TERMINATION OF PREGNANCY

How far do we really have to go?

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American flags fly high as anti-abortion protesters swarm the well-manicured lawns of abortion clinics, plastering large protesting signs across the gates safeguarding women's reproductive health services. It's the 21st century, yet women's reproductive rights are under attack with the most aggressive anti-abortion law to be enacted by November 2019 in Alabama, with no exceptions for rape victims. [1] Conversely, across the Atlantic, cheers of celebration are heard throughout Ireland, following major changes to longstanding anti-abortion laws in 2018. The Irish referendum ended with a 66% vote towards decriminalising abortion; a notable triumph for women's reproductive rights. [2]

Despite the deep-rooted social stigma and controversy, access to an abortion along with the necessary medical and psychological support is a common and normal part of a woman's reproductive life. However, 20th century medical literature framed the medicolegal conflict of abortion as the "doctor's dilemma", failing to recognise the woman as the most important decision-maker during her pregnancy. [3] The medicolegal conflict that traverses decades of abortion history starkly reminds us that reproductive medicine continues to be a practice where paternalism in the legal system impedes the delivery of necessary and safe healthcare worldwide. [3]

Abortion in Australia

One in three Australian women have an abortion at least once during their lives with maternal mental health being the reported reason for over 95% of terminations. [4, 5] A termination of pregnancy may either involve medications or surgical treatment. Medical termination of pregnancy involves the use of oral medications, prescribed by a qualified medical practitioner, to cease the pregnancy. [6] In contrast, a surgical termination, used in abortions after 9 weeks of gestation, requires the use of surgical instruments to remove the fetus safely. [6] Both medical and surgical abortions are available in Australia, with variations in laws between states and territories. [6]

The long and arduous path to the decriminalisation of abortion in Australia has not been an easy one, and for New South Wales (NSW), has only recently become a reality. From the late 1800s, abortion was deemed illegal nationwide. This was until 1969, when a Supreme Court case, R v Davidson, deemed abortion legal on the grounds that it must be an absolute necessity for the preservation of maternal physical or mental health, and that the risks of the procedure did not outweigh the perils it sought to prevent. [7] Gradually, a number of Australian states have progressively reformed their legislation to decriminalise abortion over the last 20 years. However, the laws and ramifications for illegal abortion differ from state to state, leading to confusion in the general public. [6]

South Australia first legalised abortion in 1969, yet women are still required to have two medical practitioners approve of the procedure within the first 28 weeks of gestation on the grounds of maternal health or foetal disability. [8] Western Australia and Victoria deem abortion legal before 20 weeks' and 24 weeks' gestation respectively, whereas, the Australian Capital Territory has no legislated restrictions based on gestational age. [8] Furthermore, Queensland recently removed termination of pregnancy from the state's crimes act in 2018, leaving NSW as the last state to definitively decriminalise abortion this September.

After these outlined gestational ages, women may access abortions depending on the doctor they see and their circumstances. However, the chances of obtaining an abortion following these legislated dates are dismal. [9] Ultimately, these convoluted legislative disparities exist due to the fact that abortion falls under the jurisdiction of the state government, making it challenging to achieve a nationwide consensus.

Recent legal challenges in New South Wales

After three days of tiring debate, the new Abortion Law Reform Act 2019 passed the NSW lower house. [10] Politicians cheered as the bill passed through parliament with a vote of 59 to 31. [10] The bill recently passed the Senate after an exhausting 40 hours of discussion, fully decriminalising abortion in NSW for the first time in 119 years. [11] Despite divisive opinions on the matter, this movement symbolises, perhaps, the growing acceptance and ongoing support for abortion and the recognition of the necessity for women's reproductive rights.

The legal controversy around abortion in NSW recently came under the limelight, fuelling political conflict and discourse. The new Abortion Law Reform Act 2019 was introduced to the NSW parliament in late July, aiming to remove abortion from the Crimes Act 1900. [12] The new bill proposes ter-
mination of pregnancy be allowed up to 22 weeks’ gestation, with abortions hereafter available if approved by two doctors.[12]

Previously, the NSW government theoretically allowed for termination of pregnancy, however, only under strict circumstances. A termination was only deemed lawful if a physician believed the mother was in serious danger physically or mentally by continuing the pregnancy.[13] Consequently, a violation of this criminal law would cost the woman, doctor and any assistant up to 10 years imprisonment, letting archaic paternalism shadow over women’s reproductive rights and their autonomy. [14] This truly embodied a tangible and sombre example of how legal technicalities and quarrelling politicians can deleteriously impact on human rights and health outcomes of everyday individuals.

The Australia Medical Association (AMA) have welcomed the call to decriminalise abortion in NSW. [15] However, the AMA have warned that the emotionally fuelled fearmongering from those opposing the decriminalisation may have led to further imposed restrictions and barriers against women. [16] The AMA outlined their concern on the previously proposed amendment to mandate abortions after 22 weeks’ gestation be subject to review by a four person panel, further delaying treatment and worsening a women’s anxiety and suffering.[16] The thought of having to ask permission from a panel of strangers during the utmost private, daunting and emotionally traumatic time of one’s life is the epitome of entrenched paternalism in healthcare.

However, the current form of the legislation allows access to termination of pregnancy after 22 weeks’ gestation with the approval of two medical specialists, removing the amendment to require an extensive panel to review the abortion.[12]

Across international waters...

The Australian narrative of the abortion decriminalisation movement starkly differs to other international jurisdictions. In Ireland, a polarising referendum in 2018 led to the removal of the criminal sanctions against termination of pregnancy for the first time since 1861.[2] Prior to 2018, women in Ireland would have to leave the country to access the treatment needed for a termination.

