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Editorial
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Abortion and the full humanity of women: nearly there

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In 2008 the Victorian Parliament will have an historic opportunity to pass into law legislation that acknowledges women's full humanity, moral agency and their capacity to make sound ethical decisions in relation to their fertility.[1] It is anticipated that this law will remove criminality from abortion. Parliamentarians will have the opportunity to lift the burden of risk of criminal prosecution and jail time from women and their doctors in relation to abortion.

Victorian Members of Parliament (MPs) will have the opportunity to consider access to safe and legal abortion from the perspective of the women for whom it is an essential health service, and to redress the sexual discrimination that arises from stigmatising legislation that criminalises health services only needed by women, and punishes women who need those services.

Upper-House MP Candy Broad introduced the Crimes (Deciminalisation of Abortion) Bill 2007 on 17 July 2007.[2] The Broad Bill was a private-member's bill, on which MPs would have a conscience vote. In one of the first decisive decisions made by the new Premier, John Brumby, Cabinet took charge of the process by referring the Broad Bill to the Victorian Law Reform Commission for review on 20 July. He asked the Commission to finalise its advice by March 2008. Candy Broad responded by withdrawing her Bill, and reserved the right to reintroduce it if the Law Reform Commission proposed a bill that did not substantially reflect the purpose of her Bill.

Parliament has not previously been asked to debate and vote on an abortion bill. The only other time the Victorian Parliament has debated the subject was in response to a motion by Ivan Trayling MP, for an inquiry into abortion in 1973.[3]

Candy Broad's Bill, the Crimes (Decriminalisation of Abortion) Bill, sought to remove the crime of abortion from the *Crimes Act (1958)*, and from the common law, except when it is carried out by someone other than a doctor, or a person acting under the immediate supervision of a doctor. It 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. It provided protection to doctors and women from criminal sanctions, including jail terms, in relation to abortion.

The purpose of the Broad Bill was to correct a long-standing anomaly in health-service legislation in Victoria by removing Sections 65 and 66 from the *Crimes Act*.[4] These sections make unlawful abortion a crime punishable by a term of imprisonment for both the woman and her doctor, and all those assisting in the abortion. It became part of the *Crimes Act* when Victoria became an independent state in 1901, and took over the whole of the English crimes act. Buried in that Act was legislation passed in 1861, the *Offences Against the Person Act*, which made abortion a criminal offence if carried out unlawfully.[5] That Act was passed in order to protect women from unsafe interventions at a time when medicine had very little to offer, anaesthesia and antibiotics had not been invented, and neither had electricity! We have moved on, and so must the abortion laws. The original law was designed to protect women's health and life, which is why it applies whether or not the woman is pregnant, and it now hinders that purpose. It was not designed to protect fetal life. The criminal law is the wrong vehicle through which to achieve that objective.

Abortion is lawful in Victoria if the doctor follows the rules established by Mr Justice Menhennit in 1969.[6,7] These require the doctor to form an honest belief, on reasonable grounds, that the abortion is necessary to protect the woman's mental or physical health. Following this ruling ~10 private clinics were established to provide abortion services, and several public hospitals included abortion in their women's health services. The state regulates these services through the normal health professional registration and private day-centre regulations.[8] Public hospitals report the numbers of abortions to the Department of Human Services. 9089 abortions and related procedures were reported in public hospitals in 2004–2005. Not all of these are terminations of pregnancy as they are not reported separately. [9] Private gynaecologists also do abortions for their patients, in registered day-procedure clinics regulated by the Department.[10] Abortion is a service claimable on national health insurance.[7]

Removing abortion from the *Crimes Act*, and not putting it anywhere else, will have the effect of freeing doctors from the threat of criminal prosecution, and normalising abortion as an essential women's health service. This should encourage doctors to provide abortion, and lays the groundwork for the Department of Human Services to ensure that abortion services are available to women wherever they need them, and that providers are protected from harassment.

The legal status of abortion does not affect the number of abortions that women require. However, it does have an important impact on the experience of women and their doctors. When abortion was illegal in Australia, the Royal

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Commission on Human Relationships, held in 1976, found that there were ~100 000 abortions each year.[11] The latest estimate of the number of abortions in Australia is 80 000–90 000 per annum, and fewer than 20 000 in Victoria.[7] This is despite abortion being legally accessible, and a more than doubling in the population.

