30 May 2019

Reform of South Australia's abortion laws

This submission has been prepared by the Coalition of Women's Domestic Violence Services SA (CWDVSSA) in response to the South Australian Law Reform Institute's Review of South Australia's Abortion Laws of May 2019.

CWDVSSA strongly supports removing abortion from the *Criminal Law Consolidation Act 1935 (SA)*. We welcome the Attorney-General and SALRI's approach in aiming to modernise the law in South Australia and adopt best practice reforms with the intention of making abortion a regulated medical procedure under health laws, as opposed to a criminal law issue.

The Coalition of Women's Domestic Violence Services SA (CWDVSSA) is the statewide peak body of non-government organisations working to respond to and eliminate domestic, family and sexual violence in South Australia. Our members provide services that promote women and their children's safety and wellbeing, and work to prevent and respond to violence against women. We lobby and advocate for women's rights to respect, safety and self determination, and represent providers of specialist services in the domestic, family and sexual violence and related sectors.

CWDVSSA support the work of organisations such as Women's Health Victoria (WHV) and Children By Choice in supporting abortion law reform and decriminalisation in Victoria and Queensland's abortion law reform reviews of 2008 and 2018 respectively, and this submission is informed by their key work in this area. CWDVSSA also supports the work of the South Australian Abortion Action Coalition (SAAAC), who advocate for the removal of abortion from the *Criminal Law Consolidation Act 1935 (SA)*, and whose members include professionals from medical, legal, academic, social justice, and advocacy backgrounds.

As stated by WHV in their submission of the review of termination of pregnancy laws in Queensland:

"Safe and legal access to abortion is good public health practice and plays an important role in supporting women's broader health and wellbeing"[1]

In addition to this submission, we also refer the South Australian Law Reform Institute to the Victorian Law Reform Commission's 2008 *Law of Abortion: Final Report*[2] and Children By Choice's 2016 submission[3] to Queensland's Health, Communities, Disability Services, and Domestic and Family Violence Prevention Committee on Queensland's abortion law reform.

[1] Women's Health Victoria February (2018) *Review of termination of pregnancy laws in Queensland*
[2] Victorian Law Reform Commission (2008) *Law of Abortion: Final report*
[3] Children By Choice (2016) *Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016*

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COALITION OF WOMEN'S DOMESTIC VIOLENCE SERVICES OF SA INC.

Question 1. Should there be offences relating to qualified health practitioners performing abortions in the Criminal Law Consolidation Act 1935 (SA)?

This submission from the Coalition of Women's Domestic Violence Services SA supports the removal of abortion from the *Criminal Law Consolidation Act 1935 (SA).*

No, registered qualified health and medical practitioners with appropriate qualifications and training should not be subject to offences under this Act.

In cases where a health practitioner performs an abortion that is not authorised by law, it is the view of this submission that they should face professional sanctions and be deemed to have engaged in professional misconduct, however, criminal offences should not be applicable.

2. Should there be offences relating to the woman procuring an abortion in the *Criminal Law Consolidation Act 1935 (SA)?*

No. It should not be possible for a woman or pregnant person in South Australia to be charged with a criminal offence for seeking or accessing a termination, or consenting to someone else providing them with a termination of pregnancy.

3. Should a woman ever be criminally responsible for the termination of her own pregnancy?

No. A woman or pregnant person should not ever be criminally responsible for the termination of her own pregnancy.

4. Should South Australia have criminal offences for abortions not performed by an appropriate health practitioner?

Any legislation in South Australia related to the procedure of abortion should not be covered by the *Criminal Law Consolidation Act 1935 (SA).*

We note that unqualified or unlicensed people attempting to provide abortions of any kind commit an offence under the *Health Professional Regulation National Law*. An unqualified or unlicensed person performing a surgical procedure is committing an assault under the *Criminal Law Consolidation Act (1935)* SA. Any person importing abortion medications without a license commits an offence under the *Therapeutic Goods Act 1989* (Cth).

5. Should health practitioners (other than medical practitioners) be permitted to authorise or perform, or assist in performing, lawful terminations of pregnancy in South Australia?

Yes. For example, pharmacists, registered nurses and midwives should be permitted to authorise or perform, or assist in performing, lawful terminations of pregnancy in South Australia. This is of particular significance to women's health and safety, and access to choice, in remote, regional and rural areas, where women may face limited access to services.

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6. Should a woman be allowed to access lawful abortion on request at any stage of a pregnancy?

