

# Fact Sheet: Infant Viability Bill 2015

## Key messages

- Under the current law, abortions can be performed up until the 9<sup>th</sup> month of pregnancy.
- This places Victoria's abortion laws among the most extreme in the world.
- The Bill would limit abortion to less than 24 weeks' gestation, at which time it is possible for a child to survive independently of its mother. This would bring Victoria into line with common practice overseas, current medical knowledge and medical advances.
- The Bill would also ensure appropriate care for children prematurely delivered from 24 weeks, including comfort and pain relief, even if they do not have much hope of survival.
- Late-term abortions do not address or alleviate the complex underlying circumstances faced by the women concerned, and if anything, are more likely to exacerbate these.
- In contrast, the Bill allows women facing a difficult pregnancy from 24 weeks to access the holistic care and support that they need, and provides for more positive long-term outcomes.

## 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*.
- Up until 24 weeks' gestation women can seek an abortion from a registered medical practitioner without restriction.<sup>1</sup>
- From 24 weeks **up until birth** women can have an abortion if two doctors agree that the abortion is appropriate in all the circumstances. The doctors must consider all relevant medical circumstances and the woman's current and future physical, psychological and social circumstances.<sup>2</sup> The two doctors could both be abortionists from the same practice.
- The current law offers no support for women facing a difficult late-term pregnancy and no protections for a child born alive after a failed abortion. It also allows a female "of any age" to undergo an abortion without any requirement for parental notification.<sup>3</sup>

### How does Victorian law compare with other jurisdictions?

- Victoria's abortion laws are among the **most extreme in the world**.
- For example, 43 states in the US prohibit abortion after a specified point in pregnancy (most commonly 20-24 weeks) except where necessary to protect the mother's life or health.<sup>4</sup>
- In many European countries, abortion is only allowed up until 10-12 weeks, after which there are strict conditions that need to be met for an abortion to be performed.<sup>5</sup>
- In the UK, abortion is only allowed up until 24 weeks to prevent physical or mental health risks to the woman or her other children. It is only allowed after 24 weeks under strict conditions.<sup>6</sup>
- Victoria's laws are **out of step** with common practice overseas, with medical knowledge of foetal viability and pain,<sup>7</sup> and with medical advances including progress in neonatal practices.<sup>8</sup>

## What changes would the Infant Viability Bill make?

### Abortion limited to less than 24 weeks

- Abortion would be limited to less than 24 weeks' gestation. This reflects the **accepted point of viability** for preborn children in Victoria – in other words, when a child can survive independently of its mother. Around 2/3 of babies born at 24 weeks who are admitted to a neonatal intensive care unit will now survive and go home.<sup>9</sup>
- This amendment would protect the life and health of both women and their preborn children and would bring Victoria into line with common practice overseas, current medical knowledge and medical advances.
- Under the Bill, a doctor who performs a late-term abortion commits a criminal offence, as does the operator of a hospital who fails to take reasonable care to prevent it.<sup>10</sup> **The women involved do not commit an offence.**<sup>11</sup>

### Options for women from 24 weeks

- At or after 24 weeks, the woman may carry the preborn child to term, or in certain circumstances, undergo a premature delivery.
- In a case where there is a substantial risk of death or serious and permanent physical impairment to a woman more than 24 weeks pregnant or to her preborn child, a registered medical practitioner may perform a premature delivery in a hospital that has neonatal care facilities. This is to be with the intention of preserving the child's life and for the purpose of protecting the life and health of the child or woman, or both.<sup>12</sup>

### All reasonable steps to preserve the child's life

- The Bill would require a doctor who is involved with a premature delivery from 24 weeks to take all reasonable steps to ensure appropriate care to preserve the child's life – however long or short that may be.<sup>13</sup>
- An example of appropriate care might be a palliative care strategy for preborn babies with life-shortening conditions.<sup>14</sup> Even if a baby does not have much hope of long-term survival, under the Bill they would still be provided with appropriate support and comfort before their death.
- Doctors are already subject to legal, ethical and professional obligations to provide appropriate medical care. However, this is in stark contrast to what currently happens when a baby survives a late-term abortion in Victoria, where they are denied appropriate and humane care, including the **denial of comfort and pain relief.**<sup>15</sup> The Bill seeks to ensure that such care is provided.

