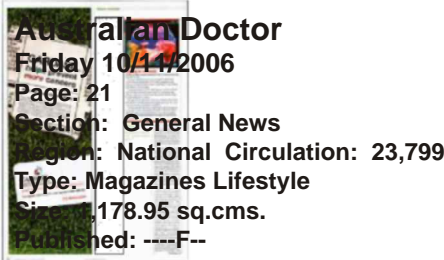


Calls to bring clarity to Australia's confusing and inconsistent abortion laws may sound convincing, but some experts believe national reform could make doctors more vulnerable.

BY HEATHER WISEMAN

ABORTION
Part 2



It sounds like such a simple and sensible fix: make Australia's abortion laws clear and consistent, so doctors and their patients know what is legal and what is not, and women across the country have equal access to the procedure.

But it's not simple and it may not even be sensible.

The AMA's calls for clarity and consistency in abortion laws have acquired new urgency after recent controversial cases in NSW and Victoria.

But one expert in health law and ethics believes there are serious risks in asking for abortion laws to be spelled out, describing such a move as "unwise".

Associate Professor Cameron Stewart, from the law department of Sydney's Macquarie University, says the vagaries of the law enable doctors to make their own informed judgments in a complex area with many variables.

"The cost of having certainty is that you may need to have more regulatory control," he says. "[New laws] might be more prescriptive and more difficult to comply with."

Although he understands doctors feel vulnerable, particularly in states where abortion comes under criminal law, he says their fear is ill-founded.

"The wobbliness is in favour of doctors," he says.

"Doctors have a tendency to feel victimised, but it's crap — the system is set up to protect them. Criminal law presumes you're innocent. This is not an area of law where abortion practitioners should feel threatened."

AMA president Dr Mukesh Haikerwal disagrees. While he acknowledges any effort to address problems with abortion legislation is risky, he says it would be an improvement if doctors knew where they stood — even if

the law became more prescriptive.

"If you're working in a fog, and a practitioner is caring for a woman in this way and is at risk, I don't think that is a tenable situation either," he says.

Although it would be "problematic" if clarifying the laws resulted in more restricted access to abortion, Dr Haikerwal says the current lack of clarity brings its own difficulties. "I don't think the position would be worse than now if it clarified doctors' rights and responsibilities in this area."

The AMA has stopped short of calling for abortion to be removed from criminal legislation, but Dr Haikerwal says if this brought clarity and consistency the AMA would support it.

"The issue is that, where abortion is deemed legal and is being carried out, that practitioners should not be at risk

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of being prosecuted," he says. "Because of the nature of the current laws, in some states that is a possibility."

Decriminalisation is exactly where the AMA should focus its lobbying, according to Dr Leslie Cannold (PhD), senior lecturer at the centre for gender and medicine at Melbourne's Monash University. The AMA should stop pushing for nationally uniform legislation and aim for state-based change, one jurisdiction at a time, starting with Victoria.

"It is exactly the right time to push for a repeal bill [to remove abortion from criminal law] in Victoria, because the Bracks Government is about to be re-elected and it is only at the beginning of the term of a new government that they will take this issue on," says Dr Cannold, who is also a board member of Family Planning Victoria and a principal of Reproductive Choice Australia.

"If Victoria goes, there is a very good chance of repeals in NSW and Queensland, and then you've covered most of the doctors and most of the women in the country."

Last month the NT became the second Australian jurisdiction, after the ACT, to remove abortion from criminal legislation, including it in the Medical Services Act with all other health-related

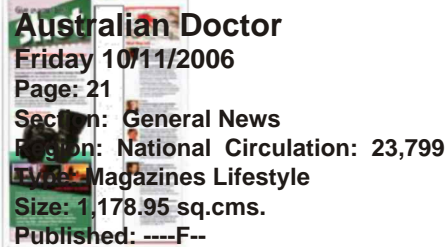
legislation (see box, above right).

Private obstetrician and NT AMA treasurer Dr Jenny Mitchell says moving the legislation out of the Criminal Code of NT has brought some peace of mind, but the new laws still lack adequate clarity.

"They only changed about five words in the whole Act when they moved it," she says. "[But] it's good not having that big knife hanging over your head — that if someone gets their knickers in a knot, the police will come knocking on your door and charge you."

The call for decriminalisation has also come from leading Melbourne obstetrician and ultrasonologist Associate Professor Lachlan de Crespigny, who wrote in the *Medical Journal of Australia* highlighting the inequity of Australia's inconsistent laws and calling for "a single clear national law on abortion, both in early and late pregnancy". While acknowledging there would be "objections and difficulties in clarifying and unifying Australian abortion laws", Professor de Crespigny said previous legislative reform on other state-based issues showed it was possible.¹

"Unifying laws would require states and territories to work together, presumably with Federal Government



input,” he wrote. “The process would not be easy, but could be achieved with sufficient co-operation and determination, as shown by the successful introduction of new laws on gun ownership and embryo experimentation.”

A spokeswoman for the Attorney-General’s Department says the Federal Government does not have power under the constitution to enact uniform national abortion laws. Uniform gun laws were only passed after state and territory agreement at a meeting of the Australasian Police Ministers’ Council, while consistent laws on embryo experiments arose out of agreement in the Coalition of Australian Governments.