International evidence of best practice in reproductive health demonstrates that it is possible to halve that abortion rate by meeting the need for abortion, making it uncomplicated, and combining that with systematic education about sexual relationships, sexual health and reproductive options, plus widespread access to contraceptives. Countries such as the Netherlands and other Northern-European countries are examples of best practice that Australia could learn from.[12]

Australia is a long way behind international best practice in reproductive health. This reflects our heritage of Irish rather than European Catholicism, with its anxiety about sexuality and the subordinate role of women, and all that flows from that.*

Fundamentalist religious opposition to lawful abortion stems from an unstated position that the role of women is to serve the family, in which the male is the head of the household and draws his authority from an all-male clergy, which derives its authority from the male Christian god.[13] Other monotheistic religions with male gods have similar structures. This is known as the 'great chain of being'. The vigour of the struggle about abortion derives from competing views about whether women are fully human, or derive their humanity from contributing their life force to supporting the lives of their husbands and children.

The notion that motherhood is woman's natural destiny is a discriminatory stereotype. When it is embedded in legislation, regulation or public practice, such as in the delivery of health care, it disadvantages women and denies them full personhood. It also disguises the burden of work and the effort of bearing and rearing children and leads to indifference to that burden. It serves as a barrier to paid work and education because it is seen as a natural 'trump' that will always take priority.[14]

This discrimination is contrary to international conventions and state legislation guaranteeing equality between women and men.[15] The UN Convention on the Elimination of all forms of Discrimination Against Women states, in Article 12 that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning". Australia is a signatory to CEDAW.[15] Equality requires two things: an acknowledgement of women's difference, and the elimination of discrimination based on that difference.[14] In the dialogue of abortion, women who reject the role of selfless motherhood are judged as flawed and as threatening to the good order of society. Societies use pregnancy as a vehicle to suspend women's human rights.[16]

There is another thread in the view about whether women are fully human that derives from (or alternately led to) the Christian story of Adam and Eve. In this story women are in the thrall of their sexual drive, cannot be trusted, hold unreasonable sway over men through sexual allure, and have an innate tendency to waywardness. Aristotle, St Paul, Freud, the Vatican and many others in between expressed variations of this view.[13] In the abortion debate this thread translates into concepts such as 'unfettered' and 'unrestrained' access to abortion, which underpin the drive to regulate, oversee and constrain the pathways to abortion.

One of the challenges of abortion is that it can be, and is, used by women to prevent exposure of sexual activity. It resonates with folk wisdom such as 'it takes a wise man to know his own father', and more recent use of DNA testing in which paternity is either asserted or denied by men and mothers. Women have the upper hand in knowing the biological origin of their children.

A move to decriminalise abortion is a move to authorise women's moral agency. It is consistent with the Charter of Human Rights and Responsibilities, which came into effect in Victoria in January 2007, and which declares that human rights are based on human dignity, equality and freedom, and 'every person has the right to enjoy his or her human rights without discrimination'. The Charter includes a right to privacy and makes it unlawful for a public authority to act in a way that is incompatible with a human right. In relation to abortion, this should make it unlawful to provide health services that do not meet the sex-specific needs of women, including abortion, in the same way that men's needs are met.

In a far-sighted move that foreshadowed the introduction of Candy Broad's Bill, the Charter has a savings clause that specifies that 'nothing in this Charter affects any law applicable to abortion or child destruction'. The reference to child destruction encompasses unlawful termination of a fetus capable of being born alive, presumed to be at 28 weeks gestation. This refers to Section 10 of the *Crimes Act (1958)*, which provides lengthy jail terms for such an action. Section 10 provides some recourse for pregnant women against violent assault that leads to fetal death.

The increasingly multicultural nature of Victorian society, especially the increase in migration from cultures that are frankly patriarchal, places a burden of responsibility on the state to protect women of those cultures from harm that might arise from the enforcement of values, such as family honour, which focus on virginity for unmarried women and subservience of all women. Access to lawful abortion, where women are presumed to be good women and treated with dignity, capable of making autonomous decisions about their health, with their privacy respected, is an essential component of such protection.

These sentiments are consistent with community sensibilities in the 21st century.

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*"This understanding of women is that it essentialises them: women have fundamentally different natures because of their sex, and the biological fact of that sex is more important than their personhood. Time and again, that complementarity was assigned a value such that the difference women embody physically and substantively (compared to men, whose maleness is the standard for comparison in all realms) is not merely *different*; it is a nature *subordinate*, "less than," deficient." From Cardinal Joseph Ratzinger's preparation for the Papacy: How "The Vatican's 'Enforcer' ran the Congregation for the Doctrine of the Faith 1979–2005." Catholics for a Free Choice, www.catholicsforchoice.org; accessed 5 September 2007.

Conflict of interest

None declared.

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