30 May 2019

South Australian Law Reform Institute

Via email: salri.new.ref@adelaide.edu.au

Dear SALRI

Re: Review of the law and practice of abortion in South Australia

The South Australian Branch of the Royal Australian and New Zealand College of Psychiatrists (RANZCP SA Branch) welcomes the opportunity to make a submission to the South Australian Law Reform Institute’s (SALRI) review of the law and practice of abortion in South Australia.

The RANZCP is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advocates to the government for mental health care. The RANZCP has over 6500 members including more than 4900 fully qualified psychiatrists and over 1500 members who are training to qualify as psychiatrists. The RANZCP SA Branch represents over 400 members including over 300 qualified psychiatrists and almost 100 trainees.

With respect to this review, the RANZCP SA Branch notes that the intent of the review is “to consider how the law can be modernised to reflect current clinical practice, and will also look at making abortion a regulated medical procedure under health laws, rather than as it currently is, a criminal law issue”; and that its terms of reference from State Attorney-General the Hon Vickie Chapman MP “do not extend to preventing or precluding abortion” (1).

Firstly, this submission will use the phrase ‘termination of pregnancy (TOP)’ as the preferred term over ‘abortion’, due to the latter being freighted with emotional and political associations that can contribute to clouding of reasoned debate.

The RANZCP SA Branch asserts that the health, well-being, autonomy and welfare of women must be the central objective of law reform in this area. Health care occurs in a social context in which it is acknowledged that power is distributed unevenly, with biases based on class, race, gender and sexuality. Consequently, women in general and those from marginalised groups are at risk of experiencing lesser access to services and lesser access to autonomy of choice concerning those services. Women with pre-existing mental illness form one of the most vulnerable and disadvantaged of these marginalised groups, along with very young women, women subject to family violence, Aboriginal and Torres Strait Islander women, and those from refugee or recent immigrant groups. To be genuinely accessible to women in all possible social circumstances, TOP needs to be rapidly available, safe, free of cost, private and sensitive to the high levels of psychosocial stress usually experienced by women. 

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women seeking it. A number of factors in the current law pertaining to TOP in SA mean that it does not meet this modern understanding of women’s needs.

The fact that termination of pregnancy is regulated by the Criminal Law Consolidation Act is the principal of these factors, as it may deter pregnant women seeking TOP and medical practitioners who might provide it, thereby impacting both freedom of choice and availability. The RANZCP SA Branch therefore welcomes the intent of this review to consider legislation to recognise TOP as a health matter rather than a criminal matter and strongly urges this outcome as an unambiguously positive move for the mental health of women.

Another important barrier to access in current legislation is the requirement for two doctors to certify the need for TOP. This is a particular burden in regional and remote areas, where a large proportion of women in SA reside. Equally the prescribed hospital requirement is constraining, particularly with respect to medical TOP. The mandate that the woman must be resident in South Australia for at least 2 months does not take account of the potential social pressures that may lead her to seek TOP sooner than this timeframe, nor does it respect the fact that earlier TOP is likely to be medically and psychologically safer. This is particularly true for the aforementioned vulnerable groups who may be experiencing psychosocial stress in the form of poverty, mental illness, domestic violence or control by others of their place of residence. Removing these requirements by moving to regulate TOP in the same way as any other medical/surgical procedure under health care and consent legislation already in existence in our view will support the mental health needs of these women. The RANZCP SA Branch considers that legislation pertaining to health care procedures and consent are sufficient to protect the rights and wellbeing of women and that there are no outstanding concerns in our view that women will be rendered more vulnerable in terms of their mental health, or any other consideration, by ceasing specific regulation of TOP.

To underpin these assertions we note that decades of data collection in SA concerning TOP show that, while it is a commonly performed and evidently needed service, it is associated with a very low rate of complications and the overall rate of the procedure itself shows a long-term downward trend (2). The accepted facts that no method of contraception is 100% effective, that a number of desired pregnancies will always be found to have fetal malformation or disease that is either not compatible with life or not compatible with adequate quality of life, and that occasionally individual factors of a given pregnancy can represent a threat to the life and/or mental health of the woman, all demonstrate that there will always be a need for TOP in South Australia.

The RANZCP SA Branch further notes that legislation in other Australian states has made provision for safe access zones around health services providing TOP to prevent harassment and abuse of women using these services. The RANZCP SA Branch supports such provisions as directly protective of women’s autonomy, mental health and right to private, dignified access to essential health care services and urges the SA legislature to adopt the same.

With specific regard to mental health care needs of women seeking TOP, the RANZCP has previously outlined evidence and recommendations in a Discussion Paper (3). Pregnant women seeking a termination may not want or need counselling, but where it is desired it should be readily available. Women with pre-existing mental illness are likely to require assertive mental health support and advocacy, while women experiencing severe fetal abnormality or other reason for late termination are likely to have enhanced needs for support; in these circumstances there is a role for psychiatrists, particularly those with perinatal expertise, to provide consultation, support and advocacy for affected women.
Large scale retrospective studies seeking to determine whether there is any link between TOP and later mental illness have shown conflicting results but are plagued by methodological limitations and the potential for political bias. Provisions for mental health needs are outside the scope of legislation relating to TOP, however, are within the purview of state government services, and the RANZCP SA Branch urges attention to appropriate access as part of the design of health care services for provision of TOP.

This submission sets out the view of the RANZCP SA Branch regarding the mental health consequences of laws relating to TOP, and is consistent with advice provided to other State Governments by the RANZCP and its Branches. Please do not hesitate to contact me via the Branch Office for any queries via 08 8431 5042 or email ranzcp.sa@ranzcp.org

Yours faithfully

Dr Sally Tregenza SA Branch Chair

References