



A suitable legislative framework for termination of pregnancy in South Australia

Fact Sheet 8 – Termination and Current Medical Practices

Types of procedures

There are currently two types of common abortion procedures available to South Australian residents, early medication abortion and surgical abortion. Both procedures are considered safe and severe complications are said to be rare.¹

There is a further abortion procedure performed for late term abortions only which is known as a Medical Abortion. This procedure involves the administration of medication to terminate the pregnancy and induce a still birth.

Early medication abortion

This procedure uses pharmaceutical drugs to medically induce a termination of pregnancy. Early medication abortion can be performed up to 9 weeks into the gestation.² Two medications, mifepristone and misoprostol, are taken orally to cause the woman to miscarry.

The medications are administered over approximately a 48 hour period and together these medications cause the uterus to contract and the expulsion of the pregnancy tissue. This expulsion usually occurs between one and six hours after taking the second medication and no further medical treatment is required.³

Surgical abortion

A surgical abortion can be performed after 6 weeks and up to 22 weeks of gestation.⁴ Surgical abortions may be performed after 22 weeks of gestation where a 'late term abortion' is performed (See Fact Sheet 9 – Late Term Terminations). Women having a surgical abortion are required to

¹ See Queensland Law Reform Commission, *Review of Termination of Pregnancy Laws*, Report 76 (June 2018) 31-32 [2.81]-[2.84]; Victorian Law Reform Commission, *Law of Abortion*, Report No 15 (June 2008) 35-36 [3.32]-[3.34], 49 [3.114]. The WHO has observed that '[t]he vast majority of women who have a properly performed induced abortion will not suffer any long-term effects on their general or reproductive health': WHO, 'Safe abortion: technical and policy guidance for health systems' (Guidelines, 2nd ed, 2012) [2.2.6.8]. Such findings are on occasion challenged.

² A 'medical termination' refers to the use of pharmaceutical drugs to induce a termination of pregnancy. Currently, mifepristone and misoprostol are used in combination as the preferred drug regime; however misoprostol alone is also common and other drugs may also be used. In Australia, mifepristone and misoprostol are available together as 'MS-2 Step', which is 'indicated ... for the medical termination of a developing intrauterine pregnancy, up to 63 days [nine weeks] of gestation'. Mifepristone is taken first, followed between 24 and 48 hours later by misoprostol. The clinical guideline also provide that generally a woman may be cared for on an outpatient basis where her pregnancy is less than nine weeks. See Queensland Law Reform Commission, *Review of Termination of Pregnancy Laws: Consultation Paper* (WP 76) (December 2017) 16 [55]-[57].

³ SA Health, *Early medication abortions*, 7 February 2018,

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/abortions/early+medication+abortions>.

⁴ SA Health, *Surgical abortions*, 10 July 2017,

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/abortions/surgical+abortions>.

visit a health facility on two separate days.⁵ During the first visit, the medical practitioner will provide consultation, perform an ultrasound scan, and arrange an operation appointment. The operation itself will be carried out on a separate visit to the facility.

The present law in South Australia requires that an abortion procedure, whether surgical or medical is required to take place in 'prescribed hospitals'. These hospitals are primarily located in Adelaide or major rural centres (which can cause issues for rural, regional and remote access). Funding and staff shortages also impact the ability of the 'prescribed hospitals' from performing abortion procedures.

Access to treatment

The 1969 South Australian model places the decision about abortion not with the woman but rather with the medical practitioner.⁶

The current law in South Australia was enacted in 1969 and contemplates surgical only procedures and was enacted prior to the now widespread availability of early medication abortion. This restricts access to abortion procedures in South Australia, by:

- Restricting the provision of abortion services to 'prescribed hospitals'
- Limiting the provision of abortion services to medical practitioners
- Requiring examination and certification by two medical practitioners.

These restrictions make access to services more difficult and costly for South Australian women, particularly in rural and regional areas.

Prescribed hospitals

The present law does not enable medical practitioners to authorise or prescribe early medication abortion for their patients from a general practice setting or by a specialist telephone service as occurs in other States in Australia. Given the operation of the present law and clinical practices, this is likely to mean that a woman in South Australia must visit a hospital on two occasion within a 48 hour period. This places particular burdens on women in regional and rural areas where a hospital maybe some distance from their home.

Restrictions to medical practitioners

Access to termination services depends upon the availability of skilled and willing medical practitioners. In some Australian jurisdictions, the law allows other health practitioners, such as nurses, midwives or pharmacists, to authorise or administer termination medication. International research demonstrates that early medication abortion can be safely and effectively provided by appropriately trained health care providers and it need not be confined to only medical practitioners.⁷

Requirement for examination and certification by two doctors

In South Australia, abortion procedures are the only health procedure that requires examination and certification by two legally qualified medical practitioners in order to make the procedure lawful. This requirement contributes to additional costs and delay and prevents other qualified health

⁵ SA Health, *Surgical abortions*, 10 July 2017,

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/abortions/surgical+abortions>.

