

Today in Queensland, abortion remains an offence under sections of the Criminal Code, in laws enacted over 100 years ago.

While abortions are permitted under medical supervision, sections of the Criminal Code exist that cause confusion and are subject to judicial interpretation as to the meaning of lawful. This ambiguity means that health professionals and women are open to the risk of prosecution.

Uncertainty of the legal status of abortion has also resulted in this important area of women's health receiving little attention in health policy development and the lack of reliable and well planned delivery of services.

The health, legal and ethical issues associated with abortion, combined with divergent community views, means that any proposed abortion law reform may be a contested topic. Even within the pro-choice lobby, there are a range of perspectives on this issue.

Family Planning Queensland has developed this information sheet to provide clear and accurate answers to the many questions the abortion debate raises.

What is an abortion?

The word abortion refers to the termination of a pregnancy. Generally this involves a minor surgical procedure in which the pregnancy is removed from a woman's uterus. It is also possible to use prescribed therapeutic drugs to induce a termination of pregnancy. Medication abortion is becoming increasingly available in Australia. The method used to terminate a pregnancy will also depend on the stage of the pregnancy.

Surgical termination of pregnancy

First trimester terminations are usually performed in a clinic using suction aspiration. This procedure uses gentle suction to remove the lining and the contents of the uterus. The procedure takes approximately 15 minutes. Second trimester terminations are similar to first trimester, however preparing the cervix is a more involved aspect of the procedure. Hormone blocking tablets and other agents are often used to help soften the cervix.

Medication termination of pregnancy

In this case, a woman takes therapeutic drugs which will cause the termination of the pregnancy. The administration of these drugs occurs under the supervision of a doctor and requires a medical prescription. Drugs for this purpose may include one, or a combination of, mifepristone (anti-progesterone), methotrexate and a prostaglandin. Mifepristone (also known as RU486) was first approved for use in France in 1988 and has been available in many other countries since the early 1990s¹

¹ Dixon, Nicolee Abortion Law Reform: An overview of current issues (2003) 4; Qld Parliamentary Library Research brief 2008/09. 4

Is termination of pregnancy a safe procedure?

In Queensland, termination of pregnancy is permitted under medical supervision and medical advice. This means that a termination of pregnancy is managed in the same way as all other medical or surgical procedures. All procedures must comply with infection control standards, client confidentiality must be respected, and the person must give consent for the procedure.

Where a termination of pregnancy is performed by a qualified medical practitioner (doctor) and in compliance with current standard of health practice, it is a safe procedure. In the early stages of gestation (5-14 weeks) the risk of complication is around 1%. After 15 weeks it rises to over 5%.²

It is important to note that the risk of death from unsafe abortion is 100 to 500 times greater than the risk under safe conditions.³ History has shown that where women become pregnant and have no access to safe abortion, for example, where abortion is completely prohibited⁴, the rate of illegal abortion grows and the safety of the procedure declines.

Are abortion services widely available in Queensland?

Access to abortion services in Queensland is variable. For those living in isolated areas, access to an abortion requires travel to a regional or metropolitan centre. Travelling and accommodation costs add substantially to the overall cost of having a termination of pregnancy.

Surgical abortions are available in free-standing private medical clinics and/or day surgeries on the Gold Coast and in Brisbane, the Sunshine Coast, Rockhampton, Townsville and Cairns⁵. Medication abortion is available at a more limited number of clinics. Availability of termination of pregnancy in Queensland's public hospitals is very restricted and the procedure is generally only performed where there are significant physical or mental health risks to the woman.⁶

How much does an abortion cost?

Children by Choice estimates the cost of a surgical termination of pregnancy in South East Queensland to be between \$370 and \$550 within the first trimester of pregnancy (up to 12 weeks gestation). Where and when medication abortion is available, cost is generally similar to that of a surgical abortion performed at the same stage of pregnancy. Prices increase to over \$550 between 12 and 14 weeks gestation, and for a termination of pregnancy between 14 and 16 weeks gestation, the cost can range from \$650 to \$1350. Prices vary from clinic to clinic.

The cost of a termination of pregnancy is higher in Queensland's regional centres, where the cost (up to 12 weeks gestation) will typically range between \$650 to \$850 for Medicare and Health Care card holders. After 12 weeks gestation, the cost increases by approximately \$100 each week, to 15 weeks at Rockhampton and 16 weeks at Townsville⁷.