On the other hand, the state government of Alabama recently approved of a new draconian law banning abortion from November 2019 onwards.[17] The legislation will only allow a termination if a lethal foetal abnormality is detected or if there are serious health risks to the mother regardless of gestational age. Appallingly, there are no exceptions for rape victims. Ultimately, this legislation responds punitively to the needs of rape victims, subjecting women to significant mental, emotional and physical harm and furthering restrictions on women’s reproductive rights. Violation of this law is classified as a Class A felony, with the maximum sentence comprising life imprisonment.[18]

The anti-abortion movement, re-ignited in America by a rise in conservative state governments, has started a wave of legislative challenges. A number of American states, including Missouri, Mississippi, Louisiana and Georgia, have begun pursuing “heartbeat” bills, aiming to criminalise termination of pregnancy as soon as a heartbeat is detected during the pregnancy.[18] However, a foetal heart beat can be detected as early as 6 weeks in pregnancy with many women unaware of being pregnant at all. This significantly restricts a woman’s autonomy early on during pregnancy. Additionally, what is interpreted as a foetal heartbeat, a small flickering shadow of greys on the ultrasound screen, is not anatomically, nor clinically, a completely formed heart.[19]

Unsafe abortion

The World Health Organization (WHO) has stressed that legal restrictions do not lead to a reduction in the number of abortions or births. However, the number of unsafe terminations and the significant mortality and morbidity associated with unsafe terminations of pregnancy spikes.[20]

The WHO defines unsafe termination of pregnancy as one that is performed by unqualified individuals or self-induced abortion, all of which are prone to unhygienic and dangerous consequences.[20] These practices leave women at risk of substantial harm and in critical danger if complications, such as severe bleeding, occur.

Despite a decline in the rate of unsafe abortions since 1990, approximately 13% of all worldwide maternal deaths are due to unsafe terminations of pregnancy.[20] An estimated 25 million unsafe terminations occur worldwide annually, with over 99.9% occurring in developing countries.[21] However, these numbers are likely to be considerably higher due to the ongoing underreporting from both mothers and doctors due to their concerns for safety, imprisonment and avoiding hospital presentation.

Access to safe and early abortion can potentially prevent 500,000 maternal deaths and the related morbidity of an additional 8.5 million women globally each year.[20] With higher rates of maternal death and injury from unsafe abortions, greater
volumes of healthcare resources are required in the long-term compared to safe terminations of pregnancy. The WHO estimates an annual global cost of US $533 million due to major complications associated with unsafe abortions, such as massive haemorrhage and post-natal infection.[22] In developing regions, this places immense strain on an already economically burdened healthcare system.

The ‘Unsafe Abortion’ WHO report outlines that only 28% of all nations allow for legal terminations on request from the woman herself, illustrating the need for major international reform on abortion law.[20] Yet, this proves difficult when legal systems can be largely influenced by religion and cultural beliefs across the world, even if these philosophies are viewed as outdated by many.

Only 49% of all countries allow for a legal termination for rape victims, adding to the ongoing life-long pain suffered by rape victims.[20] Additionally, only 85% of developed countries allow rape victims to access abortion treatment, undoubtedly refuting the idea that this is a third world problem.[20] Ultimately, the decriminalisation of termination of pregnancy largely impacts on the rates of unsafe abortion and begins the path to improving access to women across the world. However, providing equal access does not end with the signature of a politician’s pen.

Decriminalisation ≠ Access

Australian women are often hit with great difficulty in raising the appropriate funds needed for the high-priced procedure, travel, time off work and childcare expenses when arranging care for their family while being away.[23] The median Medicare-rebated upfront cost was $560 for a medical termination and $470 for a surgical termination in 2017. An abortion after 19 weeks can cost up to a steep $7,700.[23]

Similar to the US, Australia is a vast country and has approximately 29% of its population living in rural and remote regions,[24] where increasing rurality has had a long-standing association with a lack of access to abortion.[25] With closure of a Tasmanian women’s reproductive health clinic in 2018, there has been a fivefold increase in the number of women needing to travel interstate for access to abortion clinics.[26] This comes down to a lack of gynaecologists offering the service in Tasmania.[27] The shortage of willing doctors across rural Australia is prominent in the literature.[28]

Moreover, a review conducted by de Moel-Mandel and Shelley found only 37% of delayed terminations in Victoria were for residents of Victoria, indicating the extent of travel women are needing to go to receive an abortion.[29] With variations in the restrictions in legal abortion criteria, women may need to travel longer distances to access the same level of care for a delayed termination. However, South Australia places further constraints on those who have not lived in the state for at least 2 months ineligible for a termination of pregnancy [8].

Conclusion

The decriminalisation movement has led to polarising changes across the world, with some states legislating to permit abortion whilst other states aggressively criminalise such reproductive services, archaically shackling women’s human rights once again. However, decriminalisation will never entirely equate to pragmatism nor complete removal of the deep-rooted and damaging stigma that has stood for decades. As Rosa Luxemburg once said, “Those who do not move, do not notice their chains” and, therefore, remain in a state of enduring deprivation of their rights.

In fostering and protecting women’s reproductive rights, unequivocally a form of human rights, we must collectively challenge the paternalistic status quo. We must fight for more developed services in rural areas, encouraging our state governments to fund these services and thereby combating the financial barriers that prevent so many from accessing a fundamental human right.

Acknowledgements

None

Conflicts of interest

None declared

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Image

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1. Near-total abortion ban signed into law in Alabama [Internet].


