



Submission to the Australian Law Reform Commission

Maternity Consumer Network and Maternity Choices Australia are the leading maternity consumer advocacy organizations in Australia. We have a combination of nearly 2000 memberships via individuals and organizations. Together we work towards promoting women's human rights in childbirth and sit on many governing health boards that advise on maternity care policy. As part of our work, we also help women with complaints about their maternity care and report to health regulatory authorities or police as necessary. However, navigating narrow medical negligence, civil and criminal justice, discrimination and human rights laws are extremely burdensome on individual mothers and our volunteer advocates. We do not get paid or receive grants for this area of advocacy for women

Obstetric violence is a serious global issue and most obstetric violence is sexual violence in nature. The UN defines obstetric violence as:

"A form of gender- based violence, exercised by those in charge of health care for pregnant women accessing services during pregnancy, childbirth and postpartum."¹

The WHO has recognised 'abuse and mistreatment' and discussed high income countries like Australia having a 'too much too soon' culture causing more harm than good.²

While obstetric violence can encompass a range of issues, the sexual violence experienced by women during birth makes up the bulk of our complaints. This ranges from forced vaginal and anal exams to being down against their will for operative vaginal births such as forceps being shoved inside without consent and without their human right to pain relief. It also includes female genital mutilation via episiotomies, which for many women are done without consent,

¹ [UN Res.71170..pdf \(eipmh.com\)](#)

² [New evidence shows significant mistreatment of women during childbirth \(who.int\)](#)

against their refusal and often without their human right to pain relief.³ Guidelines often support cutting women's genitals to prioritize a fetus over a woman's bodily autonomy despite limited evidence.⁴

Unfortunately, Australia doesn't have specific obstetric violence laws that criminalize this behavior. And while there are sexual violence/FGM laws police can charge a provider under, there is a socio/cultural myth that a healthcare provider can perform medical procedures on women's genitals because of their title/profession and the woman being located in a hospital.

Despite women's bodily autonomy being recognised in Australia in pregnancy, it is not so in practice and culture and many people are of the belief it is okay to assault women to prioritize an unborn baby.

This bodily autonomy is recognised by both Queensland Health and NSW Health in their maternity care consent policies.^{5 6} But they are not worth the paper they are written on as these autonomy policies are never up-held by any health regulator or hospital and have yet to be tried by the civil or criminal court in Australia.

In the civil legal system, most lawyers won't take on a case of a woman being assaulted in birth unless she meets the threshold of physical injuries to warrant a sufficient payment worthy of legal interest. Most women will not meet this threshold.

Relevant Australian research has captured that 1 in 10 women identify as being victims of obstetric violence, yet there is very little action by police or health regulators to address this.⁷

In fact health regulators usually excuse sexual violence against women in medical situations and do not inform women they have the right to make a police report.

For example, a woman in Queensland came to our organizations alleging she was held down by multiple healthcare providers as a doctor shoved a 'fetal pillow' (a device used in cesarean sections) into her vagina without pain relief. She was clear her consent was contingent on her being put under general anesthesia.

During the assault, a midwife tried to intervene and tell the doctor to stop and the woman's partner heard her screams from outside. Despite the severity of the case, the Queensland Health Ombudsman refused to take the case on until she complained to the hospital first. The hospital brazenly admitted they contravened Queensland Health Guidelines in order to prioritize the wellbeing of a fetus over the woman's human rights. This is despite the fact the

³ [The impact of a perineal care bundle on women's birth experiences in Queensland, Australia: A qualitative thematic analysis - PubMed \(nih.gov\)](#)

⁴ [A pre-post implementation study of a care bundle to reduce perineal trauma in unassisted births conducted by midwives - PubMed \(nih.gov\)](#)

⁵ [Consent to Medical and Healthcare Treatment Manual - Policy and procedure manuals \(nsw.gov.au\)](#)

⁶ [Partnering with the woman who declines recommended maternity care | Queensland Health](#)

⁷ [Dehumanized, Violated, and Powerless: An Australian Survey of Women's Experiences of Obstetric Violence in the Past 5 Years - Hazel Keedle, Warren Keedle, Hannah G. Dahlen, 2022 \(sagepub.com\)](#)

advice in the Queensland Guideline on 'Partnering with the woman that declines recommended maternity care' advises not to assault women during emergencies and simply explain the risks of what their choices may be.⁸

The Queensland Health Ombudsman did not inform the woman this was a crime or let her know she could go to the police so we had to do it. We did the police report for her to the QPS sexual assault unit and had to have meeting with the OHO about their response and lack of action on this (which they were receptive to, but the hospital that condoned the abuse received no admonitions). Despite admissions from the hospital and doctor themselves that they did perform this act without consent and for reasons against women's rights to bodily autonomy, the Queensland district prosecutor dismissed the case as 'not being a crime,' rather than for the fact there was a lack of evidence.