Either of these bodies could, in theory, bring about national conformity on abortion laws, as could members of the Standing Committee of Attorneys-General. The standing committee could have done this through the subcommittee it set up to draft a national model criminal code. However, in 1998 the subcommittee formally backed off on abortion, saying it was “not in a position to make a final report to ministers on ... a recommended legislative position” and that “consultation proved that the issue is ultimately one for political decision”.

A former adviser to Federal Parliament, specialising in health and bioethics issues, Dr Natasha Cica (PhD), says
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chances of national legislative reform are “pretty much zero”.

“It would be possible for the states and territories to get together to achieve national reform, but that demands politicians’ will and, in the case of abortion, that is most unlikely,” says Dr Cica, who prepared a comprehensive report on abortion law designed to be used as a resource for MPs debating the issue.

Member of the ACT Legislative Assembly Mr Wayne Berry proved he had the will when he lobbied successfully for abortion to be decriminalised in the ACT in 2002, but he too holds out little hope for consistent national reform. “It could occur — at COAG there could be a broad agreement — but I doubt that it would happen,” he says, suggesting a state-based attempt at decriminalisation is the only way ahead.

But even that would take great time and patience, largely because politicians believe taking a stand on abortion issues can end their careers. Mr Berry, though, found the opposite to be true in the 10 years he pushed for reform in the ACT, despite heavy lobbying from the Right to Life Association.

“The important thing that I learned from my experience as a campaigner for abortion

law reform was that most in the community supported the actions I took and my stance earned their respect,” he told a recent Reproductive Choice Australia meeting. “While anti-abortion campaigners are loud and well organised, they are out of step with the rest of the community.”

“It is a mistake to view their loudness and organisational ability as a reflection of how the rest of the community will vote on the issue of abortion.”

Abortion provider Marie Stopes International works across four different legal jurisdictions in Australia — NSW, Queensland, WA and the ACT — and sees the problems caused by complex and unclear laws. But Australian CEO Ms Suzanne Dvorak cautions against hasty moves for change.

“While it is important that the community discusses this issue, we need to be careful about jumping to what we think is the solution too quickly,” she says.

“National legislation, particularly the decriminalisation of abortion, could be the answer, but there may be other possible solutions that need to be explored before making that decision.

“It is important that the debate remains focused on upholding a woman’s reproductive rights.” ●



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Ending an anomaly

THERE has been a bizarre anomaly in the NT's abortion laws for the past 30 years.

The laws stated that only a gynaecologist or obstetrician could terminate pregnancies of 14 weeks' gestation or less, while any "suitably qualified medical practitioner" could perform terminations up to 23 weeks.

Private obstetrician and NT AMA treasurer Dr Jenny Mitchell says this had prevented private clinics from operating in the territory, where the workload was being carried almost entirely by one obstetrician in Darwin.

But legal reform last month, which saw abortion laws moved from the NT's Criminal Code to the Medical Services Act, have overcome the long-standing inconsistency.

The new law still requires an obstetrician or gynaecologist to be involved "where reasonably practicable" in any termination before 14 weeks, but Dr Mitchell says it now allows qualified GPs to perform these terminations and does not preclude the use of RU486.



What they said ...



QUEENSLAND

Dr David van Gend is a Toowoomba GP who will not prescribe the morning-after pill or refer patients seeking an abortion. He is Queensland secretary of the World Federation of Doctors Who Respect Human Life.

"The laws are inadequate, but in the current brutalised cultural climate, any change would be for the worse. The laws should not be removed [from the criminal code], because they keep a social 'truce' between those who [believe] that it is wrong for adults to kill their young, and those who want ... the unrestricted freedom to kill their young.

"The current [criminal code] arrangements ... achieve that pragmatic truce, and to upset that balance would only heighten the social discord over abortion. Prudent politicians know the laws are best left well alone."



VICTORIA

Dr David Grundmann performs late-term abortions at a Melbourne surgery and earlier abortions in the four clinics he owns in Queensland and one in NSW.

"We treat our patients as normal medical patients, but the law doesn't. There's no reason why abortion should still be in the criminal code. I don't think there should be any laws regarding abortion."



Associate Professor Lachlan de Crespigny is a leading Melbourne obstetrician and ultrasonologist. In 2004, he co-authored a Medical Journal of Australia article calling for clarification of Australia's abortion laws, which included the following comments:

"Why should an ACT woman carrying a fetus with a major abnormality at 20 weeks be entitled to a legal abortion yet if she lived in WA she would need to win approval from a government committee, while in NSW her access to abortion would be uncertain?"



NSW

Dr Geoff Brodie is medical director of Australian Birth Control Services and has two clinics in Sydney.

"[In NSW] the doctor must have an honest belief on reasonable grounds that ... [it] would be detrimental to the woman's health [to continue the pregnancy]."

"Only one doctor's opinion is necessary and the onus of proof is on the crown, which makes it even harder for someone to prosecute the doctor. No jury is going to convict a doctor under normal circumstances."

NT

Dr Jenny Mitchell is a private obstetrician and NT AMA treasurer.

"I think the law as it stands gives us a lot of scope because it's not restrictive at all. A lot of people would call for more clarity, particularly for termination where, in a life plan, a pregnancy isn't what the woman wants, which is what the majority of terminations are for. Technically it's still not clear whether these terminations are legal or not."