AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.

ABN 91 028 693 268

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12 June 2019

Dr David Prater
Deputy Director
South Australian Law Reform Institute
Email: salri.new.ref@adelaide.edu.au

Dear Dr Prater,

AMA(SA) submission to the South Australian Law Reform Institute (SALRI) Review of Abortion Law and Practice in South Australia

Thank you for the opportunity to provide input into the review of South Australia's abortion laws, for the extension that enabled us to best capture our members' input, and for the meeting at AMA House on 5 June 2019 that helped clarify aspects of the SALRI survey before finalising this submission. We also appreciated the invitation extended to us, and to our members in regional areas, to contribute to discussion in face-to-face meetings and forums with the South Australian Law Reform Institute (SALRI).

Abortion is an issue with complex medical, ethical, legal and social aspects, and this is reflected in the diversity of opinions among Australian Medical Association South Australia (AMA(SA)) members. The AMA(SA) respects the varying, and often deeply held, opinions of its members on this topic.

Before drafting this submission, we contacted all AMA members in South Australia, seeking their opinions and comments about the questions posed in the SALRI online survey. The feedback we received, along with reference to relevant AMA position statements, led to the development of a draft paper that was discussed at length at the AMA(SA) Council meeting on 6 June 2019.

This submission represents the overall view of AMA(SA) Council reflected at this meeting in response to the SALRI survey questions. However, in providing this submission, the Council wishes to emphasise its understanding and recognition of the significant diversity of opinions regarding abortion, and to specific questions posed in the SALRI survey, among our AMA(SA) members.

As you will read below, we have provided specific feedback according to the subjects outlined in your online survey.

I have attached the relevant AMA's position statements as follows:

- *AMA Position Statement on Ethical Issues in Reproductive Medicine 2013*
- *AMA Position Statement on Reproductive Health and Reproductive Technology 1998 (Revised 2005)*
- *AMA Position Statement on Conscientious Objection 2019.*

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1. Role of the criminal law (questions 1-4)

The AMA(SA) believes abortion should be a regulated medical procedure rather than a criminal law issue. As such, it should be removed from the criminal code, so that neither qualified health practitioners who perform abortions, nor individuals who seek abortions, can be prosecuted for these actions.

An individual should never be regarded as having performed a criminal act in seeking or undergoing an abortion.

We suggest that reforms based on our recommendations below, along with adherence to accepted standards, policies and professional ethics, will provide the means to protect the health of individuals seeking abortion services while securing their right to do so.

2. Who should be permitted to perform or assist in performing terminations? (question 5)

The AMA(SA) is of the firm belief that abortions should only be performed by qualified medical practitioners, or suitably trained nurses working under the direct supervision of qualified medical practitioners. The AMA(SA) also recommends criminal consequences for an individual who performs abortions who is not a qualified medical practitioner or a nurse working under the direct supervision of a qualified medical practitioner.

This advice is based on our belief that abortion must be performed by people qualified to do so, to ensure a termination is performed correctly and for the safety, health and wellbeing of the patient during and after the procedure.

Clinical, counselling and information services should be adequately funded and made available in all regions of the state to ensure that individuals are able to access the information they need to make informed decisions and to procure from qualified medical practitioners the services they need to act on their decisions safely and without criminal penalty or social recrimination.

3. Gestational limits and grounds for termination of pregnancy (questions 6-11)

The AMA(SA) recommends the removal of gestational limits in relation to when an abortion may be performed. This supports our view that in almost all cases, late-term abortions are sought in response to medical conditions affecting or with the potential to affect the pregnant individual and/or the foetus. A pregnant individual should be able to decide their own best course of action, regardless of gestation. They should be able to make this decision while avoiding the emotional and psychological trauma that may be caused when decisions are made under the pressure of arbitrary (non-clinical) limits.

The fact sheets provided by the SALRI support this and indicate that in Australia, late-term abortions are rare. ‘Fact Sheet 9’ refers to data that reports that about 99 per cent of the terminations in Victorian public hospitals and private health facilities, and more than 98 per cent of those performed in Queensland public hospitals and private health facilities, are performed before 20 weeks’ gestation. The data shows that when abortions at 20 weeks’ gestation or later occur, they are overwhelmingly performed in response to the physical and/or mental health condition of the pregnant individual or in response to diagnosis of a serious foetal abnormality, which sometimes cannot be detected until screenings at 19 or 20 weeks.

The Royal Australian & New Zealand College of Obstetricians and Gynaecologists (RANZCOG) recognises special circumstances of late presentation or diagnosis, such as diagnosis of foetal abnormality, reproductive coercion/domestic violence, difficulty accessing abortion services and illness during pregnancy (such as a cancer diagnosis).

4. Consultation by the medical practitioner (questions 12-14)

The AMA(SA) believes one qualified medical practitioner should be required for consultation and consent up to 24 weeks' gestation. At or after 24 weeks' gestation, the AMA(SA) believes that consultation with a second medical practitioner should be necessary.

