

OFFICIAL



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Dear Committee Secretary

Thank you for seeking the views of the South Australian Department for Health and Wellbeing (DHW). Please find enclosed our feedback on the Human Rights (Children Born Alive Protection) Bill 2021 (the Bill).

The South Australian DHW does not support the Bill on the basis of four main reasons. The clinical practice of termination care is already highly regulated within South Australia, the care provided is of the highest quality, the vast majority of terminations occur under the gestation of viability and thus it is unclear the value of reporting information on babies born alive. As such it is considered that this Bill is unnecessary, contributing an additional regulatory burden with no additional value. Each of these items are further detailed below.

Existing provisions in South Australia for care following termination of pregnancy

Clinical practice as it relates to termination of pregnancy is legislated by the *Termination of Pregnancy Act 2021*.

The *Termination of Pregnancy Act 2021* Part 2 s7 Care of person born after termination specifies the obligations of the medical practitioner with regards to a person born alive following a termination. Of note, the Act is clear that there is a duty to provide medical care and treatment that is clinically safe and appropriate to the medical condition. Specifically:

7—Care of person born after termination

(1) This section applies if a termination results in a person being born.

(2) Nothing in this Act prevents the medical practitioner who performed the termination, or any other registered health practitioner present at the time the person is born, from exercising any duty to provide the person with medical care and treatment that is—

(a) clinically safe, and

(b) appropriate to the person's medical condition.

(3) To avoid doubt, the duty owed by a registered health practitioner to provide medical care and treatment to a person born as a result of a termination is no different than the duty owed to provide medical care and treatment to a person born other than as a result of a termination.

Clause 9(1) of the Bill is expressed in similar terms to section 7(3) above, and so this is unnecessary duplication of legislation.

Best practice care

The best practice clinical care of an infant is part of a complex clinical decision making process that takes into account all relevant factors. Clinicians are the best placed to make such decisions, in partnership with the patient, and this is supported by the existing governance arrangements for medical practice in South Australia such as guidelines (Perinatal Loss and Perinatal Care at the Threshold of Viability, can be found at www.sahealth.sa.gov.au/perinatal) and specialist training requirements.

Health care is highly regulated. For example, the Health Practitioner Registration Board ensures that registered health practitioners are suitably trained, qualified and safe to practice. The primary purpose is to protect the public and uphold professional standards in the regulated health practitioners. These professional standards are set by the professions using best practice evidence, based approaches.

Gestation at termination in South Australia and reporting of baby born alive

The vast majority of terminations of pregnancy occur at gestations where there is no viability and if born alive there is a rapid progression to death. Data from 2021 demonstrates that 99.8% of terminations of pregnancy occur in gestations less than 23 weeks, the accepted absolute lower limit for viability. It should further be noted that a fetus at an early gestation can be born alive well under the gestational age for viability. It is unclear given these matters what the purpose is of reporting the fact of a baby born alive following termination. The South Australian DHW does not support adding additional reporting and regulatory burden on clinicians where there is no apparent value in doing so. Notably, there is already an obligation to report data regarding termination of pregnancy within South Australia to the Termination of Pregnancy Registry, set out under the Termination of Pregnancy Regulations 2022.

Thank you again for the opportunity to provide a submission for this matter.

Kind Regards

DR ROBYN LAWRENCE

Chief Executive

Department of Health and Wellbeing

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