² *ibid*

³ World Health Organisation cited in Association for Legal Right to Abortion [n.d.] Frequently Asked Questions

⁴ *ibid*

⁵ Summarised from Children by Choice website www.childrenbychoice.org.au/nwww/clinicqld.htm, accessed 21 July 2010

⁶ Dixon (2003), 16

⁷ Summarised from Children by Choice website www.childrenbychoice.org.au/nwww/termination.htm, accessed 26 August 2010

These costs include the Medicare rebate. Prices for non-Medicare card holders will be higher. Some clinics provide concessions for Pension or Health Care Card holders. Other concessions may be possible at some clinics for various circumstances.

Note: Prices mentioned above are subject to change. Women are advised to contact clinics for accurate costs.

Are medication abortions available in Queensland?

Mifepristone (RU486), which is used for early medication abortion, can only be obtained in Australia under the Authorised Prescriber legislation of the Therapeutic Goods Act 1989. There are only a limited number of medical practitioners who are Authorised Prescribers in Queensland. While there is increasing availability in South East Queensland, the access for women in rural and regional Queensland is more limited.

Medication abortion is limited by a number of factors including availability of prescribers, gestational limits and limited awareness of its availability by medical practitioners. Currently, this method is only available at a small number of clinics, and can only be used up to 9 weeks gestation.

How many abortions take place in Queensland?

It is not possible to say how many abortions take place in Australia as a national data set does not exist. However, Health Insurance Commission data is collected for two Medicare benefit claims:

Item 16525:

management of second trimester labour, with or without induction, for intrauterine foetal death, gross abnormality or life threatening maternal disease in the second trimester. This item number can only be utilised by private medical practitioners providing care to patients in private hospitals or private patients in public hospitals.

Item 35643:

evacuation of the gravid uterus by curettage or suction curettage (a procedure considered only suitable in the first trimester)

Statistics available from Medicare Australia for item number 16525 showed a total of 765 processed claims Australia-wide for the period July 2008 to June 2009. The Queensland total was 109. Medicare item number 35643 showed a total of 15,146 for Queensland and 72,203 Australia-wide for the same period.⁸

Both of these Medicare items however also apply to procedures which are not specifically pregnancy terminations, but for procedures such as those undertaken as a result of miscarriage or foetal death. It is therefore impossible to gain a precise figure for the number of abortions performed, either in the first or second trimester in Queensland.

What do Australians think about abortion?

Recent surveys published in Medical Journal of Australia on attitudes to abortion indicate the numbers opposed to abortion outright are fewer than 15% among all groups. Similar results were reported in both an online survey of Australians in July 2008 (n=1050), and in a survey of members of the Royal Australian and New

⁸As provided online by Medicare: Pharmaceutical Benefit Schedule Item Reports
www.medicareaustralia.gov.au/statistics, accessed 19 July 2010

Zealand College of Obstetricians and Gynaecologists (n=740), indicating approximately 85% of people are unopposed to abortion because of any personal views.^{9 10} Queenslanders are more pro-choice than Australians as a whole. The residents of Brisbane -- with 63% in support of unrestricted access to abortion -- are the most liberal in the country.¹¹

What is the law in Queensland relating to abortion?

In Queensland, even where an abortion is performed by a qualified doctor and with the consent of the woman undergoing the termination of pregnancy, it is still possible that a court could find the abortion to be unlawful.

Abortion is an offence under sections 224, 225, and 226 of the Queensland Criminal Code 1899. These sections apply to the person performing the abortion (s224) the woman undergoing the abortion (s225) and anyone knowingly supplying drugs or implements for an abortion (s226). The maximum penalties are 14 years for a person performing a termination and 7 years for a woman having a termination.

The provisions above are read in conjunction with section 282 of the Criminal Code, which provides a defence to a charge that an abortion has been performed unlawfully. In September 2009, amendments were made to section 282 to include medication abortion. Section 282 previously specified a doctor was protected if they performed a surgical operation in good faith, raising concerns with doctors that medication abortion was excluded and providers of this service were placed at higher risk.

Since September 2009, Section 282 now reads:

A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or *medical treatment* of:

- A) A person or unborn child for the patient's benefit; or
 - B) A person or unborn child to preserve the mother's life;
- if performing the operation or providing the medication, treatment is reasonable, having regard to the patient's state at the time and to all circumstances of the case¹².

It is for the prosecution to establish beyond reasonable doubt that the defence provided in section 282 does not apply to the facts of the case.

The Criminal Code does not set out the circumstances in which an abortion is lawful. As has occurred in Victoria and New South Wales, it has been left to the judiciary to describe the circumstances in which an abortion may be performed lawfully.

Nearly 40 years ago in *R v Davidson*¹³, a Victorian case, Justice Menhennitt set out the circumstances in which a therapeutic abortion would be lawful. His Honour indicated that a therapeutic abortion was lawful where the accused honestly believed on reasonable grounds that the act done (that is, the abortion) was

⁹ de Costa CM, Russell DB, Carrette M., Views and practices of induced abortion among Australian Fellows and specialist trainees of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. *Medical Journal of Australia*. 2010 Jul 5;193(1):13-6.

