



Australian Medical Association Tasmania Ltd.

Submission to the Tasmanian Government on the law governing termination of pregnancy

5th April 2013

Introduction

The Australian Medical Association Tasmania would welcome legal certainty on abortion.

Termination of pregnancy is a health issue and as a medical procedure should not form part of the criminal law.

AMA Tasmania supports the right of every woman to make her own health decisions, but at the same time it is important to respect the right of a doctor to determine the services they provide.

Doctors' views regarding abortion are as diverse as views among the rest of the community. What is important to all doctors and their ability to provide quality care to their patients is the independence of the doctor patient relationship.

Any legislative change must ensure doctors have the independence that is crucial for them to be able to provide the best possible care for their patients without fear of criminal proceedings.

AMA Tasmania has grave concerns that the draft legislation has the potential to criminalise members of the profession with conscientious objection to termination of pregnancy.

Termination of pregnancy is a medical procedure

Currently, the law in Tasmania suggests every termination is potentially a crime. The current legal framework requires the doctor to demonstrate that the procedure is legal, rather than considering the patient's well-being as the primary focus.

The primary duty of a doctor is to do the best for their patient, within the legal framework set by government. The legal framework should not provide a barrier to best patient care.

The best possible patient care will be determined by a patient and her doctor based on a wide range of individual circumstances. It is difficult to define best patient care, as every patient is different.

Medical guidelines are a more appropriate mechanism for health care than legislation. There are very few medical or health procedures that are governed by regulation, and for very

good reasons. Patient-centred health care and the primacy of the doctor-patient relationship are essential for best practice health care.

Conditions enshrined in legislation or associated regulations impose a barrier between the doctor and their patient, and may cause harm as the law will not allow doctors and their patients to make a decision solely based on the need of the patient.

The AMA Tasmania submission

AMA Tasmania's submission outlines our current understanding of the law concerning termination of pregnancy, and responds to the proposals outlined in the draft reproductive (access to termination) bill 2013.

The AMA Tasmania submission cannot be read as representing the view of all doctors, as medical practitioners' views on termination of pregnancy vary considerably.

The current law in Tasmania

Medical services are regulated by numerous statutes and regulations. In addition, there are codes and guidelines. Medical practitioners are regulated by the Australia Health Practitioners Regulation Authority which is governed by the Australian Medical Board, Tasmania. This body registers medical practitioners and enforces restrictions on practice. Other legislation provides regulation for other relevant matters, including premises, advertising, infection control, privacy and other issues.

In addition to statutory and regulatory restrictions on practice, codes of ethics and guidelines provide advice to practitioners about ethical and clinical responsibilities, including continuing medical education, best clinical practice, and dealing with patients.

Several regulatory agencies are able to investigate the conduct of medical practitioners. These include the Australian Medical Board, Tasmania, the Health Complaints Commissioner (State Ombudsman), local government authorities, and Tasmania Police.

Medical practice is a highly regulated activity, although there are few legislative restrictions on practice. That is because the regulatory framework recognises the importance of protecting the individual relationship between patient and doctor. Existing guidelines recognise that hard and fast rules create a theoretical and practical barrier to best patient care, as patients and their circumstances are different.

Currently, Criminal Code makes it an offence to unlawfully perform a termination of pregnancy. This is the only medical procedure currently mentioned in the *Act*.

Although termination of pregnancy is still a criminal offence in Tasmania it is commonly performed by doctors relying upon the "Menhennit ruling" (a judicial interpretation of the meaning of 'unlawful' from 1969) which legalises a termination if performed to preserve the woman from danger to her life or health. A ruling in NSW in 1973 (the "Wald ruling") extended the concept of mothers' health to social and economic health.

While these rulings provide some comfort to doctors, overall it is an unsatisfactory situation and does not reflect the reality that a substantial number of terminations are performed in Tasmania and prosecutions are not routinely launched against the doctors involved.

In theory, doctors performing terminations are at risk of criminal prosecution. AMA Tasmania would prefer legal certainty.

Concerns and comments with the draft new legislation

The AMA has a number of concerns and associated comments:

- **Lawful termination** - weeks of gestation – The AMA recommends that after 14 weeks, there should be 2 doctors supporting any request in writing before any termination is carried out and after 20 weeks, there must also be a timely formal review process by a panel, as is currently the case. We suggest 20 weeks as there is a good chance of a baby being viable from this point in time.
- **Life threatening emergency** - No procedure should be done without valid consent as per any medical procedure except in a life threatening emergency. However there should be provisions to take into account a minor or a woman with a disability if they are not competent to consent as per the Tasmanian Guardianship Act.
- **Conscientious objection** - Importantly, the proposed changes to the termination laws in Tasmania should not deny a doctor opposed to terminations the ability to act according to his or her beliefs. AMA Members are very concerned about conscientious objection. It is noted that Members of Parliament would have a conscience vote on the proposed legislation but that the draft as it stands denies similar consideration to medical practitioners.
- **Mandating referrals** - Mandating a conscientious objector to make a referral to another doctor could be viewed as denying that doctor the ability to live according to their beliefs (if the person considers providing a referral to be participating in an activity to which they object). The AMA has already informed the minister directly that a referral in medicine is a very formal process. We suggest removing section 7, subsection 2 and replacing it by paraphrasing the Federal AMA position statement on Reproductive Health and Reproductive Technology. “When a personal moral judgement or religious belief prevents doctors from recommending termination of pregnancy, they must so inform their patients. They must also inform patients that this option may be available elsewhere.”
- **Fines** - The legislation allows for a fine where a referral is not provided. This provision criminalises conscientious objection. We understand in Victoria one doctor has been required to appear before the medical board for not providing a referral.
- **Referral obligations** – The draft legislation information paper states that referral obligations exist under the Tasmanian Charter of Health Rights and Responsibilities, the Australian Medical Association Code of Ethics, and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists Code of Ethical Practice. The AMA *Code of Ethics* does **not** oblige a doctor to provide a referral in the case of conscientious objection. What the Code says in relation to referral is '19. Recognise your professional limitations and be prepared to refer as appropriate'. Again, this does not impose a duty to refer in relation to conscientious objection.
- **Access Zones** – will be introduced within 150 metres of a place where termination services are provided. Within an access zone a person must not engage in inappropriate behaviour this included protesting, harassing or intimidation or even filming or threatening them. Although perhaps not strictly a medical issue, members have expressed surprise at and disapproval of this provision. Protests and harassment have not been a feature in Tasmania to the best of our knowledge. This seems to be a response to a non-existent problem and does appear to impede free speech.

