Dear Ms Franks

Health Care (Health Access Zones) Amendment Bill 2019

1. I refer to an email from your office of 8 October 2019 in relation to the Health Care (Health Access Zones) Amendment Bill 2019 (“the Bill”).

2. The Bill seeks to establish health access zones around premises where termination of pregnancy services are provided in South Australia, including the Pregnancy Advisory Centre in Woodville.

3. The Bill also sets out prohibited behaviours within a health access zone and proposes a maximum penalty of 2 years imprisonment for a person who is found to be engaging in a prohibited behaviour in a health access zone.

4. The Society notes that the South Australian Law Reform Institute (SALRI) is currently undertaking a reference with respect to South Australian Abortion Law Reform. The issue of protection of women and service providers, and the creation of safe access zones is included in the SALRI reference. Enclosed with this submission is a copy of the Society’s submission dated 31 May 2019 to SALRI in relation to its Abortion Law Reform Reference.

The establishment of health access zones

5. The Society notes that a number of jurisdictions have established specific safe access zones around premises providing termination services. Enclosed with its submission to SALRI of 31 May 2019 is a table containing the relevant legislative provisions concerning abortion by jurisdiction, including safe access zones.

6. The Society supports the establishment of a safe access zone to protect a woman who is seeking or who has accessed terminations services, from harassment and intimidation or behaviour which attempts to obstruct a woman from accessing health care services related to terminating a pregnancy. The Society considers that the same protection should also apply to a health care practitioner who performs or assists in the lawful termination of pregnancy.

7. In weighing up the competing rights, i.e. ensuring safe and dignified access to health care, while also respecting freedom of political of communication as they relate to premises which perform
termination services, the Society considers a fair balance exists with the introduction of a safe access zone.

8. The Society supports the general principle that a person ought to be able to access health care services privately and without fear or risk of ridicule, humiliation or publication. This principle is also recognised internationally, including by United Nations treaty bodies, including the Special Rapporteur, who recommended that States whose domestic law authorises abortions under various circumstances should ensure that services are effectively available without adverse consequences to the woman or the health professional.\(^1\)

**Protected premises**

9. Under the Bill, a protected premises is taken to be a health access zone. A protected premises is defined to include all incorporated or private hospitals; the premises located at 21 Belmore Terrace, Woodville (the Pregnancy Advisory Centre); and any other protected premises under section 48C.

10. The Society notes that other jurisdictions such as Victoria and Tasmania, have defined a safe access zone as an area within a radius of 150 metres from premises at which abortions are provided. This approach could be considered with respect to the current Bill, rather than including specific premises (i.e. the Pregnancy Advisory Centre in Woodville) in the Act.

11. As conveyed to SALRI in its submission of 31 May 2019, the description of any offence ought to be carefully constructed to achieve the intention of protecting patients and healthcare practitioners, and appropriately restrained to facilities which carry out termination and related services.

**Prohibited behaviour**

12. Clause 3 of the Bill defines prohibited behaviour as the following:

12.1 to threaten, intimidate or harass another person; or

12.2 to obstruct another person approaching, entering or leaving protected premises; or

12.3 to record (by any means whatsoever) images of a person approaching, entering or leaving protected premises; or

12.4 to communicate, or attempt to communicate, with a person about the subject of abortion; or

12.5 to engage in any behaviour of a kind prescribed by the regulations.

13. The Bill further prescribes that it is not offence to engage in the prohibited behaviours listed above if the recording of images, or the communication of information is by a person employed, or otherwise providing services, at protected premises to which the health access zone relates; or that occurs with the permission of the person whose image is recorded, or to whom the information is communicated.

14. The Society suggested in its submission to SALRI that the Victorian model be considered with respect to the establishment of safe access zones. The *Public Health and Wellbeing Amendment*

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(Safe Access Zones) Act 2015 (Vic) defines “prohibited behaviour” within the defined exclusion zone around a facility as:

a) In relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or

b) Subject to subsection (2), communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety; or

c) Interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided;

d) Intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access or leaving premises at which abortions are provided, without that other person’s consent; or

e) Any other prescribed behaviour.

15. In comparing the Victorian provisions to those contained in the Bill, the Victorian legislation appears to be more prescriptive and clearly defined. The Society suggests that the Bill could be amended to reflect the Victorian legislation (i.e. the offences above) in this regard.

**General comments**

16. The Society notes that SALRI is due to provide a report to the Parliament on its Abortion Law Reference in the coming months, or possibly weeks. Given the establishment of safe access zones was part of SALRI’s reference, there may be some benefit in waiting for SALRI’s report and recommendations to be delivered. Notwithstanding the importance of this issue, it may be a more prudent approach to pursue this matter as part of a holistic reform of abortion law in this state.

Yours sincerely

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PRESIDENT

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Encl: Submission to SALRI re Abortion Law Reform Reference 31 May 2019