⁶ Mary Heath and Ea Mulligan, 'Abortion in the Shadow of the Criminal Law? The Case of South Australia' (2016) 37 *Adelaide Law Review* 41, 54.

⁷ World Health Organisation, *Health worker roles in providing safe abortion care and post abortion contraception*, 2015, http://www.who.int/reproductivehealth/publications/unsafe_abortion/abortion-task-shifting/en/.

practitioners from consulting in a formal capacity. In any other medical situation, it is unnecessary to seek approval from two medical practitioners.

Late Term abortions and differing criteria

When considering late term abortions, further issues arise such as health issues for the women and the foetus. In some jurisdictions this involves additional criteria for consideration. Some jurisdictions however make no distinctions (See Fact Sheet 9 – Late Term Terminations.)

Conscientious objection

Under current mandatory national codes of conduct and ethics, medical practitioners,⁸ nurses and midwives⁹ and other health professionals are protected from being required to provide care for which they have a conscientious objection, other than in an emergency situation.¹⁰

These protocols also specify obligations on health practitioners to ensure that patients have access to alternative sources of care and, in the case of medical practitioners, to refer patients elsewhere.¹¹

Current law and clinical practice respects conscientious objections to provide health services, especially abortion. The relevant law in some States provides that individual health practitioners have no duty to provide or assist with an abortion procedure, except in an emergency situation.¹²

The Victorian law¹³ provides medical practitioners who object to abortion are not compelled to act (save for medical emergency) and do not have to provide information to a patient, but are required to inform the patient of the conscientious objection and refer the patient to another medical practitioner who can provide the information and is willing to act.¹⁴ The Queensland law is similar in this context.¹⁵

QUESTIONS TO CONSIDER

SALRI is interested in your views on current medical practices relating to termination of pregnancy. Some matters you might consider are:

⁸ Medical Board of Australia 2014, *Good medical practice: A code of conduct for doctors in Australia* (clause 2.4.6). <https://www.medicalboard.gov.au/Codes-Guidelines-Policies.aspx>

⁹ Nursing and Midwifery Board of Australia, 2018, *Code of Conduct for Nurses* (clause 4.4.b). <http://www.nursingmidwiferyboard.gov.au/documents/default.aspx?record=WD17%2F23850&dbid=AP&checksum=L8j874hp3DTIC1Sj4klHag%3D%3D>

¹⁰ Australian Medical Association, 2004, *Code of Ethics (Revised 2016)* (clauses 2.1.11 and 2.1.12). <https://ama.com.au/system/tdf/documents/AMA%20Code%20of%20Ethics%202004.%20Editorially%20Revised%202006.%20Revised%202016.pdf?le=1&type=node&id=46014>

¹¹ Medical Board of Australia, 2014, *Good medical practice: A code of conduct for doctors in Australia* (clause 2.4.7).

¹² See Victorian Law Reform Commission, *Law of Abortion*, Report No 15 (2008) 1212-115; Queensland Law Reform Commission, *Review of Termination of Pregnancy Laws: Consultation Paper* (WP 76) (December 2017) 63-64 [230]-[235].

¹³ *Abortion Law Reform Act 2008* (Vic) s 8.

¹⁴ This issue was raised by the QLRC in consultation. They concluded: ‘Others supported the inclusion of a legislative requirement to refer, observing that it may appropriately balance the freedom of health practitioners to operate according to their own beliefs and values against the relevant rights of women, including rights to health and autonomy, and against the need to avoid those beliefs and values creating a barrier to timely access to termination services (particularly in rural, regional and remote areas). Additionally, it was suggested that, because medical practitioners are “in a position of power and authority”, a requirement to refer would ensure that women can receive advice and access treatment, and thereby have their rights realised in practice’: Queensland Law Reform Commission, *Review of Termination of Pregnancy Laws: Consultation Paper* (WP 76) (December 2017) 64 [234]. See also at 63-64 [230]-[235]; Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Parliament of Queensland, *Abortion Law Reform (Woman’s Right to Choose) Amendment Bill 2016 and Inquiry into Laws Governing Termination of Pregnancy in Queensland*, Report 24 (2016) [16.5]; Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Parliament of Queensland, *Health (Abortion Law Reform) Amendment Bill 2016*, Report No 33a (2017) [6.4.4].

¹⁵ *Termination of Pregnancy Act 2018* (Qld) s 8.

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- Should South Australia have criminal offences for abortions not performed by an appropriate health practitioner?
 - Should health practitioners (other than medical practitioners) be permitted to authorise or perform, or assist in performing, lawful terminations of pregnancy in South Australia?
 - 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?

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- 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?
 - 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.
 - 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.

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