Input from members on current access to termination services. -A major theme of feedback received revolved around on the paucity of services available in the public sector and clearly changing the legislation will have no effect upon this.

Federal AMA policy in relation to abortion (these statements are direct from policy and are appropriate to use in a submission)

- There should be legal certainty on abortion;
- The Australian Medical Association supports the right of every woman to make her own decisions about reproduction including abortion;
- The access of all people to reproductive medicine including abortion services should be free from undue political, commercial, cultural, or religious interference;
- A patient who seeks, or has undertaken an abortion, should not be marginalised or stigmatised;
- A patient should not be coerced into undertaking (or not) an abortion;
- A doctor who undertakes research or provides clinical services related to abortion should not be marginalised or stigmatised (not yet in policy but part of review of statement);
- A doctor who chooses not to undertake research or provide clinical services related to abortion should not be marginalised or stigmatised (not yet in policy but part of review of statement);
- All people should be aware of and have access to family planning information and services;
- Individual doctors hold differing views on abortion and this should be respected;
- Where the law permits abortion, the procedure should be performed by appropriately qualified medical practitioners, in premises approved by a recognised health standards authority;
- Where the law permits abortion, non-surgical forms of termination (such as RU486/mifepristone) should 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 the appropriate clinical assessment;
- It is the doctor's responsibility to provide patients with information regarding the potential health risks and psychological consequences which can arise from continuation of, and termination of, pregnancy.

AMA Policy Resolution ID: 7695-1-06

That Federal Council asserts that interventions to reduce Australia's abortion rate must support and inform women and must not attempt to coerce women into making any particular reproductive choice. Acceptable interventions should focus on both reducing the number of unwanted pregnancies as well as reducing the number of abortions related to unwanted pregnancies. Federal Council of the AMA supports the following as acceptable interventions to reduce Australia's abortion rate:

1. Acceptable interventions to reduce unwanted pregnancies: - Additional investment to increase female high school retention rates; - Investment in promotion and improvement of sex education in primary and secondary schools at least financially equivalent to that allocated to pregnancy counselling; - Investment in self-esteem, self-confidence building, and assertiveness activities in schools; - Investment in measures that will increase awareness of and greater access to: -- confidential health services for young people -- confidential objective family planning/sexual health counselling with family planning trained professional -- a full range of effective contraception; - Provision of emergency contraception, as well as a full range of contraception, on the PBS; - Reduction of the stigma and privacy/confidentiality concerns in relating to obtaining contraception.

2. Acceptable interventions to reduce abortions related to unwanted pregnancies: - Provision of greater financial support to those raising children, such as Federal Government funding of 14 weeks paid maternity leave and an increase in the availability and affordability of child care (eg allow childcare costs to be claimed as a tax deductible expense; allow employers to offer childcare as a FBT exempt salary sacrifice); - Maintenance of awareness of family planning issues (fertility, contraception) for 'older' women and/or women who already have children, including permanent forms of contraception; - Investment in 'return to school' support programs for teenage mothers; - Elimination of pregnancy discrimination related to employment (consistent high rate of complaints to Sex Discrimination Commissioner/Human Rights Commissioner).
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Relevant Federal AMA policy on conscientious objection

Below are statements on conscientious objection (and the policies in which they are found). Please note that none of these statements indicate that a doctor with a conscientious objection has a duty to provide a referral to another doctor.

AMA Code of Ethics

16. When a personal moral judgement or religious belief alone prevents you from recommending some form of therapy, inform your patients so that they may seek care elsewhere.

Position Statement on Reproductive Health and Reproductive Technology

2.6 When a personal moral judgement or religious belief prevents doctors from recommending some form of therapy, they should so inform their patients. They should also inform patients that such therapy may be available elsewhere.

Medical Board of Australia Good Medical Practice: A Code of Conduct for Doctors in Australia statements on conscientious objection

2.4.6 Being aware of your right to not provide or directly participate in treatments to which you conscientiously object, informing your patients and, if relevant, colleagues, of your objection, and not using your objection to impede access to treatments that are legal.

2.4.7 Not allowing your moral or religious views to deny patients access to medical care, recognising that you are free to decline to personally provide or participate in that care.

For further information please contact

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