

Introduction

As you may know, the Victorian government is currently reviewing the existing legislation in Victoria that relates to abortion. It is expected that new legislation will be introduced into the Parliament some time in 2008.

In the December 2007 issue of TMA there is an article which outlines a submission made on behalf of the Diocese of Melbourne to the Victorian Law Reform Commission on abortion. Below you will find the full text of the submission.

The Anglican Church in Melbourne does not have a definitive viewpoint on abortion. From within the Melbourne Diocese I convened a think tank of women representing a wide range of opinion on the issue, to advise me on the submission. Their report constituted, in effect, a consensus opinion.

While abortion is always a controversial issue, I expect that debate will intensify over the next several months.

The Anglican Church has predominantly been silent about abortion. Yet it is something which impacts upon many families and which is extremely sensitive for many people. Many Anglicans have had very difficult experiences surrounding abortion or the decision as to whether or not to have an abortion. Beliefs and opinions tend to be quite polarised.

I therefore ask you to exercise great discretion and sensitivity in discussing abortion, whether you are a member of the clergy or a pastoral minister, a chaplain, a lay person in a parish, or a staff member of an Anglican agency.

I recommend that you invite people who have been directly affected by abortion to speak about it with someone they trust and to seek prayer. This is generally better than open unregulated debate, or even sermons on abortion, which can cause much unnecessary anguish.

The Working Group which prepared the submission below is currently working on a document of Pastoral and Liturgical Guidelines on Abortion, which is expected to be made available to churches in 2008.

People who might want to contribute to this Guidelines document are invited to contact my office.

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**Submission to the Victorian Law Reform Commission
Inquiry on the Law of Abortion
from the Anglican Diocese of Melbourne**

9 November 2007

This submission to the Victorian Law Reform Commission is made at the request of the Most Revd Dr Philip Freier, Anglican Archbishop of Melbourne. The submission has been prepared by a ‘think tank’ of eight women members of the clergy and laity of the Diocese, appointed by the Archbishop. The think tank consists of a theologian, two senior clergy, an ethicist, a gynaecologist/obstetrician, two writer/researchers and the Chair who is the Archbishop’s External Communications Advisor. Members of the think tank also took part in a verbal Consultation with the Commission on 22 October 2007.

This submission comprises a Preamble which gives a general explanation of our position on abortion, and then moves to a consideration of a number of the Discussion Questions set out by the Commission for this Inquiry. At the conclusion of the Questions some additional comments are made.

Preamble

The Anglican Church of Australia is part of the worldwide Anglican Communion of independent Anglican Churches, of which the Archbishop of Canterbury is the symbolic leader. On ethical and many other issues, Anglicans typically take a middle-ground approach based on our understanding of Scripture in the light of the teachings and history of the Church and of human reasoning. So our general position on abortion is not absolutist – we are not absolutely ‘anti abortion’ nor absolutely ‘pro-choice’. However, the Anglican Church is for life, in the sense that our religious faith teaches a profound respect for all of the life that God has created, and for his life-giving Spirit which is manifest in the love between people, families and communities. As we answer some of the specific questions you have posed, you will see what this means in detail.

Historically, the wider Anglican Communion has said very little on abortion. The 10-yearly Lambeth Conference of Bishops last discussed abortion in 1930 when it passed a resolution which stated ‘The conference further records its abhorrence of the sinful practice of abortion’. (The same conference cautiously approved the use of contraception.). In 1989, the Australian General Synod – the national decision-making body of our Church - passed a resolution which expressed some alarm at the number of abortions being performed in Australia. No formal resolutions on the topic have been passed since then.

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

We believe abortion is a serious moral issue, but we do not believe abortion should remain a matter for criminal law. The discrepancy between the law as it stands and the current interpretation of that law leaves an uncertainty for doctors and pregnant women which it would be better to resolve. In our view, public acceptance of the reality of abortion, including acceptance of the practice among women of diverse religious communities, indicates that a change in the law is timely.

Our thinking is framed within the context of the Bible as the word of God, the Church's teaching over the centuries, and the pastoral practice of Anglican clergy. Although there are no specific biblical texts addressing therapeutic or induced abortion, the Bible points us to a world in which both the unborn and their mothers are protected and nurtured. The biblical vision presents the possibility of human beings living without violence or injustice, a world in which all life is embraced as the gift of a benevolent, self-giving God. This is a vision of a world, as yet not fully realised, where women are never violated or coerced, where children are always made welcome, where parents raise their children in a supportive and loving community; where forgiveness, understanding and reconciliation are available for all peoples; and where the needy, the poor and the vulnerable are given preferential treatment. This is the ideal; in the less than ideal circumstances in which we live, we realise that difficult moral decisions often have to be made. Further, we recognise that the Bible is a collection of texts written in a world without our modern medical practices and so does not speak specifically to the ease and safety with which a pregnancy may be terminated today. There were methods in the ancient world for dealing with unwanted pregnancies, indicating that the issue is not a new or exclusively contemporary one.