### Requirement to provide holistic care to women in distress

- The Bill would require doctors to provide, or to refer women who are 24 weeks pregnant or more and experiencing distress to support services as soon as practicable.<sup>16</sup>
- 'Distress' is defined as "psychological, social, emotional, physical or health distress",<sup>17</sup> recognising the complicated circumstances of women seeking an abortion after 24 weeks.
- This approach is to **ensure that women receive holistic care** that takes into account their physical, emotional, social, economic and spiritual needs.<sup>18</sup>

- For example, if the woman is the victim of sexual or family violence, her doctor could arrange for counselling, crisis intervention and other support; if she is homeless, they could ensure access to housing support services; if she is struggling to afford the expenses of a child, her doctor could refer her to pregnancy support services; and if she is struggling with the diagnosis of a disability, they could refer her to disability support services.<sup>19</sup>
- This approach has the significant advantage of **addressing the underlying causes** forcing a woman at risk to seek a late-term abortion. It does not require her to undergo a traumatic experience placing her at further risk of emotional, psychological and physical damage in the immediate and long-term.
- While holistic care should be standard practice for such women, it is not. The Bill seeks to address this situation.

## How many abortions are performed in Victoria after 24 weeks?

- In Australia, there is no national data collection on abortion and no uniform method of data collection, collation or publication.
- A report by the Consultative Council on Obstetric and Paediatric Mortality and Morbidity shows that in 2010 there were a total of 366 post 20-week abortions in Victoria, and 378 in 2011.<sup>20</sup>
- In 2010, 184 late-term abortions were carried out between 20-27 weeks, and 7 between 28-31 weeks.<sup>21</sup> In 2011, 172 were carried out between 20-27 weeks, and 10 between 28-31 weeks.<sup>22</sup>
- In 2011, **a late-term abortion** was carried out for psychosocial<sup>23</sup> reasons **after 37 weeks**.<sup>24</sup>
- Of these abortions, there were 24 babies in 2010 and 40 babies in 2011 who were born alive following premature labour induction.<sup>25</sup> Reports from staff present during these abortions indicate that these babies were not offered medical intervention and were left to die.<sup>26</sup>

## Why are some abortions performed after 24 weeks?

- Approximately half of all late-term abortions in both 2010 and 2011 were due to suspected or confirmed foetal abnormality.<sup>27</sup> In light of disability rights and domestic and international efforts to combat **discrimination of persons with disabilities**, this is a troubling statistic.
- Abortion advocates insist that allowing late-term abortions is important for women who are particularly vulnerable, such as those who are suicidal, those who are pregnant as a result of sexual violence, or those who have been unable to access support earlier due to family violence or other complex personal circumstances. However, these **complex circumstances are not resolved by late-term abortion**. If anything they are exacerbated.
- For example, abortion itself puts women at risk of psychological harm (not to mention physical harm), including depression, anxiety, suicidal behaviours and substance use disorders.<sup>28</sup>
- The tragic circumstances of women who are victims of sexual, family or other violence, are also not alleviated by abortion. Abortion in these circumstances potentially conceals or even legitimises acts of violence. Instead of offering women a traumatic procedure that puts their health and well-being at further risk, health practitioners and others involved in providing support should be attempting to **address the root causes** that lead women to seek an abortion in these situations.
- It is appropriate that decisions relating to the health of women and their preborn children are made between the woman and health professionals, taking into consideration the life and health of *both* the woman and her preborn child.

