dangerous risk taking activities associated with my then undiagnosed mental health problems.

When I realised I was pregnant I knew that my only option was an abortion. I was estranged from my family, had no real home and no job. I had not even finished

school and I had a real problem with alcohol.

I eventually sought an abortion through a doctor who made the necessary referrals and arrangements for me. It happened just after I turned 16.

The process of being “allowed” to have one was horrible. I was treated like an ignorant little idiot, not the mentally ill kid that I was. I was made to feel even less of a person and with hindsight the way I was treated contributed even more to my sense of worthlessness.

To make things worse I got an infection. After how I was treated when I had the abortion I was already feeling ashamed and I did not seek medical help for quite some time. The infection grew worse and worse and became septic.

By the time I sought help I was very sick and the damage was done.

I have been told that I have a one in 130,000 chance of being able to conceive a baby. The odds of me successfully carrying it to term are even less. I adore children but the chances of me having them are so low that I am resigned to it being unlikely.

Looking back I know I did the right thing having an abortion. I was a mess, drinking heavily and pretty much homeless. I couldn't have given a child a good start in life.

What wasn't right was how I was treated. Having to ask people to allow me to have an abortion and going through the negative and judgmental process that I did to have that abortion is why I didn't seek help when I got an infection.

¹⁸ Provided by a southern health service.

Because of that I can't have children. No one should have to pay such a high price as that.

Case Study 6¹⁹

Age: 20 (now 40)

As a 20-year-old mother of two young children I found out that I was pregnant again.

Not long after I found out I was pregnant one of the routine scans revealed that my baby had died. The doctor didn't know why.

The scan showed that although my baby had died it had not "expelled".

My doctor told me that due to the risk of infection I would have to have a procedure to "tidy up".

Because I was pregnant I couldn't have a D&C, I instead had to have an abortion.

The abortion took place at the local public hospital and it was a truly awful experience – not because of the actual procedure but how I was treated.

I had to go through consultations with two psychologists even to be allowed to have the procedure. Given my baby had died I was already traumatised enough without having to go through those two "counselling sessions".

Once I had gone through the abortion I was put in recovery.

They might tell you that the staff are non-judgmental but that simply isn't true.

The nurses and even a couple of the doctors were perfectly nice to me until they

read my chart to see why I was in there. I saw how their faces changed when they read my chart.

Once they knew why I was there their demeanour changed, my pain relief medication had to be requested several times before being delivered and the nurses were quite cold and unpleasant towards me.

Nobody bothered to ask me why I had needed an abortion. They just made assumptions.

My baby had died for unknown reasons and that was sad enough. I didn't need to be treated like I was in addition to that. I was already grieving for my baby but the way I was treated after undergoing a necessary procedure was just plain wrong.

Case Study 7²⁰

Age: 37 (now 44)

At 37 I had just finished a long-term relationship with a man who didn't treat me well and who had repeatedly told me over the years that he didn't want children.

I had been unhappy for a long time but had been unable to end the relationship as soon as I had wanted to. Sometimes it is just not all that easy to get out of a bad relationship.

About two weeks after we had finally split up I found out that I was pregnant.

I already had two children, both in their teens, from an earlier relationship. I had raised both of my children on my own and with very little help, financial or otherwise, from their father.

¹⁹ Provided by a southern health service.

²⁰ Provided by a southern health service.

As a mum who had started her family as a younger woman, I had spent the past few years retraining and now had myself in a good position financially. I was doing well at my job and had an excellent chance for advancement.

When I was in my twenties I had been in a bad car accident that had left me with serious back and neck injuries. These injuries meant that having another baby would have been very risky for me and the child.

When I found out that I was pregnant I knew that I didn't want to have the baby. Actually, it was less that I didn't want to have the baby, more that I knew I couldn't have the baby.

To have gone through with the pregnancy would have left me forever tied to a violent and controlling man who didn't want children but who would have used that child to get at me.

I would have had my health put at risk because of my past injuries and this would have impacted on my ability to care for my existing children.

On top of all this, I did not want to be a single mum again.

I know that the decision not to proceed with the pregnancy was the right one for me and I made an appointment with a doctor to see what my options were.