From a theological perspective, there are three main positions presented in relation to unborn life as human life. One is the absolutist position which argues that human life begins at the moment of conception. Although some individual Anglicans may hold this view, it is neither taught by the Anglican Church nor are members required to hold this view. At the other extreme is the pro-choice perspective that says women can do what they like with their own bodies. Our consensus view is the gradualist position which argues that while the embryo/foetus is fully human from the time of conception, it accrues moral significance and value as it develops.

While we believe that the destruction even of an early embryo is of moral significance, we believe the moral significance increases with the age and development of the foetus. The significance increases gradually over time, in parallel with its physical development. As a pregnancy advances, more powerful moral reasons are required to allow the destruction of the embryo/foetus. It is more serious to consider destroying a foetus at 28 weeks than at 10 weeks. We would want to see this distinction noted in any legislative provisions, though we would counsel against a legislated absolutist end-point after which an abortion could not proceed.

Anglican thought always takes the historical, cultural context seriously and creates a dialogue between the scriptures, human experience/reason and the Church's various teachings/traditions over time. Pastoral wisdom, appropriate to the times, arises from

this dialogue. On that basis Anglicans may choose a conscientious course of action, acting as responsible individuals within a community called to live in human freedom. While abortion saddens Church members, we respect the well-being of the mother, for whom devastating damage (emotionally, physically, economically or psychologically) may result from a pregnancy.

Each individual has his or her own ‘moral agency’, that is, the capacity for making important moral decisions. But in saying that, we also hold another important truth: that no woman is an island. An ethical framework based on community allows us to see that a woman’s abortion ‘choice’ cannot be abstracted from the wider web of relationships of which she is a part, especially with the father of her child. She cannot be considered a truly ‘free agent’, abstracted from her social, economic and cultural environment to choose without external influence. We do not advocate change on the basis that a woman has the right to do whatever she wants with her body, as that removes the rights of others, such as the foetus, the father and the wider community. In any legislation, we would like to see statements which affirm the value of the foetus, but hold that in balance with the moral agency of the mother, in community with others, to make choices.

The role of the Church is to offer guidance in decision making, pastoral support, spiritual guidance and prayer. The Anglican way has always been to equip its members to make their own mature decisions on how they should act in particular circumstances, rather than to develop elaborate sets of rules for every conceivable situation. The Anglican Diocese of Melbourne, even within the diversity of members’ views, supports the provision of safe and affordable abortions with appropriate safeguards for women who, for whatever reasons, request them. The alternative would be a return to earlier times when women of means could obtain safe abortions, but poorer women had to resort to dangerous ‘backyard’ abortions. This would be entirely unacceptable.

4. 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?

We recommend that the Commission consider the definitions of ‘severe’ and ‘profound’ ‘disability’ that are used by other government departments for the purposes of determining government assistance to families and individuals. These definitions could be adapted for the purposes of abortion legislation. However, we emphasise that many families are prepared to care for children whose disability would be categorised as ‘severe’ or ‘profound’ and no woman should feel under pressure to abort such a foetus.

The Commission is referred to Point 4 under our Further Comments, below.

‘Serious handicap’ should not be able to be defined solely on the view of the mother or father. We absolutely reject minor disabilities such as simple cleft palate and simple club foot in a foetus as grounds for abortion.

5. 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?

The ‘gradualist’ approach we have presented above in Section 1 should be incorporated in the abortion law of Victoria.

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

We recognise that medical technology, and the knowledge of the development of the foetus, is changing rapidly. We are therefore reluctant to have enshrined in this legislation the period of gestation past which a decision to terminate must move beyond the woman and her doctor, and come before an ethics committee. We note the requirement in Victoria for every birth of 20 weeks gestation and over to be registered. We support the requirement in major Victorian hospitals for terminations sought after this period of gestation to be brought before an ethics committee, because we believe this is commensurate with the increased moral significance of such an action.

7. What should be the role of the medical practitioner in deciding whether a termination is lawful and can proceed?

- Should these decisions be made by one or more practitioners?

The reality is that the structure of medicine in Victoria is that a patient seeking an abortion is seen by more than one practitioner, but this may not always be two doctors.

We strongly affirm the role of hospital ethics committees in approving abortions after 20 weeks’ gestation. We do not believe that these decisions should be given to one or even two practitioners to make on their own. We do not believe that the mandating of matters which must be taken into consideration by a practitioner in making the decision to allow an abortion is effective. Other areas of the law show this to be an ineffective legislative mechanism.

