



South Australian Law Reform Institute
By email: salri.new.ref@adelaide.edu.au

Thursday, 30 May 2019

Dear SALRI team,

RE: Access to abortion services in South Australia and the Repeal of law that criminalises abortion in South Australia

In the past, prior to current legislation, women died or were left with lifelong health issues after accessing termination of pregnancy services from unqualified individuals. The current legislation, whilst dated, has changed that, so that termination of pregnancy is much safer for women. However, it is time that the law that criminalises women seeking a termination of pregnancy is repealed.

The ACM welcome the opportunity to make this submission in support of the repeal of the South Australian Law that criminalises abortion. Such law prevents women from accessing services that provide choice, safety and support where they choose to exercise their right to bodily autonomy. Women accessing abortion services in South Australia are not criminals and therefore should not be treated as such under the law. We also welcome the opportunity to raise our concerns about the ongoing closure of services available to women where they choose to proceed with abortion.

Who we are

The Australian College of Midwives is the peak professional body for all midwives in Australia with branches in every State and Territory. As a unified body we support midwives to work to their full potential and through this, we ensure midwives are able to provide high quality, evidence-based care with the view of ensuring the best possible outcomes related to pregnancy and childbirth. We are committed to improving Australian maternity care and the health and wellbeing of all women and families across the childbearing years and we seek every opportunity to achieve this goal. In light of this, we support women's choice and autonomy across the full spectrum of care related to pregnancy and childbirth with this including the right to end a pregnancy where this is deemed by the woman, to be the most appropriate decision for her individual circumstances.

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Our overarching position

Women are entitled to and deserve access to the provision of services that provide safe and appropriate methods of pregnancy termination. We are supportive of the positive action to address these issues by the Minister for Health and Wellbeing, the South Australian Law Reform Institute, consumers and other key stakeholders.

Access to abortion services in South Australia

The impact on women

The choice to end a pregnancy is a difficult decision and one that is not taken lightly. Women who are considering and/or choosing to access abortion services require understanding, an opportunity to voice their decision without fear of harassment or discrimination, and support in whatever decision they feel is right for them given their individual circumstances. Without the provision of services that offer an environment that supports privacy and dignity, and the provision of registered health care professionals who are experienced in providing abortion services, women are likely to be subjected to experiences that deny them the right to these important aspects of care. In addition to this, the diversion and referral to other sites has the effect of causing unnecessary delays in service and further the impacts the woman's privacy given that she may have to share her story more than once to receive the care she is seeking. This is unacceptable and as such, there is a pressing need to act to ensure that women of South Australia are able to access services that result in the least amount of harm, both physically and psychologically.

Meeting the needs of women in South Australia

Women seeking abortion in South Australia deserve full disclosure about the provision of services available to them as a minimum. Beyond this, women require:

- Access to safe services;
- Access to registered health professionals that can facilitate their request to abortion services;
- Access to services and professionals that will respect their dignity, privacy and right to make decisions about their bodily autonomy.

Our Concerns

In addition to the need for the current Law to be revised to remove criminalisation of women, for seeking and obtaining an abortion, we are highly concerned at the decommissioning of essential abortion services for women in South Australia with the recent closure of the Pregnancy Advisory Clinic and the removal of services at the Women's and Children's Hospital. Both of these services have now been transferred to the Queen Elizabeth Hospital where women are required to attend the general or emergency departments which are lacking in the level of support and privacy required for women seeking these services.

We implore the Minister for Health and Wellbeing and key stakeholders to realise the impact that the recent changes in service provision have had on the women of South Australia and furthermore, request that they seek to reinstate the services previously offered or offer alternative services that uphold access, dignity, privacy and support of women, as a matter of urgency.

Our position: Repeal of law that criminalises abortion in South Australia

Access to the provision of accessible abortion services has been limited in part by South Australian legislation. Given the recent closures of many hospitals and the lack of such services at those hospitals that remain, women's access to safe and accessible abortion is limited and this is more significant for those women who live in rural and remote areas. Further to this, there remains a requirement that a woman be seen and assessed by two doctors who agree that she meets the requirements set out in legislation and is such, eligible via law to request an abortion. Not only does this law preclude other registered health professionals from offering the option of abortion assistance but it also restricts access, where the required number of doctors are not available. These legal requirements do not reflect the human right of bodily autonomy and therefore, undermine the authority of a woman to make decisions about her own body and her life.