## What should we be doing to improve the situation for women facing difficult pregnancies?

- The Bill will go a long way to improving the situation for women facing difficult pregnancies by facilitating the provision of access to holistic care where a woman is 24 or more weeks pregnant and is experiencing psychological, social, emotional, physical or health distress.
- Through facilitating such care, the Bill aims at promoting women's holistic wellbeing as well as ensuring that the needs of women facing difficult pregnancies are truly met and that the root causes leading them to seek an abortion are appropriately addressed.
- Instead of focusing on using abortion as the solution to situations of family or sexual violence, we should be addressing these unacceptable practices in the first instance. We should also focus on providing appropriate support services to women in these situations including alternative accommodation, financial support and psychological counselling.
- In situations where women feel they are unable or unwilling to parent a child born in difficult circumstances, we should have positive alternatives in place. For example, in addition to the Bill, another way to help women facing difficult pregnancies would be to address Australia's desperate need for adoption law reform. Our adoption laws need to be user-friendly and have at their heart the wellbeing of both birth mothers and their children. Adoption could then be a real option for women facing difficult pregnancies.
- Education and awareness programs could also be carried out to encourage support for women facing difficult pregnancies, particularly by their families and the father of the child.

<sup>1</sup> *Abortion Law Reform Act 2008*, s 4.

<sup>2</sup> *Ibid* s 5.

<sup>3</sup> *Ibid* s 3.

<sup>4</sup> Guttmacher Institute, *State Policies in Brief: State Policies on Later Abortions* (2016) p 2.

<sup>5</sup> "Europe's abortion rules – no single policy", *Euronews* (14 April 2016), <http://www.euronews.com/2016/04/14/europes-abortion-rules---no-single-policy/>.

<sup>6</sup> *Abortion Act 1967* (UK), s 1(1).

<sup>7</sup> Doctors on Fetal Pain, <http://www.doctorsonfetalpain.com/>.

<sup>8</sup> Salter J, "Premature babies: How 24 week-old babies are now able to survive", *The Telegraph* (17 November 2014), <http://www.telegraph.co.uk/women/womens-health/11121592/Premature-babies-How-24-week-old-babies-are-now-able-to-survive.html>.

<sup>9</sup> "Premature babies", *Better Health Channel*, <https://www.betterhealth.vic.gov.au/health/healthyiving/premature-babies#>.

<sup>10</sup> *Infant Viability Bill 2015*, clause 10(1) and (4).

<sup>11</sup> *Ibid* clause 10(3).

<sup>12</sup> *Ibid* clause 5.

<sup>13</sup> *Ibid* clause 6.

<sup>14</sup> *Infant Viability Bill 2015*, Explanatory Memorandum, clause 6.

<sup>15</sup> Zwartz B, "Aborted babies 'being left to die'", *The Age* (7 October 2010), <http://www.theage.com.au/victoria/aborted-babies-being-left-to-die-20101006-167u0.html>.

<sup>16</sup> Above n 10 clause 4(1) and (2).

<sup>17</sup> *Ibid* clause 4(3).

<sup>18</sup> *Infant Viability Bill 2015*, Second Reading Speech, 13 April 2015.

<sup>19</sup> *Ibid*.

<sup>20</sup> The Consultative Council on Obstetric and Paediatric Mortality and Morbidity, *Victoria's Mothers and Babies: Victoria's Maternal, Perinatal, Child and Adolescent Mortality 2010/2011* (Department of Health, Melbourne) p 159.

<sup>21</sup> *Ibid* 160

<sup>22</sup> *Ibid* 162.

<sup>23</sup> 'Psychosocial' encompasses any cause other than foetal or maternal physical health.

<sup>24</sup> Above n 20 162.

<sup>25</sup> *Ibid* 159.

<sup>26</sup> Zwartz B, "Aborted babies 'being left to die'", *The Age* (7 October 2010), <http://www.theage.com.au/victoria/aborted-babies-being-left-to-die-20101006-167u0.html>.

<sup>27</sup> Above n 18 159.

<sup>28</sup> Fergusson DM, Horwood LJ and Boden JM, "Abortion and mental health disorders: evidence from a 30-year longitudinal study" (2008) 193 *BJ Psych* 444 at 449.