

# Roe v Wade – a lesson in complacency

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We have seen an abundance of articles in the news lately concerning *Roe v Wade*, and last week the decision was overturned. Summer Walker, Associate at Wotton + Kearney, sits down with Health Law Partners, Marie-Clare Elder and Claudine Watson-Kyme, to discuss their views on its implications.

## At a glance

- On 24 June 2022, the United States Supreme Court overturned the 1973 decision of *Roe v Wade*.
- The decision has been criticised widely, including by many world leaders.
- It is likely to cause significant social and economic impacts, particularly for many of America's most vulnerable women.
- While the decision carries no legal weight in Australia, it is a timely reminder not to be complacent about our own legal and health system.

## Background

*Roe v Wade* (*Roe*) was a landmark 1973 United States Supreme Court decision that ruled that a woman has a constitutional 'right to privacy' to make decisions about her reproductive life, including whether to continue or end her pregnancy before viability.

*Roe* has been viewed as a 'pro-choice' decision. Although it did not create an absolute right to abortion, it meant that the government's interests in protecting health and prenatal life must be balanced against the woman's right to privacy.

The initial draft majority decision of US Supreme Court Justice Samuel Alito, in the matter of ***Thomas Dobbs, State Health Officer of the Mississippi Department of Health et al., Petitioners v Jackson Women's Health Organization, et al. (Dobbs)***, revealed the Court's intentions to overturn *Roe*. On 24 June 2022, it did just that.

The effect of this judgment means decisions about abortion access will be left up to each state. At least 23 states have, or are considered highly likely to, ban abortion.<sup>1</sup>

## Questions for Marie-Clare & Claudine

**As *Roe* has been overturned, what will some of the social impacts be on US citizens?**

*Roe* changed the arc of women's lives by allowing access to safer abortion. Studies found the legalisation of abortion led to:

- African American women experiencing a 28 to 40% decline in maternal mortality
- a reduction of teen motherhood by 34%, and
- reduced cases of child neglect and abuse.<sup>2</sup>

With *Roe* overturned, data indicates rates of abortion are likely to stay the same – regardless of their legality. With legal access to abortion unavailable in many states, it is likely there will be a rise in dangerous and/or backyard abortions, which in turn carry higher risks of infection that can lead to sepsis and death.

There are also concerns about unwanted pregnancies triggering a rise in domestic violence perpetuated by men who do not want to accept fatherhood.

Concerningly, the management of ectopic pregnancies will become a legal decision, rather than a medical one, which may prevent women from seeking medical help. Another area of medical impact is in the IVF field, where access to IVF and decisions about the storage, use and destruction of embryos may be legally impeded.

**What will be the economic impact on US citizens?**

The [Amicus Brief](#) of 154 distinguished economists in the matter of *Dobbs* is a fascinating statistical analysis of the causal impact of abortion on women's lives.

It reveals that in the US, approximately 49% of women who seek abortions are poor and 75% are poor or low income.<sup>3</sup> Many of these women also lack access to paid maternity leave or to affordable childcare. A mother working full-time and making \$15 per hour (more than double the US federal minimum wage) faces infant childcare costs that total one-third of her gross pay.

According to a study by David Kalist<sup>4</sup>, the financial effects of being denied an abortion are as large or larger than those of being evicted, losing health insurance, being hospitalised, or being exposed to flooding due to a hurricane. This has downstream impacts on women's social and economic lives, and their ability to attend college and enter professional occupations.

With access to abortion, Angrist and Evans found a 22 to 24% increase in the probability that African American teenage women graduated high school and a 23 to 27% increase in their probability of attending college.<sup>5</sup>

Another study showed that young women who utilised legal abortion to delay an unplanned start to motherhood by just one year had an 11% increase in hourly wages later in their careers.<sup>6</sup>

The 2020 'Turnaway Study' found that US women who were turned away at an abortion clinic due to the gestational cut-off age (turnaway group) experienced a 78% increase in past-due debt and an 81% increase in public records related to bankruptcies, evictions, and court judgments in the subsequent five years, compared to the 'near limit group' who went on to receive an abortion.

**What effect could the decision have in Australia?**

The *Roe* decision carries no legal weight in Australia. Currently, Australia's abortion laws are regulated on a state-by-state basis where each state has different cut-off requirements.

For example, NSW permits abortions for up to 22 weeks and permits an abortion after 22 weeks if two medical practitioners agree to the procedure. South Australia was the last state to formally decriminalise abortions in 2021.

The general community sentiment amongst Australians is that they support women's right to choose and access safe abortions.

However, it is important not to be complacent about this health issue. Australia has not been immune to abortion-related violence, including pro-life crusader Peter James Knight's murder of a security guard at a Melbourne abortion clinic in 2001. We also have vocal anti-abortion groups, and social media sends a strong current of conservative American values through our culture.



## What are some of the current obstacles to access abortion in Australia?

Despite the legal status of abortions in Australia, experts agree there is an issue with accessibility.

Abortions are costly as they are largely performed in private clinics. Only South Australia and Western Australia offer abortions in public hospitals. In a number of states (including New South Wales), patients also need to spend money seeking the approval of two medical practitioners for the procedure.

The majority of abortion clinics are located in metropolitan areas, leaving rural women disadvantaged and having to travel long distances to see potentially multiple medical providers.

There is also a shortage of trained surgical abortion providers. Presently, roughly only 10% of GPs have re-registered to prescribe mifepristone (used in the case of early termination of pregnancy), and this figure is much lower in regional areas.



## Final thoughts

In our opinion, the 24 June decision was a devastating blow to the rights of women, as well as to the disadvantaged and vulnerable. The consequences of stripping a citizen's right to bodily autonomy will be felt by Americans for generations. The *Roe* decision is a powerful warning to other nations, like Australia, not to be complacent in protecting and advancing the rights and freedoms many of us take for granted.

## References

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- <sup>3</sup> Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 Am. J. of Pub. Health 1904, 1906 (2017); Rachel K. Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, 12 PLoS ONE e0169969 (2017).
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- <sup>6</sup> Ali Abboud, *The Impact of Early Fertility Shocks on Women's Fertility and Labor Market Outcomes* (Nov. 22, 2019), <https://ssrn.com/abstract=3512913>; Kelly Jones, *At a Crossroads: The Impact of Abortion Access on Future Economic Outcomes* (American Univ. Working Paper, 2021), <https://doi.org/10.17606/0Q51-0R11>

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