Public Health Association of Australia submission on Reproductive Health Care Reform Bill 2019 (NSW)

Contact for recipient:
Standing Committee on Social Issues
A: Legislative Council, NSW Parliament
E: socialissues@parliament.nsw.gov.au
T: (02) 9230 3594

Contact for PHAA:
Terry Slevin – Chief Executive Officer
A: 20 Napier Close, Deakin ACT 2600
E: phaa@phaa.net.au T: (02) 6285 2373

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia.

The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.
Introduction

PHAA welcomes the opportunity to provide input to the Standing Committee on Social Issues inquiry into the Reproductive Health Care Reform Bill 2019, as amended by the NSW Legislative Assembly. PHAA believes that abortion is a safe, common medical procedure which should be regulated in the same way as other medical procedures, without additional barriers or conditions. Universal access to safe abortion is an essential element of the provision of high quality reproductive health services for women in Australia. PHAA strongly support the removal of abortion regulation from criminal law in Australia, and the provision of timely access to affordable early abortion services and emergency contraception to reduce the risks associated with increasing gestation.

The Bill

The Bill seeks to reform the law relating to termination of pregnancies and regulating the conduct of health practitioners in relation to terminations. This includes repealing provisions of the Crimes Act 1900 relating to abortions and to abolish the common law offences relating to abortion.

Terminations at not more than 22 weeks

The Bill allows for medical practitioners to perform terminations on a person who is not more than 22 weeks pregnant if that person has given informed consent, unless in an emergency situation.

Terminations after 22 weeks

The Bill allows for specialist medical practitioners to perform terminations on a person who is more than 22 weeks pregnant if:

- a specialist medical practitioner considers that in all the circumstances, the termination should be performed
- that specialist medical practitioner has consulted with a second specialist medical practitioner who agrees
- The person has given informed consent and
- The termination is performed at a hospital or approved health facility

In considered whether the termination should be performed, the specialist medical practitioners must consider:

- All relevant medical circumstances
- The person’s current and future physical, psychological and social circumstances and
- The professional standards and guidelines that apply

In an emergency, a medical practitioner may perform a termination after 22 weeks without the above criteria applying, to save the person’s life or the life of another foetus.

Counselling

Unless in an emergency, prior to any termination, the medical practitioner must assess whether counselling about the proposed termination would be beneficial, and if so, provide all necessary information to the person about access to counselling, including publicly funded counselling.
Conscientious objection

Where a medical practitioner has a conscientious objection, they must disclose this as soon as practicable to the person requesting the termination, and without delay, provide information to locate or contact another medical practitioner who they do not believe will have the same conscientious objection, or transfer the person’s care to that other practitioner or health service.

Registered health professionals retain a duty owed to provide a service in an emergency situation.

Gender selection

The Act provides for a review after 12 months of whether terminations are being performed for the purposes of gender selection, with a report prepared for the Minister, and provided to both Houses of the NSW Parliament. The Act notes opposition to terminations for the sole purpose of gender selection.

Review of the Act

The Act also provides for a review of the operation of the Act after 5 years, with the report provided to both Houses of the NSW Parliament.

Crimes Act amendments

The Act replaces Part 3, Division 12 with new crimes for an unqualified person performing or assisting a termination.

PHAA response to the Bill

Having introduced safe access zones in 2018 through the amendment of the Public Health Act, NSW already has policies and legislation to support the provision of terminations. The successful passing of the current Bill will better align the legislation with practice, where terminations are a health service, not a criminal act, and provide legislative certainty around terminations after 22 weeks gestation.

However, access to services should not be impeded by the legislation and regulations. Equity of access to information, care and services based on need is essential as a human right. This is especially important for people from socioeconomically disadvantaged communities, culturally and linguistically diverse communities, Aboriginal and Torres Strait Islanders, young people and their carers, and those from rural and remote areas, for whom access to services is already more difficult. Several elements of the amended bill may in practice impede access to services.

Informed consent

The NSW Bill as amended in the Legislative Assembly includes the need for informed consent from the pregnant person requesting the termination. This is not a requirement in the legislation in other jurisdictions in Australia, and PHAA is concerned that it may introduce additional barriers to accessing services. The Bill defines informed consent only as consent given ‘freely and voluntarily, and in accordance with any guidelines applicable to the medical practitioner in relation to the performance of the termination’. It is unclear whether or how this is intended to differ from informed consent routinely obtained by medical practitioners for performing medical procedures on patients. PHAA believes that
informed consent is within the scope of practice of the medical practitioner and should not be further regulated by law.

