



A suitable legislative framework for termination of pregnancy in South Australia

Fact Sheet 6 – Termination and the law in Australia

The law in Australia relating to abortions, and who can perform them, is divided between the Commonwealth, States and Territories. This reflects the federal nature of the Australian Constitution.

Given this, there is no single consistent law in Australia governing abortion. The State and Territory Parliaments have the main legal power and responsibility to regulate abortion arrangements in Australia. All States and Territories have various laws and procedures relating to abortion.

The Commonwealth has no constitutional jurisdiction in the area of abortion. However, it is involved in regulation and oversight of medical and health practitioners which includes those who perform abortions. It is also involved in national clinical practice and as a source of funding in South Australia (though the position differs interstate where private health providers are utilised).

The different approaches to abortion regulation in Australian States and Territories are set out in **Table 1** below.

While there are very few consistencies between the States and Territories it is important to note:

1. It is lawful in every State and Territory for a pregnancy to be terminated under certain conditions (these conditions vary between the States and Territories); and
2. In Australia, it is consistently considered to be appropriate for a pregnancy to be lawfully terminated if there is a risk to the physical and/or mental health of the woman.

SALRI is aware of the differing views in the community in this sensitive area but it is beyond SALRI's terms of reference to consider if abortion should be precluded or prevented. It is not intended within this reference that SALRI should consider whether terminations should or should not occur but rather, noting that they will continue to occur, what regulations, legislations and controls could or should be in place around these procedures.

QUESTIONS TO CONSIDER

SALRI is interested in your views on the laws relating to termination of pregnancy in South Australia. Some matters you might consider are:

- Should a woman be allowed to access lawful abortion on request at any stage of a pregnancy?
- Should there be a gestational limit or limits for a lawful termination of pregnancy in South Australia?
- 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?
 - Should there be a specific ground or grounds for a lawful termination of pregnancy?
 - 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).
 - Should different considerations apply at different stages of pregnancy?
 - 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?
 - 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 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?
 - Should there be provision for health practitioners in South Australia to decline to provide an abortion related service for conscientious objection?
 - 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.
 - 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?
 - Should there be any requirements in relation to offering counselling for the woman?
-

-
- Should South Australia provide for safe access zones in the area around premises where termination of pregnancy services are provided?
 - 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?
 - What types of behaviour or conduct should be prohibited in a safe access zone?
 - Should the prohibition on behaviours in a safe access zone apply only during periods of operation?
 - 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?
 - 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?
 - Should data about terminations of pregnancy in South Australia be reportable?
 - 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?
 - Should women be permitted to use telehealth or other electronic services to consult with medical and/or health practitioners?
 - 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.
 - Should there be a residency requirement to access a lawful abortion in South Australia?
 - Do you have any suggestions for incidental law changes to present law and/or practice in South Australia in relation to abortion?

Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice we encourage you to speak to a lawyer and/or contact a community legal service.

SALRI acknowledges the assistance of the SA Attorney-General's Department in providing grant funding for this project.

2 April 2019