

Fetal Welfare and the Law

1996

Preamble

1. The Australian Medical Association is concerned that some fetuses will suffer permanent harm *in utero* because of the mother's behaviour. The mother's exercise of her rights to refuse or ignore medical advice and care can damage the fetus. Such autonomy, as is the right of every legally competent person, requires modification in the event that the child is likely to be affected in the course of its subsequent independent existence.

A pregnant woman's right to refuse treatment

2. The Association recognises that a doctor may not treat a legally competent pregnant woman who has refused consent to that treatment. It is the role of the doctor to inform and educate the patient about the risks of refusing treatment. Recourse to the law to impose medical advice or treatment on a legally competent pregnant woman is inappropriate.

Educational role of the doctor

3. It is the role of medical practitioners to provide clear and comprehensive information to pregnant women and their partners with respect to behaviour which can pose specific risks to the fetus.

The protection of a child born to a negligent mother

4. In "care and protection" proceedings to determine whether or not there is a substantial likelihood that a child will suffer further harm at the hands of its mother, a court should accept evidence of persistent maternal behaviour adverse to the welfare of the child when it was *in utero*, where the mother was warned or where she could reasonably be expected to have known that her behaviour was likely to damage the fetus.
5. When evidence indicates that the mother chose not to heed the medical advice which she received before or during the pregnancy and labour, thereby sharing the responsibility for the child's being born disabled, in cases where a doctor is accused of negligence, any damages which might be awarded against the doctor should be reduced to the extent that the Court considers just and equitable, having regard to the extent of the mother's responsibility.

Responsibility of other persons

6. The Association is aware that a child can be damaged, when *in utero*, through the action of persons other than its mother. Behaviour by any party, including the mother's partner, may result in such harm. In such cases the party concerned must accept responsibility for their actions.

This Position Statement was formulated in response to a Report on Fetal Welfare and the Law by John Seymour which was received by the Federal Council in May 1995.