The doctor basically told me that I was pregnant and "that was that". He looked at me as though I was stupid. He certainly didn't give me any options past having child number three regardless of my wishes. I just left.

I saw another doctor who gave me my options and made the necessary referrals. I

had to attend a private clinic and it was very expensive. I don't know what I would have done if I had not had the money required to proceed.

Having to go through a process where I was initially denied a referral and which then turned out to be what I would imagine as prohibitively expensive for some was not how it should be.

I believe that abortion is not always a choice for some women. It can be a necessity. Whilst it might be a decision made easily it is never a decision made lightly. It should not be made any harder than it already is.

What is the law in other States?

Termination of pregnancy in Australia is governed by State legislation. Victoria is the only state in which an abortion is not a crime if it is not done for medical purposes. New South Wales currently has the least defined standards, relying solely on common law to define what a lawful abortion may be.

Victoria

Legislation - Abortion Law Reform Act 2008

Requirements -

Victorian legislation allows a termination by a registered medical practitioner if the pregnancy is no further than 24 weeks.

After 24 weeks an abortion may be performed by a registered medical practitioner if there is reasonable belief that an abortion is appropriate in all circumstances and at least one other registered medical practitioner has been

consulted and also believes that an abortion is appropriate.

The medical practitioners must have regard to all relevant medical circumstances and the woman's current and future physical, psychological and social circumstances.

A person authorised to administer or supply abortion inducing drugs may legally supply these drugs to a woman who is no more than 24 weeks pregnant.

At more than 24 weeks gestation drugs may be supplied only at the written direction of a medical practitioner after consideration of all relevant circumstances and only a pharmacist employed by a hospital may supply the drugs.

A registered health practitioner who has a conscientious objection to the requested abortion must refer the patient to another practitioner. A duty is conferred on a practitioner despite any objection to perform an abortion in an emergency where it is necessary to save the life of the woman.

There is no requirement for counselling.

New South Wales

Legislation - NSW Crimes Act 1900

Requirements -

The *NSW Crimes Act* dictates that unlawful abortion is an offence punishable by up to ten years in prison. The act however, does not define a lawful abortion.

Common law dictates that abortion can be lawful if it is required to avoid a "serious danger to the woman's life or physical or mental health" (R v Wald).

This was extended by Justice Kirby in the case of *CES V Superclinics* to the current position which requires a consideration of whether a serious danger to the pregnant woman's health would be present during her pregnancy, but also after the pregnancy.

There is no case law that discusses late term termination in NSW. Late term is however generally regarded as after 22 weeks.

Australian Capital Territory

Legislation - Health Act 1993

Requirements -

There are no criminal law provisions relating to abortion in the ACT however abortion that is not carried out within the provisions of the *Health Act 1993* is an offence under that Act.

Abortion is defined within the *Health Act 1993* as administering a drug, using an instrument or any other means of causing a woman's miscarriage. A person who is not a doctor may not carry out an abortion and it is an offence under the Act, which carries a maximum penalty of five years.

The termination must be carried out in an approved medical facility, which is approved by the Minister by notifiable instrument. Failure to comply with this provision carries a penalty of 6 months imprisonment or a fine or both.

There is no duty or obligation in the ACT on any person to carry out an abortion or to assist in a termination.

The legislation does not require counselling to be undertaken, nor does it define a point

in the gestation when a termination is unlawful.

Queensland

Legislation - Criminal Code 1899

Requirements -

Termination of pregnancy in Queensland is an offence under the *Criminal Code 1899*.

Under the Code anyone, including a pregnant woman, who attempts to procure a miscarriage of pregnancy may be found guilty of an offence. Additionally anyone who unlawfully supplies anything used to procure an abortion is guilty of an offence.

The Code was amended in 2009 to protect doctors who provided abortion services if they are in good faith, with reasonable care and skill and for the benefit of the patient or to preserve the mother's life.

The legislation now requires the person performing the termination to have regard to the patient's state at the time and to all circumstances of the case.

There is no requirement to look at the effect or the person's state after a termination.

Further, there are no requirements relating to gestation periods or counselling.