Yes, women should be able to access safe, lawful abortions at any stage of a pregnancy. South Australian data shows that the vast majority of women access the procedure before 14 weeks' gestation, with only 2% of terminations taking place at or after 20 weeks[4]. It is the view of this submission that it is women themselves, rather than their health professionals, who must be the primary decision makers in relation to abortion.

7. Should there be a gestational limit or limits for a lawful termination of pregnancy in South Australia?

No. Terminations should be lawful without any gestational limits in South Australia. We refer to The Royal Australian & New Zealand College of Obstetricians and Gynaecologists (RANZCOG)'s statement on Late Termination of Pregnancy, which recognises the necessity of allowing for late gestation abortions without reference to gestational limits.

Further, women may require abortions later in their pregnancy due to circumstances which may not have presented earlier. This submission is particularly concerned for the rights of women to access required healthcare relating to abortion in cases of reproductive coercion and other forms of domestic and family violence, which may significantly contribute to women finding it extremely difficult and dangerous to access abortion services, causing significant delays in presentation.

Particularly as pregnancy is associated with increased risk for women experiencing assault from a partner for the first time, or an increase in the form or intensity of violence[5], it is necessary for legislation and regulatory frameworks to support and enable women's independence and autonomy in relation to pregnancy at every stage.

8. If there is a gestational limit for a lawful termination should it be related to:
(a) the first trimester of pregnancy;
(b) viability of the foetus (approximately 22 – 24 weeks);
(c) other?

As stated above, it is the view of this submission that gestational limits should not be imposed on women's access to lawful terminations of pregnancy in South Australia.

However, should a gestational limit be set, it should be related to the viability of the foetus, and any gestational limit must enshrine the health, safety and decision-making responsibilities of the person carrying the pregnancy. It is the view of this submission that if there is a gestational limit for terminations, it should remain at 28 weeks as it currently stands under the *South Australian Abortion Law Reform Bill 2018.*

[4] Angela Pratt; Amanda Biggs; Luke Buckmaster (2005) *How many abortions are there in Australia? A discussion of abortion statistics, their limitations, and options for improved statistical collection*
[5] Australian Institute of Family Studies (2015) *Domestic and Family Violence in Pregnancy and Early Pregnancy*

9. Should there be a specific ground or grounds for a lawful termination of pregnancy?

No. Terminations should be available upon request of the person carrying the pregnancy, regardless of a specific ground or grounds.

10. If there is a specific ground or grounds for a lawful termination should they include:
(a) all relevant medical circumstances;
(b) professional standards and guidelines;
(c) that it is necessary to preserve the life of the woman;
(d) that it is necessary to protect the physical or mental health of the woman;
(e) that it is necessary or appropriate having regard to the woman's social or economic circumstances;
(f) that the pregnancy is the result of rape or another coerced or unlawful act;
(g) that there is a risk of serious or fatal foetal abnormality (drawing on the terminology from the present law)

Yes. If a specific ground or grounds are necessary for a woman to access abortion services in South Australia, it should include all of the above, as well as:

- The pregnancy is the result of reproductive control or coercion in the context of domestic or family violence
- That it is necessary or appropriate having regard to the woman's level of risk in experiencing or escalating domestic or family violence

11. Should different considerations apply at different stages of pregnancy?

Any difference in consideration at different stages of pregnancy must be based on preserving the health, safety, human rights and bodily autonomy of the person who is pregnant.

Any specific ground or grounds for a lawful termination should apply at any stage of pregnancy, and women should be allowed final decision-making responsibility about an abortion throughout her pregnancy.

We acknowledge that in later stages of gestation, health professionals might play an increased role, as in the current Victorian model in which terminations after 24 weeks gestation require increased medical consideration. However, it is the view of this submission that the woman or pregnant person must remain the primary decision maker in accessing termination services at any stage.

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, except in cases where:

- A consultation is requested by the patient, and that patients are aware that they have a right (but not an obligation) to make such a request
- A termination presents complications which may affect the health and safety of the patient

- The medical practitioner should refuse to authorise, perform, or assist to perform, the termination on any grounds

13. If a consultation is required, should it include:
(a) another medical practitioner; or
(b) a specialist obstetrician or gynaecologist; or
(c) a health practitioner whose specialty is relevant to the circumstances of the case; or
(d) referral to an appropriate counsellor; or
(e) referral to a specialist committee?

If a consultation is required, it should include either:

- A health practitioner whose speciality is relevant to the circumstances of the case, and/or
- Another medical practitioner (which could include specialist ob/gyn practitioners or counsellors), whose consultation is agreed to by the patient

Choice of practitioner and right of veto must be given to the patient.

