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6 March 2018

The Secretary
Queensland Law Reform Commission
Via email: ***lawreform.commission@justice.qld.gov.au***

To the Secretary

Thank you for providing AMA Queensland with the opportunity to give feedback to the Queensland Law Reform Commission (QLRC) on its consultation paper regarding abortion law reform.

AMA Queensland is the state's peak medical advocacy group, representing over 6000 medical practitioners across Queensland and throughout all levels of the health system. We have previously advocated publicly on issues of public health, vaccination and medical regulation. Our members take a very strong interest in medico-legal issues given their importance the health system in Queensland.

AMA Queensland has considered the questions posed in your consultation paper and offers the following responses.

Q1. Who should be permitted to perform, or assist in performing, lawful terminations of pregnancy?

As we stated in our submissions to the *Abortion Law Reform Bill 2016* and the *Health (Abortion Law Reform) Amendment Bill 2016,* AMA Queensland is of the view that where surgical termination of pregnancy is performed, the procedure and the associated anaesthesia should, as with any other medical intervention, be performed by appropriately trained doctors in premises approved by a recognised health standards authority. This is consistent with the AMA position statement on *Ethical Issues in Reproductive Medicine* and with legislation in every other state and territory (except NSW) which exempts medical practitioners from criminal offences for performing terminations of pregnancy.

As the Commission states in the consultation paper for this review, 'as a matter of clinical practice, other health practitioners, such as nurses and midwives, Aboriginal and Torres Strait Islander health practitioners, and pharmacists, may also assist in performing terminations of pregnancy' as long as this occurs under the direction of a medical practitioner.

Non-surgical forms of termination (such as RU486/mifepristone) should also be made available as an alternative to surgical abortion in cases where they are medically deemed to be the safest and most appropriate option based on an appropriate clinical assessment by a medical practitioner.[1]

Q2. Should a woman be criminally responsible for the termination of her own pregnancy?

No.

[1] AMA Position Statement on *Reproductive Health And Reproductive Technology (2008)*

Q3. Should there be a gestational limit or limits for a lawful termination of pregnancy?

AMA Queensland supports a position which mirrors Clause 4 of the *Abortion Law Reform Act 2008 (Victoria)*.

In relation to Clause 5, we make two comments:

- **Clause 5(1)(b):** We would recommend that a similar clause be included in any potential Queensland legislation, with an amendment as follows.

  "has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances ***and that the other medical practitioner has seen the patient prior to making that determination."***

- We note that Clause 5 specifically requires the medical practitioner to consider whether the abortion is appropriate in all the circumstances and must have regard to;
  a) all relevant medical circumstances; and
  b) the woman's current and future physical, psychological and social circumstances

  We consider this very important to avoid one circumstance being considered in isolation of the other circumstances.

Q4. If yes to Q-3, what should the gestational limit or limits be?

We believe the gestational limit should be 22 weeks.

Q5. Should there be a specific ground or grounds for a lawful termination of pregnancy?

Please refer to our response regarding Clause 5 in Question 3.

Q7. If yes to Q-5, should a different ground or grounds apply at different stages of pregnancy?

Please refer to our response regarding Clause 5 in Question 3.

Q8. Should a medical practitioner be required to consult with one or more others (such as another medical practitioner or health practitioner), or refer to a committee, before performing a termination of pregnancy?

AMA Queensland supports a position similar to that which is set out in Clause 5(1)(b) of the *Abortion Law Reform Act 2008 (Victoria)*, with the recommendation we made in response to Question 3.

Q9. If yes to Question 8, what should the requirement be?

Queensland Health uses a clinical guidelines document to help guide clinicians performing therapeutic terminations of pregnancy. Section 3.2.1 of the current clinical guidelines indicates that two medical specialists, one of whom must be a specialist obstetrician, must consider the circumstances of each individual case and we would be supportive of this continuing.

Depending on the clinical complexity of the pregnancy, further consultation with a medical practitioner whose specialty is relevant to the circumstances of the case may also be appropriate. For example, if the termination is due to be performed on mental health grounds, the medical opinion of a psychiatrist should be sought to determine if the termination is appropriate on mental health grounds or if another form of treatment could be considered.

Ideally, as set out in our response to Question 3, AMA Queensland would also like to ensure that any other registered medical practitioner involved in the consultation and who also reasonably believes that the abortion is appropriate in all the circumstances has seen the patient prior to making that determination.

Despite our willingness to consider further consultation, AMA Queensland is not supportive of a committee being formed to consider the case. We are in agreement with the RANZCOG submission to one of the two abortion bills which says that a panel being formed is not only a gross infringement of privacy in a highly sensitive health matter, but that as the numbers of clinicians empowered to make decisions these decisions expand, there is an increasing likelihood that individuals with varying degrees of prejudice against termination of pregnancy come to influence the decision making around the needs of individual women.