However sometimes women are told by prosecutors there is not enough evidence regardless of admissions and that was the case for a Victorian woman who was held down and forceps shoved inside her without pain relief and against her will, leaving her with severe birth injuries (attached).

Likewise, we get a significant amount of complaints from Victoria and NSW of women being forced into vaginal exams and operative vaginal births via physical force and none of the health regulators such as the NSW HCCC or AHPRA make police reports, let alone inform the women they have the option to go the police. Most sexual violence against women during birth is justified by these health regulators unfortunately.

Women themselves don't know police are an option and that they can attempt to pursue things through the criminal legal system for sexual assault in medical settings regardless of the odds against them. Unfortunately there is a cultural myth that this is just a civil matter and health entities tell women they should request a debrief with their medical rapist as part of a resolution.

This is the only form of sexual violence we know of where women are told by government health and regulatory health agencies to give their alleged rapist access to their person and let said alleged rapist dictate their justifications for the assault.

It is also the only form of sexual violence that is done in a room full of witnesses, with medical students invited to watch and birth support do not know how to intervene or to call police. Very rarely do the health professionals who witnessed everything document the assault let alone try and intervene themselves. It is our suspicion many of them don't even recognise or identify that is what happening is sexual assault and sexual violence.

While being able to advocate for women and report medical sexual violence with them to get their cases investigated as organisations, women approaching police as individuals don't have such luck. We had a case where a woman was violently sexually assaulted by a midwife during

⁸ [Partnering with the woman who declines recommended maternity care | Queensland Health](#)

her birth via a vaginal exam that left her injured, who was then told by police that the midwife had a medical exemption when she reported the assault to them.

There is no such medical exemption. Consent is only assumed if a woman is unconscious and there is no advanced healthcare directive in place. Health care professionals have no special status to assault patients under any Australian laws.

This is what women who are victims of sexual violence in maternity care are up against and many of them get no justice and there is no accountability for sexually violent medical providers.

So to answer the questions from the perspective of our organizations:

1. Most women do disclose sexual assault by their medical provider, but are told by friends, family, hospitals and health regulators that the assault is okay because its done by a medical provider and they should be grateful they got a baby out of it. They also have to deal with medical lobbies like RANZCOG and the AMA writing submissions to other birth trauma inquiries implying the violence women experience from obstetric assault is from their unreasonable expectations and that their abuser isn't doing it 'intentionally.'⁹ ¹⁰ Women are being told by their own government that the birth trauma they experience as the result of assault is their problem and they should have 'reasonable expectations' about childbirth and it is their responsibility to prevent it.¹¹ We have yet to perceive why the idea women should be treated with respect, not sexually violated and their bodily autonomy up-held in birth is unreasonable.
2. There are currently no reforms in place to address criminal or civil justice for women who are assaulted during birth and these issues are often not part of sexual violence discussions. There are birth trauma inquiries and changes towards improving maternity care and informed consent training for clinicians, which is good, but means very little without any legal accountability for medical professionals who sexually assault women. A legal deterrent to sexual violence in birth is very much needed. Many times despite being assaulted, women won't meet the 'harm' required by the civil liability act for a lawyer to be interested in their case and police don't see it as a crime. A few South American countries such as Venezuela and Brazil have criminalized the abuse of women during birth.
3. Health regulators such as AHPRA should be legally forced to write in their responses to women that they have the right to report concerns to police if such women are alleging a sexual assault occurred in their birth. State health regulators like the NSW HCCC have a long history of covering up for perverts and predators like Graeme Reeves, dubbed the 'Bega Butcher.' An obstetrician in the 90's who was alleged to have sexually violated hundreds of women and had multiple suspicious deaths of women under his care. He

⁹ [0238 RANZCOG.pdf \(nsw.gov.au\)](#)

¹⁰ [AMA \(NSW\) Submission to the Inquiry into Birth Trauma - Australian Medical Association \(NSW\) \(amansw.com.au\)](#)

¹¹ [The emotional impact of birth trauma | Pregnancy Birth and Baby \(pregnancybirthbaby.org.au\)](#)

was found guilty of mutilating a woman's genitals, but no thanks to the HCCC, police were not informed of so many allegations that would have enabled them to gather evidence and witnesses to his alleged many crimes.¹² Police should also receive training that sexual violence is not just done by partners or strangers hiding in the bush, but occur during childbirth and in other medical settings.