Consultations should not involve referral to a committee of any kind.

14. If there was a referral requirement should it apply:
(a) for all terminations, except in an emergency;
(b) for terminations to be performed after a relevant gestational limit or on specific grounds?

N/A

15. Should there be provision for health practitioners in South Australia to decline to provide an abortion related service for conscientious objection?

No. It is the view of this submission that there should not be provision for health practitioners in South Australia to decline to provide an abortion related service on the grounds of conscientious objection.

The current Victorian model of abortion law reform allows for conscientious objection by health practitioners, on the proviso that they refer the patient on to another provider under Section 8 of the Abortion Law Reform Act. We understand that this model is one of three drawn up by the Victorian Law Reform Commission being considered by the SALRI review of Abortion Law Reform in South Australia. However, a study on the views of abortion experts on the operation of Section 8 found that negative impacts were experienced by women, with some practitioners refusing to comply with the clause[6].

We are particularly concerned by the implications for conscientious objection provisions for women whose access to abortion services may already be limited, including but not limited to:

- Aboriginal and Torres Strait Islander women
- Women with disabilities
- Women from culturally and linguistically diverse backgrounds
- Women in rural, regional or remote locations

[6] Keogh, L.A., Gillam, L., Bismark, M. et al. BMC Med Ethics (2019) 20: 11. https://doi.org/10.1186/s12910-019-0346-1

This view, and these concerns, are further underpinned by the findings of a 2018 report by the International Women's Health Coalition, which advises that 'policies allowing health providers to deny care based on belief put patients at risk of discrimination, physical & emotional harm, and financial stress, and that 'policymakers should support women's access to health care and reject policies that allow providers to deny care to people in need'. It argues that denial of health care, including abortion services, based on personal belief is a violation of human rights.

16. If a medical practitioner had a conscientious objection are there circumstances where this objection should be overridden, such as:
(a) in an emergency;
(b) the absence of another health practitioner or termination of pregnancy service within a reasonable geographic proximity.

Yes. In both of the above circumstances, a health practitioner's conscientious objection must be overridden.

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. Any legislative reform which includes a conscientious objection clause must:

- Require medical professionals opposed to abortion to refer women seeking assistance to another provider who does not hold an objection;
- Include an exception for medical emergencies where a woman's life is at immediate risk;
- Include an exception in the absence of another qualified health practitioner and/or service within a reasonable geographic proximity; and
- Require conscientious objector GPs to publicly disclose this position on their clinic website and premises, to allow them to practice as they choose while at the same time prioritising women's right to timely and supportive information and care.

18. Should there be any requirements in relation to offering counselling for the woman?

No. The offer of counselling to women seeking abortion services should not be required. However, should counselling be offered as an optional choice, there should be requirements that genuine, unbiased, all options counselling is made available, provided by tertiary trained professionals, and that pregnancy counselling organisations receiving government funding be required to publicly disclose if they are anti-abortion, and/or will not refer for abortion services.

There should be no legislated mandatory counselling requirement for women seeking abortion included in any reform.

19. Should South Australia provide for safe access zones in the area around premises where termination of pregnancy services are provided?

Yes. Safe access zones are necessary in order to protect the safety of staff, patients and their support people[7]. Safe access zones should be at least a 150 metre area, in line with Victoria's *Public Health*

[7] Dr Graham Hayes and Dr Pam Lowe (2015), *'A Hard Enough Decision to Make': Anti-Abortion Activism outside Clinics in the Eyes of Clinic Users.* Aston University

and Wellbeing Act 2008, to ensure that staff and patients can safely access reproductive health services.

20. If a safe access zone was established should it:
(a) automatically establish an area around the premises as a safe access zone?; or
(b) empower the responsible Minister to make a declaration establishing the area of each safe access zone?

Safe access zones should be automatically established around the external perimeter of the premises.

This submission supports the assertions of Women's Health Victoria that 'relying on Ministerial approval on a case by case basis undermines the principle that women, no matter where they live, should be able to access common, safe and legal health services without experiencing obstruction, harassment or intimidation'[8].

For more detailed information regarding the best practice in relation to safe access zones please see WHV's 2015 submission to the Victorian Scrutiny of Acts and Regulations Committee regarding the Public Health and Wellbeing Amendment (Safe Access Zones) Bill 2015.