Q10. When should the requirement apply? For example: (a) for all terminations, except in an emergency; (b) for terminations to be performed after a relevant gestational limit or on specific grounds?

The requirement to consult should apply for a termination of pregnancy by a registered medical practitioner after 22 weeks. The wording should be similar to that set out in Clause 5 the *Abortion Law Reform Act 2008 (Victoria)*, with the recommendation we made in response to Question 3.

Q11. Should there be provision for conscientious objection?

Yes.

Q12. If yes to Q.11, are there any circumstances in which the provision should not apply, such as an emergency or the absence of another practitioner or termination of pregnancy service within a reasonable geographic proximity?

The AMA position statement on *Conscientious Objection* states that a doctor should "always provide medically appropriate treatment in an emergency situation, even if that treatment conflicts with the doctor's personal beliefs and values." AMA Queensland upholds this position.

However, it is important for the QLRC to understand that not every medical practitioner will have the skills and training to provide an abortion, even in an emergency. The wording of Clause 8(3) in the *Abortion Law Reform Act 2008 (Victoria)* states that despite any conscientious objection to terminations of pregnancy, "a registered medical practitioner is under a duty to perform an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman." This means that in an emergency, general practitioners or even ophthalmologists could technically be criminally liable for not doing something which they may not be trained for or is well outside their normal scope of practice.

For this reason, AMA Queensland would recommend that any potential legislation should reflect that despite any conscientious objection to abortion, only a registered medical practitioner who has the necessary skills and training to safely perform a termination of pregnancy is under a duty to do so. If they do not have these skills or training, in an emergency they should be obligated to urgently refer or otherwise assist the patient to a registered medical practitioner who has these skills and training, where the termination is necessary to preserve the life of the pregnant woman.

If the situation is not an emergency, conscientious objectors should not use their objection to impede access to treatments that are legal or which would impede the patient's access to care and AMA Queensland therefore supports an obligation to refer to a doctor who does not have a conscientious objection. Although this may not always be easy, especially in rural or remote areas, AMA Queensland upholds the view stated in our position statement which says that when exercising a conscientious objection, the doctor must "take whatever steps are necessary to ensure the patient's access to care is not impeded."

Q13. Should there be any requirements in relation to offering counselling for the woman?

AMA Queensland believes counselling both prior to a termination and after can be useful however this should be optional rather than compulsory or a requirement. Any counselling that is provided should be delivered by an objective organisation or individual as to do otherwise would undermine the principle of informed consent.

Q14. Should it be unlawful to harass, intimidate or obstruct:

(a) a woman who is considering, or who has undergone, a termination of pregnancy; or

(b) a person who performs or assists, or who has performed or assisted in performing, a lawful termination of pregnancy?

Yes to both (a) and (b).

Q15. Should there be provision for safe access zones in the area around premises where termination of pregnancy services are provided?

AMA Queensland is supportive of any measures which protect patients and staff from harm, intimidation or harassment. We would support any sensible measures which achieves this.

Q16. If yes to Q15, should the provision:

(a) automatically establish an area around the premises as a safe access zone? If so, what should the area be; or

(b) empower the responsible Minister to make a declaration establishing the area of each safe access zone? If so, what criteria should the Minister be required to apply when making the declaration?

As stated in our response to Q15, we would support any sensible measures which achieves the aim of protecting patients and staff. In regards to the particulars of how this is achieved in practice, we believe this question is best answered through a combination of police, legal experts and facility operators.

Q17. What behaviours should be prohibited in a safe access zone?

Any kind of protest or action which is likely to make staff or patients feel fearful or intimidated when entering or leaving the premises.

Q18. Should the prohibition on behaviours in a safe access zone apply only during a particular time period?

Restrictions should be imposed 24 hours a day, seven days a week, so as to ensure staff and patients can safely enter and leave the premises at all times.

Q19. Should it be an offence 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?

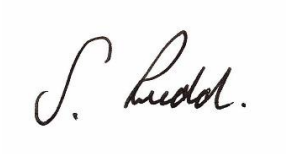
Yes.

Q20. Should there be mandatory reporting of anonymised data about terminations of pregnancy in Queensland?

Yes. More data is always valuable and helps promote public health. However, even if this data is anonymised it must be limited to collecting basic incidence and demographic data for legitimate public health purposes. If this data goes beyond this limited scope, for example by including information on whether or not the patient undertook counselling or what their reason for seeking a termination was, it could have the unintended effect of stigmatising women who obtain terminations.

In closing, AMA Queensland thanks you for providing us with the opportunity to provide the Queensland Law Reform Commission with a submission on this issue. If you require further information or assistance in this matter, please contact Mr Leif Bremermann, Senior Policy Advisor, on 3872 2200.

Yours sincerely



Dr Shaun Rudd
Chair
AMA Queensland Board and Council