In addition, the option of Early Medication Abortion (EMA) which has proven to be safe and effective is not catered for within the current law. To access EMA in South Australia a woman must attend a 'prescribed hospital' for two or more visits, thus precluding GP and telemedicine services.

Gestational limits also mean that women who seek late term abortion are denied their request on legal grounds. South Australian legislation allows for abortion up to 28 weeks gestation however, current provision in South Australia only offers abortion to 24 weeks gestation and as such, women beyond 24 weeks gestation are not able to access abortion services. Whilst requests for late term abortions are rare, there are circumstances that may mean women seek this option including fetal abnormalities, sexual assault and illness as examples. Despite existing legislation, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) acknowledges that there are circumstances where abortion should be accessible and available regardless of gestation and without legal ramifications.

The Australian College of Midwives hold that:

- Women have the right to choose and make informed decisions regarding abortion;
- Women should be provided with access to appropriate service and care by an experienced registered health care professional that supports their decisions surrounding abortion;
- Access to services and care, should be provided in a safe environment at an appropriate time and location easily accessible to the woman.

Our position: role of the criminal law

We are of the view that the current legislation is out of step and outdated and as such, does not facilitate or support a woman's right to exercise bodily autonomy nor assist her to make informed decisions about abortion. As the law stands, women who procure an abortion outside of the criteria are at risk of criminal action and we see this as a clear breach of their human rights.

Our position: who should be permitted to counsel and refer women for abortion services

It is the ACM's position that women who have made an informed decision to terminate a pregnancy have the right to access abortion services. Whilst we recognise the rationale behind the requirement that women be assessed by two registered medical practitioners before abortion services are offered, this is no longer viable or appropriate given the current context of the health

system. Further, we note that the requirement limits women's right to exercise choice in her health care decisions and delays treatment, particularly in the event that the requirement of two approving medical practitioners cannot be filled. We therefore hold that the decision to terminate a pregnancy be on the informed consent of the woman rather than the opinion of any number of registered medical professionals. Further, that provision of abortion services be made available in line with medical ethics and in accordance with the World Health Organisation recommendations that suggest that appropriately trained registered health professionals, including registered nurses and midwives, should be able to offer and facilitate abortion services [1]. As per the International Confederation of Midwives, the scope of midwife extends to sexual and reproductive health advice and support [2].

Our position: who should be permitted to perform or assist in performing terminations

It is the ACM's position that women be provided with access to abortion services in an environment that provides the highest level of care, maintains their privacy and facilitates the emotional and physical support they will require after the procedure. Abortion services in South Australia must be delivered by qualified, registered health professionals and may be inclusive of medical practitioners, midwives or nurses, who also work in partnership, as required, with other professions (e.g. counsellors).

We would like to see a reinstatement of services at the Women's and Children's Hospital and the Pregnancy Advisory Clinic, where women were previously able to access high quality, dedicated, services and care as required when undertaking such a procedure.

Our position: gestational limits and grounds for termination of pregnancy

We support the repeal of any law that imposes criminal repercussions on women who choose to exercise their bodily autonomy and right to access abortion services. The provision of appropriate, timely, private and safe services is essential to ensuring that women are able to discuss and access the option of abortion without fear of discrimination, harassment or the threat of criminal action.

Our position: consultation by the medical practitioner

It is our view, that the decision to undergo a termination of pregnancy, is at the discretion of the woman and should not be based on the views and/or assessments of registered professionals, particularly where the woman has full disclosure of information and has provided voluntary consent, free from manipulation or coercion and without fear of discrimination or harassment. As such, registered health care practitioners who offer abortion services and who are satisfied that the woman has met the requirements of informed consent, as set out in law, should not be required to consult another registered health care practitioner, except where informed consent is uncertain. In this situation, the registered health care practitioner should refer the woman to another registered health care practitioner in a timely fashion.