21. What types of behaviour or conduct should be prohibited in a safe access zone?

Any behaviour or conduct that may be reasonably viewed as, and/or is experienced as:

- Harassment
- Stalking
- Violent
- Threatening
- Defamatory
- Intimidating
- Obstructing

This includes, but may not be limited to:

- Handing out anti-abortion pamphlets or other materials
- Holding anti-abortion petitions
- Filming, photographing or otherwise recording people entering, leaving or trying to enter or leave the premises where termination of pregnancy services are performed, without consent of the person being recorded
- Displaying anti-abortion placards or any other materials
- Following, blocking or obstructing any person entering, leaving, or trying to enter or leave the premises within the safe access zone, without that person's consent
- Yelling, swearing, or otherwise verbally threatening or harassing people within the safe access zone
- The use of drones, UAVs, or any other remotely controlled or other surveillance device over or near the safe access zone

[8] Women's Health Victoria February (2018) *Review of termination of pregnancy laws in Queensland*

22. Should the prohibition on behaviours in a safe access zone apply only during periods of operation?

No. Prohibition on relevant behaviours and/or conduct must apply around-the-clock for the protection of out-of-hours staff, patients and their support people.

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. Further, it should be an offence to store or save any such recording, in any capacity.

24. Should it be unlawful to harass, intimidate or obstruct:
(a) a woman who is considering, or who has undergone, a termination of pregnancy;
(b) a person who performs or assists, or who has performed or assisted in performing, a lawful termination of pregnancy?

Yes.

25. Should data about terminations of pregnancy in South Australia be reportable?

Yes, but only if the data is de-identified and preserves the privacy and human rights of people whose data is being reported.

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. The same laws should apply statewide, with consideration given to the increased difficulties faced in rural, regional and remote areas. It is imperative that the law should act as an instrument to improve services and access to services in rural, regional and remote areas, not enable poorer or less accessible services in those areas.

27. Should women be permitted to use telehealth or other electronic services to consult with medical and/or health practitioners?

Yes, women should be able to access telehealth or other electronic services, particularly for those living in regional, rural or remote areas. Reasonable efforts should be made to ensure that women are aware of such services and that they are supported to access these.

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 health practitioner (such as a registered nurse or pharmacist) be permitted to undertake this procedure.

Yes, if the patient gives informed consent and her health and safety are not put at any additional undue risk.

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29. Should there be a residency requirement to access a lawful abortion in South Australia?

No. Lawful abortions should be accessible independently of residency status.

This is particularly crucial given the experiences of women on temporary migrant visas who are affected by domestic and family violence[9]. Restricting access to abortions on the basis of residency may have devastating consequences for women who may be experiencing domestic and family violence, including physical, financial, and emotional abuse.

Further, as previously noted, women are at increased risk of experiencing violence for the first time, or of violence escalating, during pregnancy. Restricting access to abortion services based on residency status may adversely affect women seeking a termination who have moved to South Australia from interstate to escape abuse.

30. Do you have any suggestions for incidental law changes to present law and/or practice in South Australia in relation to abortion?

N/A

[9] National Advocacy Group on Women on Temporary Visas Experiencing Violence (2018) *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children*

COALITION OF WOMEN'S DOMESTIC VIOLENCE SERVICES OF SA INC.

31. Are there any other comments you would like to make in relation to this reference?

The Coalition of Women's Domestic Violence Services SA strongly advocate for women's autonomy and right to choose. We support the work of the South Australian Abortion Action Coalition and the public health provision of abortion services in South Australia.

We advocate for maintaining a regulatory framework regarding abortion services, which supports women's health, safety and right of access to abortion services, and ensures that patients' informed consent to the procedure is assured without fear of coercion by any other person.

We support screening for domestic violence and reproductive coercion within abortion provision settings and advocate for abortion service providers to be appropriately trained and resourced to conduct such screening, and to be able to refer at-risk women to specialist women's domestic violence services.

We recognise reproductive coercion and control as a form of domestic and family violence, and that such coercion and control may often be experienced by women within the context of other forms of violence being present. Reproductive coercion may take the form of of a perpetrator of violence forcing or coercing someone (usually a woman) to either become pregnant or progress with an unwanted pregnancy, or to terminate a wanted pregnancy. We believe that more research is warranted in South Australia to determine the impacts of reproductive coercion in the context of domestic and family violence, and to create measures to respond to and reduce these impacts on women.

We would like to note that not all people who are pregnant are women -- transgender men, and others who don't identify as women, may get pregnant and require abortion services. This may be a consideration for the language used in legal and other settings to describe abortion patients, and others who become pregnant, especially where it relates to the rights of pregnant people.

Please do not hesitate to contact us for any further information you require.

Yours sincerely,

Susie Smith
Co-Chair

Coalition of Women's Domestic Violence Services SA