

Fact Sheet: Infant Viability Bill 2015

Key messages

- Under the current law, abortions after 24 weeks require the agreement of two doctors, taking into account the woman's medical, physical, psychological and social circumstances.
- Abortions at this stage of pregnancy are very rare, but there will always be a small but very real need for these services, and the current law acknowledges this.
- The circumstances surrounding abortion after 24 weeks are very complex and it is difficult to speculate on each woman's individual circumstances.
- Reasons for seeking abortions at this stage often involve factors like intimate partner violence, failure to recognise a pregnancy, and congenital abnormality.
- It is important that women in these situations are able to access the health care and support they need.
- Instead of reducing access to abortion, we should be increasing access to sex education and contraception.

Frequently Asked Questions

What is the current law on abortion in Victoria?

- Victoria's current abortion law is set out in the *Abortion Law Reform Act 2008*.
- The law allows a woman to choose to have an abortion up until 24 weeks' gestation. The service must be provided by a registered medical practitioner.
- The law only allows for abortion after 24 weeks if at least two doctors agree that the abortion is appropriate in all the circumstances. In making their decision, the doctors must consider all relevant medical circumstances and the woman's current and future physical, psychological and social circumstances.

How does Victorian law compare with other jurisdictions?

- The Abortion Law Reform Act reflects best practice in clinical and public health, as well as the recommendations of the Victorian Law Reform Commission.
- Victoria has been a national leader in reforming the law on abortion.

What changes would the Infant Viability Bill make?

Blanket prohibition on abortion after 24 weeks

- Abortions after 24 weeks would be **prohibited in all circumstances**, including in cases of incest, rape and foetal abnormalities, or in circumstances where an abortion is necessary to protect the life or health of the mother.

- These restrictions would **place women in danger** by denying them safe access to abortion services and care and would put Victoria on a par with the most repressive abortion laws in the world.
- The Bill would **criminalise doctors** who perform abortions at or after 24 weeks. Hospitals that fail to prevent an abortion at or after 24 weeks could also be prosecuted.

Only legal option for women after 24 weeks is to carry foetus to term or premature delivery

- At or after 24 weeks, the only option available would be for a woman to deliver the foetus, possibly prematurely.
- The Bill provides that, if there is a substantial risk of death or serious and permanent physical impairment, a doctor may perform a premature delivery 'with the intention of preserving the child's life and for the purpose of protecting the child or the woman, or both, from a substantial risk of death or serious physical impairment'.
- It is **ambiguous** whether the doctor is to prioritise the life of the woman or the foetus.
- Under international law, the rights to equality and non-discrimination require that the rights of a pregnant woman must be given priority over an interest in pre-natal life.
- The very limited option of premature delivery is only available in cases of a risk of death or serious and permanent physical impairment. Women in serious distress, for example about a foetus conceived by rape, would be required to carry the foetus to term. That situation has been found to constitute cruel, inhuman and degrading treatment and torture under international law.

Intervention in clinical decision-making

- The Bill would require a doctor who delivers a child after 24 weeks to take all reasonable steps to ensure appropriate care 'to preserve the child's life'.
- Doctors are already subject to legal, ethical and professional obligations to provide appropriate medical care. This would constitute an inappropriate intervention into clinical decision-making by qualified health practitioners.
- The Bill does not appear to permit palliative care of premature babies who cannot survive.

Requirement for counselling of women 'in distress'

- The Bill would require doctors to refer pregnant women who are more than 24 weeks pregnant and experiencing 'distress' to support services.
- 'Distress' is undefined and trivialises the complicated circumstances involved in cases where a woman is seeking an abortion after 24 weeks.
- It fails to meet the minimum standard of providing women with the full range of options, including access to safe and legal abortion.

How many abortions are performed in Victoria after 24 weeks?

- It is already extremely difficult, expensive and rare for women to be able to access abortion beyond 16 weeks in Victoria.
- Abortions after 24 weeks are extremely rare. A lack of accurate data in Victoria makes it difficult to identify the exact numbers of terminations carried out after 20 or 24 weeks' gestation.

- Available data indicates that less than 1 per cent of all abortions performed in Australia occur after 20 weeks.

Why are some abortions performed after 24 weeks?

- The decision to terminate a pregnancy after 24 weeks is often a very difficult one as the circumstances that surround the pregnancy are usually highly complex.
- Often the rare abortions performed after 24 weeks are in relation to planned and wanted pregnancies, in very unique and difficult circumstances, often involving foetal abnormality.
- In the other rare cases, women who present for assistance at this point in their pregnancy are often very vulnerable women living in the most complex and difficult life circumstances. This includes women who due to youth, medical conditions, or family violence have been unable to access support earlier.
- Access to abortions after 24 weeks is particularly important for women where:
 - There is severe foetal abnormality;
 - There has been a traumatic change in circumstances e.g. woman is diagnosed with a very serious illness;
 - The woman has been unable to access support earlier or has delayed seeking an abortion due to complex personal circumstances, for example family violence or failure of anticipated emotional or economic support;
 - Continuing with the pregnancy puts the woman's health or life at serious risk e.g. the woman is suicidal;
 - The woman has not recognised that she is pregnant. These are often younger women, whose bodies are still developing, and pre- and peri- menopausal women, who do not expect to be pregnant at this stage of their lives. A woman may not recognise or may be in denial that she is pregnant due to experience of trauma (e.g. rape, incest), intellectual disability or mental illness.
- In some cases, the woman has made a decision to have an abortion earlier in her pregnancy, but has experienced difficulties accessing abortion due to lack of services (for example in rural areas), unaffordability etc.
- It is appropriate that decisions relating to women's health are made between the woman and health professionals.

What should we be doing to improve women's sexual and reproductive health?

- There will always be a need for abortions after 24 weeks and such services must be made available. Unfortunately we live in a world where domestic violence, sexual assault, trauma and genetic abnormalities are all too common.
- Instead of blanket laws that put women in danger, we should be investing in universal strategies to increase access to sex education, contraception and, where necessary, early abortion.