Northern Territory

Legislation - Medical Services Act

Requirements -

Under the *Medical Services Act* medical termination of pregnancy is lawful in the Northern Territory if the practitioner reasonably believes that the woman has not been pregnant for more than 14 weeks and that two medical practitioners believe in good faith that the continuing pregnancy would pose a great risk to life or the woman's physical or mental health.

The medical practitioners can also lawfully terminate a pregnancy if the child would be seriously handicapped because of physical or mental abnormalities.

Any treatment resulting in termination of a pregnancy must be given in a hospital.

At least one of the practitioners must be an obstetrician or a gynaecologist unless it is not reasonably practicable.

Up to 23 weeks a medical practitioner can give medical treatment with the intention of terminating the pregnancy if the treatment is immediately necessary to prevent serious harm to the woman's physical or mental health.

If a termination is necessary to preserve a woman's life, it is lawful if performed on good faith and there is consent from the necessary person.

All terminations in the Northern Territory require the consent of the woman who must be at least 16 years of age, otherwise she requires a person who has the authority in law to consent.

The Act allows a person with a conscientious objection to abortion to refrain from assisting in the operation or disposal of a foetus however the duty to give professional care otherwise according to law still remains for a medical practitioner.

Western Australia

Legislation - Health Act 1911; Criminal Code Act 1913

Requirements -

Under the *Criminal Code* of Western Australia abortion is unlawful and an offence unless it is performed by a medical practitioner in good faith, with reasonable care and skill and in accordance with the regulations set out in the *Health Act 1911*.

The *Criminal Code* specifically defines abortion as attempting to perform a termination as well as doing any act with the intent to procure a termination whether or not the woman concerned is pregnant.

A defence is given for surgical or medical treatment that results in abortion if the treatment was in good faith and with reasonable care and skill to preserve the life of the mother. In determining whether the treatment is reasonable, all circumstances in the case including the patient's state at the time must be taken into account.

The *Health Act* provides regulations which assist in determining whether an abortion is lawful.

The Act justifies a termination if the woman has given informed consent, there is serious danger to the physical or mental health of the woman if the termination does

not occur and if the woman may suffer serious personal, family or social consequences if a termination is not performed.

Informed consent is specifically defined as the woman being properly, appropriately and adequately provided with counselling about the risk of termination or carrying a pregnancy to term, by a medical practitioner as well as information about and referral to further counselling if it is desired.

The medical practitioner who provides the counselling is unable to assist in or perform the abortion.

If a termination is sought after 20 weeks of pregnancy the legislation dictates that an abortion would be unlawful unless 2 medical practitioners who are members of a panel of at least 6 medical practitioners have agreed that the mother or child has a severe medical condition that would justify the procedure in their clinical judgement.

The panel is to be made up of medical practitioners appointed by the Minister and the termination must be performed at a facility approved by the Minister. For the purposes of providing informed consent a woman under the age of 16 years must have the consent of a parent or legal guardian.

South Australia

Legislation - Criminal Law Consolidation Act 1935

Requirements -

The *Criminal Law Consolidation Act* states that attempting to procure an abortion or procuring drugs to cause abortion in South Australia is a criminal offence.

This includes a woman attempting to procure her own abortion in any way that is deemed unlawful and the offence carries severe penalties including life imprisonment.

Abortion is not an offence under certain circumstances. For example if two medical practitioners are convinced that there would be greater risk to the woman if the pregnancy continued, including to her physical or mental health, or if the child would suffer from serious abnormalities and be seriously handicapped.

The legislation states that an abortion must be carried out in a hospital.

A termination can be carried out by a medical practitioner if the termination is immediately necessary to save the life, or to prevent grave health to the woman.

There is a requirement that a woman needs to have lived in South Australia for at least two months before the termination of her pregnancy unless the termination is a medical emergency.

In determining risk to the woman, the woman's actual or reasonably foreseeable environment must be taken into account and any other regulations of the governor.

The legislation states that after 28 weeks a pregnancy cannot be terminated because the woman is pregnant of a child capable of being born alive unless the termination is in good faith and for the purpose only of preserving the life of the mother.

Statements of Support for New Legislation

Tony Reidy, CEO
Tasmanian Council of Social Service (TASCOSS)

The Tasmanian Council of Social Service (TasCOSS) is the peak body for the Tasmanian community services sector. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians.