Our position: conscientious objection

We reiterate the importance of women having access to registered health professionals that support their right to abortion services in a timely fashion and in appropriate environment. We understand that registered practitioners hold their own ethical and moral views with respect to abortion and that they are entitled to these opinions without consequence. However, in the event

that a woman seeks abortion services from a health care practitioner who conscientiously objects to abortion, we hold that the health care practitioner be legally obliged to refer the woman to another registered health care practitioner that will support the woman's choice so as to not deny her right to bodily autonomy, or her human right to exercise informed decision making free from coercion or manipulation. As such, we draw on law of Victoria and the Northern Territory who apply penalties to any registered medical professional who does not facilitate a woman's choice in a timely fashion.

Our position: counselling

It is our position, as the ACM, that women be offered appropriate and timely abortion services with the inclusion of appropriate support and information. By law, consent processes require the person to provide free, intentional and voluntary consent, free from coercion, pressure and delays. This requires full disclosure of information and the opportunity to consider this information prior to a decision being made. Counselling may therefore be in the form of information provided by the registered health care practitioner offering and facilitating abortion to women seeking this option. Counselling must be available to support the woman both before and after the termination of the pregnancy as each woman chooses.

Concluding comments

South Australian women are entitled to abortion services offered by skilled, registered health practitioners that support their right to choose. These services should be provided in an environment that is safe, private, free from harassment and does not result in lengthy delays or legal proceedings. The Australian College of Midwives welcome the opportunity to respond to this consultation as well as raise our concerns around the lack of service provision and current legislation that impacts on the rights of South Australian women to access such services.

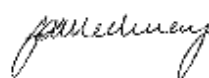
References

1. World health Organisation, Berer M, 2007, Provision of abortion by mid-level providers: international policy, practice and perspectives. Viewed online at: <https://www.who.int/bulletin/volumes/87/1/07-050138/en/>
2. International Confederation of Midwives, 2017, International Definition of the Midwife, viewed online at: <https://www.internationalmidwives.org/our-work/policy-and-practice/icm-definitions.html>

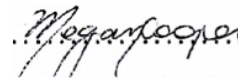
Yours sincerely,



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ACM Response to SALRI Consultation addressing 'Access to abortion services in South Australia and the Repeal of law that criminalises abortion in South Australia'

QUESTIONS	RESPONSE
Role of the Criminal Law [refer to Fact Sheets 4, 5 and 8]	
1. Should there be offences relating to qualified and registered health practitioners performing abortions in the Criminal Law Consolidation Act 1935 (SA)?	NO
2. Should there be offences relating to the woman procuring an abortion in the Criminal Law Consolidation Act 1935 (SA)?	NO
3. Should a woman ever be criminally responsible for the termination of her own pregnancy?	NO
4. Should South Australia have criminal offences for abortions not performed by an appropriate and registered health practitioner?	YES. Abortions should only be performed by a qualified health practitioner. NB: we reiterate that a woman should not be held criminally responsible for the termination of her own pregnancy regardless of the circumstances surrounding when and how the abortion was performed. Suitable and accessible service provision and qualified health care practitioners will reduce the likelihood that a woman will seek alternative options to procuring an abortion.
Who should be permitted to perform or assist in performing terminations [refer to Fact Sheets 4, 7 and 8]	
5. Should registered health practitioners (other than medical practitioners) be permitted to authorise or perform, or assist in performing, lawful terminations of pregnancy in South Australia?	<p>YES. As an overall response, in some circumstances and depending on the method of termination of pregnancy appropriate to that woman's situation if suitably qualified. However, we believe this question needs to be further unpacked as the responses vary according to the action being described.</p> <p>Authorise – YES. They should be able to approve or refer a woman to abortion services</p> <p>Perform – this will be dependent on the type of abortion being undertaken as there will be different medical/training</p>