As serious foetal abnormalities may not be detected until screenings at 19 or 20 weeks, the AMA(SA) believes that a requirement for a second medical practitioner to approve a termination should occur at the 24-week gestation point. This provision will allow an individual some time to decide a course of action without an added requirement. On the other hand, because there are significantly greater physical, ethical and psychological implications inherent in later term abortions, the involvement of a second medical practitioner after 24 weeks will give greater assurance that these physical, ethical and psychological implications have been considered. It will also assist our members: consultation between the qualified medical practitioners will enable them to both share and discuss their assessments and ensure that all appropriate matters are considered in the clinical decision-making process.

The need for increased clinical input in later gestation also aligns with the clinical management policies of most health services in which terminations are provided, where the involvement of multidisciplinary teams is mandated in recognition of the increased complexities of later term abortions.

I note that in Victoria, the *Abortion Law Reform Act 2008*, which decriminalised abortion, enables an individual to access abortion up to a gestational limit of 24 weeks. Beyond 24 weeks, a medical practitioner can provide the individual with an abortion if another medical practitioner agrees that the procedure is appropriate in the circumstances.

5. Conscientious objection (questions 15-17)

The AMA(SA) supports the Federal *AMA Position Statement on Ethical Issues in Reproductive Medicine 2013* which states that access to reproductive medicine, including abortion, should be free from political or religious interference (Preamble, 1.1).

However, as noted above, we recognise that members within our organisation have a great diversity of views about termination of pregnancy that should be respected.

The AMA Position Statement on Conscientious Objection 2019 states:

1.1 Doctors (medical practitioners) are entitled to have their own personal beliefs and values as are all members of the community.

1.2 A conscientious objection occurs when a doctor, as a result of a conflict with his or her own personal beliefs or values, refuses to provide, or participate in, a legal, legitimate treatment or procedure which would be deemed medically appropriate in the circumstances under professional standards.

1.3 A conscientious objection is based on sincerely held beliefs and moral concerns, not self-interest or discrimination.

1.4 It is acceptable for a doctor to refuse to provide or to participate in certain medical treatments or procedures based on a conscientious objection.

1.5 A doctor's refusal to provide, or participate in, a treatment or procedure based on a conscientious objection directly affects patients. Doctors have an ethical obligation to minimise disruption to patient care and must never use a conscientious objection to intentionally impede patients' access to care.

As such, we recommend that any legislative reform should allow medical practitioners to refuse to provide or participate in medical or surgical termination based on a conscientious objection. In these situations, medical practitioners should be required to provide patients with information about medical practitioners or services which provide these services.

A doctor with a conscientious objection to abortion must not intentionally impede an individual's access to such services.

The AMA(SA) believes that there should be adequate funding of pregnancy advisory and termination services that are comprehensive, free and accessible (particularly to individuals living in rural and remote areas), and which are easily contactable through well-known entry points in the community to which an individual can self-refer.

6. Counselling (question 18)

The AMA(SA) supports the autonomy of our patients. Any individual should be able to access the advice and support of a multi-disciplinary team, including counselling, if they wish to or believe they need such support. Information and advice must be available and easily accessible to allow an individual to make a decision about their pregnancy and to discuss that decision with a qualified medical practitioner or other health practitioner if they wish to do so.

However, there should be no barrier to obtaining abortion services for individuals who do not wish to participate in counselling.

7. Protection of individuals and service providers and safe access zones (questions 19-24)

The AMA(SA) recommends that legislative reforms provide for 24-hour safe access zones in the area around premises where pregnancy termination advice and/or services are offered. The introduction of safe access zone legislation in Victoria, Tasmania, the ACT and the Northern Territory demonstrates these governments' commitment to ensuring the rights of their citizens to access health services without hindrance or fear of physical or verbal abuse.

Actions that intentionally threaten or impede the ability of these services to operate − either by active or passive behaviour − places the health, safety and wellbeing of patients, caregivers and health service staff at risk, and must be prohibited in legislated safe access zones.

8. Collection of data about termination of pregnancy (question 25)

One of the complicating factors around abortion law reform is the absence of data in Australian services. Other than South Australia, no state keeps adequate records of abortion services and relevant data. Without data, appropriate service provision and funding cannot be planned for or implemented. The AMA(SA) recommends that de-identified data be kept by government health departments on medical and surgical terminations.

9. Rural and regional access (questions 26-28)

As noted above, the AMA(SA) advises that medical and surgical terminations must be performed by qualified medical practitioners or suitably trained nurses working under the direct supervision of a qualified medical practitioner.

Telehealth is among the technological and other digital innovations supporting the provision of safe, qualified medical services in Australia and elsewhere. Legislation should reflect that such services exist to increase the accessibility of termination services provided by medically led

teams, especially in a state such as South Australia where many people live in rural and remote areas.

Medical terminations should be able to be performed by these practitioners in safe environments such as surgeries and clinics, as well as in hospitals, without the need for these to be prescribed facilities.

10. Incidental (questions 29-31)

The AMA(SA) believes there should be no residency requirement to access abortion services in South Australia.

The AMA(SA) position on pregnancy termination, as with all other services, is based on our primary concern for the health and wellbeing of our patients. I urge you to include the AMA(SA) in any processes undertaken by the SALRI, South Australian Government or other parties that emanate from this review process and look forward to such participation.

Yours sincerely

Dr Chris Moy

President