TasCOSS represents the interests of its members and their clients to government, regulators, the media, and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage and promote the adoption of effective solutions to address these issues.

TasCOSS supports the right of Tasmanian women to access appropriate and timely health care, including the right to make choices about that health care according to their individual circumstances.

TasCOSS strongly supports legislative reform on the issue of termination of pregnancy in Tasmania as proposed by the Hobart Women's Health Centre, Family Planning Tasmania and the Women's Legal Service Tasmania.

The current confusion about the legal status of termination of pregnancy has had a negative effect on service delivery, access and equity and resulted in a strong stigma being attached to termination.

The impact of this confusion is experienced disproportionately by Tasmanian women already disadvantaged by factors such as

low income, geographical isolation, youth, and violent or abusive relationships.

Legal impediments resulting in a lack of choice and access to termination of pregnancy further compound and entrench the disadvantage experienced by many Tasmanian women.

In conjunction with legislative reform regarding termination of pregnancy, TasCOSS also argues for increased funding for preventative measures to reduce the incidence of termination of pregnancy: universal sex and relationships education in Tasmanian schools; increased access to safe, effective contraception and early pregnancy testing; and increased support services for young women.

**Alderman Jenny Branch-Allen
Glenorchy City Council**

When a decision of such importance needs to be made, when we are often scared, confused and unsure of the future, we need and deserve support, correct information and time.

I don't believe any one making this choice does it lightly, but not giving a woman regardless of the age they fall pregnant the right to make this choice is also not acceptable.

A decision such as this must be a personal choice, no one else's. A woman who considers all of this and chooses to terminate a pregnancy has the right to have that decision respected.

As a society, we must ensure the proper legislation and access to services that

include the right medical support and before and after care.

**Lisa Zeitzen
Executive Officer, Support, Help &
Empowerment (S.H.E.)**

Women utilising our services have been subjected to physical, emotional and sexual violence. Not only are they intimidated and frightened by their partners they also feel trapped when finding themselves pregnant and potentially linked to the perpetrator forever. This reduces their ability to leave an abusive situation and fear that they will be unable to protect a child if they choose to stay.

When seeking options they are further faced with the process of undertaking an illegal operation within the state of Tasmania, the condemnation and lack of understanding that exists within the medical profession as to the legitimacy and availability of the procedure.

We believe that the current legislation should be amended to allow for women to have access to choice, allowing them to make decisions in the best interests of themselves, the experts in their lives.

Hobart Women's Shelter

We take this stand in consideration of the lives of the women we work with. Many present escaping domestic violence and pregnant, often accompanied by at least one other child. We hear other stories of women who stay in violent relationships because of pregnancy with no other place to go and no money. In both these

instances the pregnancies are not planned and often unwanted with women saying they had no option, no choice, but to 'participate' in unprotected sex with many of their descriptions fitting with sexual assault.



Women's Legal Service Tasmania (WLS) actively engages in law reform activities where there is an identifiable risk to the wellbeing and

safety of Tasmanian women through problematic legislation. Our expertise is drawn from over 15 years of providing advice, representation, education and law reform services to and for the women of Tasmania.

Who are we?



Family Planning Tasmania
sexuality education & clinical services

Family Planning Tasmania (FPT) has 40 years of credibility in advocating for the rights of women, disadvantaged groups and youth in Tasmania.

We have a responsibility to our clientele as well as Tasmania's youth and Tasmanian society. In funding terms one of our required activities through Population Health is to advocate for issues of importance in the realm of sexual health.

A number of other Tasmanian organisations and individuals who are interested in the improvement of health, wellbeing and legislative protections of the women of Tasmania have worked with our three organisations in an ongoing advisory and support capacity.

We are extremely grateful to those organisations and individuals who have offered us their time, expert advice, support and input as we progressed this matter and developed these materials.



Hobart Women's Health Centre (HWHC) continues to provide both direct services to individual women and to

advocate and promote the health and wellbeing of all Tasmanian women. Our knowledge and expertise is based on 25 years' experience working with and for women in Tasmania.

Contact Us



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