4. We think there needs to be a law or policy on state and federal health websites and specific to maternity care that if a woman comes to them alleging assault, that they cannot take on any sort of debrief and women should report to police. The current status quo in the health system is to give obstetric sexual predators access to their victims via said 'debriefs.'
5. To add, in terms of accessing services, women who are victims of sexual obstetric violence are not given the services of rape victims and are turned away from rape crisis centres. They very much need to be part of the discussion on sexual violence and law reform and included in accessing rape victim services, especially if they do make reports to police. Currently the MCN is the only organisation that has created pamphlets and information sheets for women contemplating reporting sexual assault in birth to police and is the only one along with the help of MCA that assists them through the process and links them with access to psychological support services.

Emilia Bhat
President
Maternity Consumer Network

Azure Rigney
Vice-President
Maternity Choices Australia

[Home | mcn-australia \(maternityconsumernetwork.org.au\)](http://maternityconsumernetwork.org.au)

[Pregnancy Information | Maternity Choices Australia](#)

¹² [HCCC defends non-action on 'mutilation' \(smh.com.au\)](#)

Making a police report for obstetric violence

Obstetric violence offences

Obstetric violence can be a crime that comes in many forms. These offences can include locking women in hospital rooms to force consent to treatment or violent physical medical assaults (such as forced forceps deliveries). Each of these procedures are illegal without consent from the woman. A medical emergency is never an exception, unless you are unconscious.

Laws

Australia doesn't have specific obstetric violence laws, but we have other laws where police can charge a medical provider under, such as sexual assault/rape/bodily harm/criminal negligence. Criminal law is very complex.

Obstetric violence includes any illegal act that causes harm in the context of pregnancy, birth and post partum

Obstetric violence support



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Reporting

If a medical provider has assaulted you or is holding you against your will in a facility, a report should be made to police as soon as possible. Witnesses should make their own report also. If you are unsure, you can still report to police, request for Maternity Consumer Network to do it with you or seek your own independent legal advice. When seeking support to report obstetric violence, be mindful of getting support that is psychologically safe and from qualified supports. Many mothers may be offered support from various people who are not qualified or experienced to do so, and often contribute to trauma.



Assaulting women during birth is not okay.



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The Complaint Process

Police statement

Police will take your statement and investigate your complaint. Unfortunately obstetric violence victims do not get offered the same services as sexual violence victims via counselling/recovery needs. These will have to be sourced independently or from a birth advocacy organisation like us. You should still ask for these services from police.

What to report

Medical crimes that can be reported include:

- forced vaginal/anal examinations
- forced instrumental deliveries such as forceps being put into you against your will.

These can be reported to the police sexual violence unit.

Other issues can be reported including:

- being held against your will in hospital
- illegal physical escort to hospital in pregnancy
- forced caesarian section.

This can be reported to a general police officer as assault/abduction.

Witnesses to your assault such as your partner or other support person should make police statements along with any documentation or recordings they have of obvious criminal behavior.



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Prosecution

The Process

The police decide whether to lay charges and this depends on what evidence they gather and what is considered by the prosecutor.

Investigation is at police discretion as is decision to charge.

Criminal proceedings require a high standard of evidence for a conviction. This is 'beyond all reasonable doubt' and is decided by a jury.

Sexual crimes especially regarding obstetric violence are very hard to prove and the process can be emotionally taxing for women.

However, we do think it is important for women to report abusive and violent medical providers when they break the law to help police and community view obstetric violence as a crime.



Regulatory Authorities

A provider can be reported to the Australian Health Practitioner Regulatory Authority (AHPRA) for violence, however health regulators don't usually refer violent providers to police or take action so they are best avoided. We recommend an advocacy group like ours to support you so that appropriate authorities are aware of the circumstances.



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Your Rights

Nearly all states and territories in Australia have victim rights and support Acts as enshrined legislation. These rights include:

- being treated with kindness and empathy
- being given information about the prosecution process
- protection from the accused
- victim compensation and restitution schemes
- victim impact statement during sentencing.



Resources

<https://www.humanrightsinchildbirth.org/>

<https://www.maternityconsumernetwork.org.au/>

[Australian Sexual Assault Directory of Support Services – NASASV](#)

<https://www.maternitychoices.org/>

victimsandwitnesses.cdpp.gov.au/

[Women's Legal Services Australia – The National Voice of Women's Legal Services \(wlsa.org.au\)](#)