A method for the accreditation, preferably by the Department of Health, of all private clinics undertaking abortions is necessary. Guidelines should be prepared as to how medical practitioners make a decision whether to terminate a pregnancy. All terminations conducted should be reported quarterly.

- **Should the practitioner be required to notify the health department or similar body that the procedure has taken place?**

Yes, and we need to have more detailed information about abortion in Victoria. This should come from the practitioner as de-identified information.

10. 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?

A medical practitioner should have the right to refuse to perform or assist a termination unless a woman's life is at risk. We accept that the medical practitioner should be required to refer the woman to another medical practitioner who does not have a conscientious objection of this kind.

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

We submit that the Child Destruction Section of the *Crimes Act* should be amended so as to continue to make unlawful terminations beyond 28 weeks of gestation except where a mother's life is in danger, and criminal attacks upon a pregnant woman intended to harm her foetus, but to remove any ambiguity that doctors who are lawfully performing abortions at earlier periods of gestation might be subject to prosecution.

12. Having considering the questions above, what are the key elements you would like to see in any new law of abortion in Victoria?

- The Anglican Church wants abortion regarded as a serious moral issue, with acknowledgement of the moral status of the foetus.
- The Anglican Church accepts that abortion is regarded as a health issue not a criminal issue. However, we urge the Commission to consider what sanctions should apply to 'rogue' medical practitioners performing late term abortions without adequate cause.
- The Anglican Church wants clarity regarding the legal liability of medical practitioners involved in terminations.
- The Anglican Church wants recognition of the gradualist approach, with later term abortions in exceptional circumstances only, needing to be considered case by case. We would encourage decisions being made in consultation between the woman (the father if he is playing an active role in the woman's life) and her doctor, as well as the wider family, where possible, and with full awareness of the gravity of the moral issue. If an external body needed to be involved, we would advocate the formation of an expert panel, so that the matter does not have to be fought out in a court of law.
- The Anglican Church wants some clarifying statements, such as:
Abortion should not be treated as an acceptable means of birth control, or as a means of gender selection. While this would be very difficult to implement, we believe it needs to be strongly stated.

- The Anglican Church rejects late term abortion because of certain minor birth defects such as simple cleft palate, unless there is a genuine risk to the mother's life or serious risk to her health

As well:

- The Anglican Church would like a statement which reflects the difficulties facing some women in making this choice
- The Anglican Church would like something included which mandates that all women are given choice, and the option of counselling
- The Anglican Church would like a statement which acknowledges that while the ultimate decision to terminate a pregnancy in the first or second trimester is the mother's, she needs to take account of the fact that she lives within a community, which includes the rights of the foetus and the father.

Further Comments:

The enactment of legislation can only be a very partial response to the issues surrounding abortion. A complete policy response would include the following:

1. The collection and analysis of adequate data on abortions carried out in Victoria. Currently we do not know the ages, primary home language, literacy level of women who receive abortions, nor the reasons for which the abortion was carried out (medical, disability of foetus, social etc). Without this information, it is impossible to formulate an adequate policy response aimed at reducing abortions.
2. Increased availability of information on contraception; affordable means of contraception for all women. There is evidence that knowledge about contraception remains inadequate among women of some ethnic backgrounds and recently arrived migrant groups. Informative material in a larger number of languages needs to be made widely available, as well as provision made for services to women who are functionally illiterate. We also express concern that the new '3rd generation' contraceptive pill is too expensive for many women.
3. Adequately funded and targeted pastoral care and counselling of hospital and medical personnel conducting terminations or providing health services associated with terminations. Although this matter has been addressed in recent years by hospital administrations, strong anecdotal evidence available to us indicates that the current programs are only patchily delivered.
4. The provision of funding that ensures that vulnerable, pregnant women are not placed in the situation of having no real choice but to have an abortion. Residential programs offered by non-government agencies provide a valuable alternative but desperately need more funding.

5. Greatly increased support for the families of children with severe disabilities. Daily the media runs stories about carers who have been plunged into depression and poverty because of their care for a family member suffering a severe disability. It is not an exaggeration to say that our society is abandoning these people. No wonder women greatly fear giving birth to a child with a severe disability, but this fear would be reduced and the number of abortions sought in such circumstances also reduced, if greater access to funding (and residential care where necessary) were made available. The Anglican Church truly believes that a society is judged not by how well it treats its most powerful members, but by how well it looks after its most vulnerable members.

The Anglican Church also recognises that, as with the wider community, we have not always handled this issue well. We commit our Church to providing nurturing ministries to those in the midst of a crisis pregnancy, to those who terminate a pregnancy, and to those who give birth.