¹⁰ de Crespigny LJ, Wilkinson DJ, Douglas T, Textor M, Savulescu J., Australian attitudes to early and late abortion. *Medical Journal of Australia*. 2010 Jul 5;193(1):9-12.

¹¹ Right to choose abortion wins strong support, Horin, Adele, *Sydney Morning Herald*, October 5, 2009

¹² Children by Choice website www.childrenbychoice.org.au/nwww/auslawsum.htm, accessed 2 July 2010

¹³ [1969] VR 667.

- (a) necessary to preserve the woman from serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuation of the pregnancy would entail and
- (b) in the circumstances, not out of proportion to the danger to be averted.

The ruling of Justice McGuire in Queensland's District Court in *R v Bayliss and Cullen*¹⁴ in 1986 confirmed that the Menhennitt ruling, outlined above, applied in Queensland. However, it is important to note that Justice McGuire excluded consideration of the social and economic effects of continuing the pregnancy, which had been permitted in NSW following the decision of *R v Wald*.¹⁵

Today, in Queensland, a woman's right to choose abortion remains vulnerable to judicial interpretation of the sections of the Criminal Code described above. There is an ongoing possibility that the meaning of 'lawful' as stated in *R v Davidson* and confirmed in *R v Bayliss and Cullen* could be completely overturned or substantially revised and restricted by an appellate court.

What is meant by recommending that abortion be decriminalised in Queensland?

Abortion remains in Queensland's Criminal Code even though a termination of pregnancy is a procedure which is permitted under medical supervision in Queensland.

To decriminalise abortion in Queensland, it would be necessary to repeal (i.e. remove) sections 224, 225 and 226 of the Queensland Criminal Code 1899.

If abortion was decriminalised, would it remain a safe procedure?

Decriminalising abortion does not mean that doctors and allied health staff are no longer held responsible for their clinical decision-making and practice. All health professionals including doctors, nurses and counsellors have a duty to practice competently. If abortion did not appear in the Criminal Code, complaints regarding health professionals providing abortions would be dealt with in the same way as complaints about any other health care procedures.

There are mechanisms in place in Queensland to monitor standard of medical practice and to deal with practice which falls below the required standards.

If abortion was decriminalised, how would women be protected?

A woman must provide consent for the procedure, as is the case with all medical procedures. The consent must be informed consent which means that the woman must be given and have considered information on the risks and benefits of the termination for her health and wellbeing.

Would a change in abortion laws make a difference to health professionals and service delivery?

The uncertain state of the law relating to abortion is a source of confusion, and the risk of prosecution may dissuade doctors and other health staff from becoming involved in the provision of abortions. This leads to a shortage of service providers, especially in regional and rural areas.

¹⁴ (1986) 9 Qld Lawyers Reps 8

¹⁵ [1971] s DCR (NSW) 25

In some places, doctors who provide abortion services have been subject to harassment. The fact that abortion is seen as a crime rather than a legitimate health care need may provide those who perpetrate acts of harassment with a sense of moral superiority and legitimacy. Doctors might be more willing to become involved in the provision of abortion services if they did not have to deal with the threat of harassment and prosecution.

There is also a possibility that hospitals, doctors and other health services might rely on this legal uncertainty to avoid their responsibility to provide a full range of medical services to their communities, including reproductive health services.

Removing abortion from the Criminal Code would improve access, affordability and equity in the provision of reproductive health services for women living in Queensland.

Will decriminalising abortion lead to more abortions?

A recent report published in *Lancet* and produced by the Guttmacher Institute and the World Health Organisation concluded that unrestricted abortion laws do not predict a high incidence of abortions. Equally, in countries where there are restrictive abortion laws, the numbers of abortions performed are not translated to a low abortion rate.¹⁶ This type of research demonstrates that if the law in Queensland allowed women better access to abortion, it would not necessarily lead to an increase in the rate of abortions.

How can we prevent abortions being required?

In order to reduce the number of unwanted pregnancies in Australia, we need comprehensive and effective sexual health education in schools and in the community, and access to a range of affordable contraception, including emergency contraception. Unplanned pregnancies often result from contraceptive failure, like missing taking contraceptive pills. In order to increase the effective use of contraception, women must be able to access health professionals who can provide them with accurate information regarding how to use their chosen form of contraception.

Client information sheet

www.fpq.com.au

¹⁶ Sedgh, Gilda et al., Induced abortion: estimated rates and trends worldwide *Lancet* 2007; 370: 1338–45