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	requirements aligned with each. E.g. surgical will require surgical training whereas EMA delivery and management may not. Assist in performing – YES, if suitably qualified
Gestational Limits and Grounds for Termination of Pregnancy [refer to Fact Sheets 4, 6 and 8]	
6. Should a woman be allowed to access lawful abortion on request at any stage of a pregnancy?	YES
7. Should there be a gestational limit or limits for a lawful termination of pregnancy in South Australia?	NO
9. Should there be a specific ground or grounds for a lawful termination of pregnancy?	NO
11. Should different considerations apply at different stages of pregnancy?	YES. As method of termination of pregnancy may vary based on the gestation of pregnancy and/or the woman's physical health.
Consultation by the medical practitioner [refer to Fact Sheets 4, 6 and 8]	
12. Should a medical practitioner be required to consult with one or more others (such as another medical practitioner or health practitioner), before performing a termination of pregnancy?	NO. The decision can be made between the woman and the registered medical practitioner/health professional. The woman has made an informed decision/provided consent. Considerations must be made for women under 16 years of age as per the law and in regards to who will have legal responsibility.
Conscientious objection [refer to Fact Sheets 4, 6 and 8]	
15. Should there be provision for health practitioners in South Australia to decline to provide an abortion related service for conscientious objection?	YES
16. If a medical practitioner had a conscientious objection are there circumstances where this objection should be overridden, such as:	
(a) in an emergency;	YES
(b) the absence of another health practitioner or termination of pregnancy service within a reasonable geographic proximity.	NO. Woman's choice should be upheld however, no one should be forced to provide a service they don't agree with.

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17. Should a health practitioner who has a conscientious objection be obliged to refer or direct a woman to another practitioner or termination of pregnancy service?	YES
Counselling [refer to Fact Sheets 7, 8 and 9]	
18. Should there be any requirements in relation to offering counselling for the woman?	NO. Not a requirement however, counselling must be available to support the woman both before and after the termination of the pregnancy, as each woman chooses.
Protection of women and service providers and safe access zones [refer to Fact Sheets 5, 6 and 10]	
19. Should South Australia provide for safe access zones in the area around premises where termination of pregnancy services are provided?	YES
20. If a safe access zone was established should it:	
(a) automatically establish an area around the premises as a safe access zone?; or	YES
(b) empower the responsible Minister to make a declaration establishing the area of each safe access zone?	YES. As long as (a) is also in place. It should not be one or the other.
21. What types of behaviour or conduct should be prohibited in a safe access zone?	No written, verbal comment or physical harassment, abuse, bullying, coercion or intimidation.
22. Should the prohibition on behaviours in a safe access zone apply only during periods of operation?	NO. This should apply at all times.
23. Should it be an offence in South Australia to make or publish a recording of another person entering or leaving, or trying to enter or leave, premises where termination of pregnancy services are performed, unless the recorded person has given their consent?	YES
24. Should it be unlawful to harass, intimidate or obstruct:	
(a) a woman who is considering, or who has undergone, a termination of pregnancy;	YES
(b) a person who performs or assists, or who has performed or assisted in performing, a lawful termination of pregnancy?	YES

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Collection of data about terminations of pregnancy [refer to Fact Sheets 4, 6 and 7]	
25. Should data about terminations of pregnancy in South Australia be reportable?	YES. Data collection on the provision and uptake of health services are integral elements of health care provision. To remove the requirement to report on statistics would reduce the capability to support services ongoing and also to develop and implement health care education and support services to meet the needs of the South Australian community. All data must be de-identified.
Rural and Regional Access [refer to Fact Sheets 4, 6 and 7]	
26. Given the difficulties of access to medical services in rural areas of South Australia should there be different laws to facilitate access in rural and regional areas?	NO. Access should be universal.
27. Should women be permitted to use telehealth or other electronic services to consult with registered medical and/or health practitioners?	YES
28. Where a woman would otherwise be able to have a termination but does not have local access to clinics able to do so (such as in rural South Australia), should another qualified registered health practitioner (such as a registered nurse or pharmacist) be permitted to undertake this procedure.	YES. If qualified and depending on the method of termination of pregnancy. Surgical termination should be undertaken by qualified, registered medical practitioners
Incidental	
29. Should there be a residency requirement to access a lawful abortion in South Australia? [refer to Fact Sheets 6 and 7]	NO
30. Do you have any suggestions for incidental law changes to present law and/or practice in South Australia in relation to abortion? [refer to Fact Sheets 4, 6 and 8]	
31. Are there any other comments you would like to make in relation to this reference?	Please refer to our formal letter.