Where an additional requirement for informed consent is introduced, the definitions and requirements should be clarified to ensure that it is only the pregnant person from whom informed consent is required. The pregnant person should also have the right to speak with a social worker who is independent of their circumstances and does not have any conscientious objection to terminations, should they choose to do so.

**Terminations after 22 weeks**

PHAA is concerned about the requirements in the Bill for terminations after 22 weeks. The requirement for a specialist medical practitioner (registered obstetrician/gynaecologist or general practitioner with expertise or qualifications in obstetrics) may present an additional barrier for some patients. Access to a specialist usually requires a referral from a general practitioner and may involve significant out-of-pocket expenses. This is a particular concern for pregnant persons in rural or remote areas, who already face barriers in accessing medical care.

The requirement for the specialist medical practitioner to consult with another specialist medical practitioner presents an additional barrier. Where such a consultation is not medically necessary, it may negatively affect access to and the timeliness of a termination procedure because of the time required to obtain the consultation. If a particular case presents unusual medical issues, for example in regard to a difficult or late-term pregnancy, then any question of a medical practitioner deciding that it is appropriate to consult with other sources of expertise, should be regarded as a normal part of the practitioner providing the best possible medical care. This decision is within the scope of practice of the medical practitioner and should not be further regulated by law.

Part 4 (12) of the Bill references the Secretary of the Ministry of Health approving facilities at which terminations after 22 weeks may be performed. Care should be able to be accessed at an appropriately licenced facility, from practitioners that abide by the stringent professional guidelines and framework requirements that need to be met to provide care at this level. People should not be disadvantaged in their access to care, based on their proximity to Ministry approved facilities.

**Conscientious objection**

The allowance for conscientious objection by the medical practitioner provides a balance. It ensures safe access to abortion for pregnant persons in New South Wales, whilst respecting the right of individual medical practitioners to refuse to perform this service, based on a conscientious objection. Since this is an individual issue of conscience, this privilege should only apply to individuals closely involved with the proposed treatment. Conscientious objection should not be available to persons engaged in more distant ancillary services (such as administrative staff or general providers of facilities or services to health centres), nor should it be an entitlement available to corporations or other non-individual entities.

In addition, the acknowledged right of an individual to conscientiously object to personal participation in a termination does not mean they have the right to deny patients access to information about legal health care services. The general right of women to information about, and access to, termination health services should not be compromised by the privilege of conscientious objection which any individual may wish to assert. This is of particular importance to disadvantaged women for whom denial of information and access may seriously restrict options. Accordingly, health professionals with a conscientious objection to abortion care should inform their patients immediately and refer patients to another health professional.

Registration, professional and educational bodies should reinforce awareness of these responsibilities.
Data collection

PHAA recommends mandatory reporting of anonymised data about termination of pregnancy in NSW. Data on all health services is useful for many purposes including quality control, monitoring of health care service provision and the overall planning of service delivery. Such data is available in the national health systems of New Zealand and the United Kingdom. In particular, experience in NSW and other jurisdictions indicates that the absence of data as to where services are in demand hinders service delivery and in turn hinders access.

Conclusion

PHAA supports the broad directions of the Reproductive Health Care Reform Bill 2019, to firmly locate termination as a medical issue, not a criminal issue. However, we are keen to ensure it does not introduce barriers to accessing services, in line with this submission. We are particularly keen that the following points are highlighted:

- The requirement for informed consent is within the existing scope of practice and should not be included in the Bill
- Definitions of professionals involved in decision making and service provision, and of differences in ‘persons’ that influence equitable access to services and advice should be strengthened
- The requirement for 2 specialist medical practitioners to agree to a termination after 22 weeks may present barriers to timely and affordable health care services where it is not medically necessary
- The inclusion of provisions for medical practitioners to consciously object without hindering access to services is supported

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to safer access to termination services in NSW.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

Terry Slevin  Dr Patrick Harris  Professor Angela Dawson
Chief Executive Officer  PHAA Branch President  Convenor
Public Health Association of Australia  New South Wales  PHAA Women’s Health SIG

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References