

Frequently asked questions about abortion



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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, as sections of the Criminal Code exist, they 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 well planned delivery of services.

The health, legal and ethical issues associated with abortion and widely divergent community views means that any proposed abortion law reform will 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 a foetus or foetal tissue is removed from a woman's uterus. It is also possible to use prescribed therapeutic drugs to induce a termination of pregnancy. However, medical abortion is not widely available in Australia. The method used to terminate a pregnancy will depend on the stage of the pregnancy.

Client information sheet

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Surgical termination of pregnancy

First trimester terminations are usually performed in a day procedure surgery using suction aspiration. This procedure uses 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 more involved. Hormone blocking tablets and other agents are often used to help soften the cervix.

Medical 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 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 1990s.¹

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. For example, all surgical 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 and illegal abortion (that is when abortions are performed completely outside any legal framework) 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 prohibited, the rate of illegal abortion grows and the safety of the procedure declines.

¹Nicolee Dixon, *Abortion Law Reform: an overview of current issues (2003)* 4; *Vic Law Reform Commission (2008)*, 49

²Dixon (2003), 4; *Vic Law Reform Commission (2008)*, 51

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

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 may require that the woman fly to a regional or metropolitan centre. Travelling and accommodation costs raise the overall cost of having a termination of pregnancy substantially.

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 Cairns.⁴ Availability of termination of pregnancy in Queensland's public hospitals is very restricted and the procedure is generally only performed to save the woman's life or where the foetus has been diagnosed with a genetic abnormality.⁵

How much does a surgical termination of pregnancy cost?

Children by Choice estimates that for Medicare Card holders, the cost of a surgical termination of pregnancy in the south east of Queensland falls between \$250 and \$380 up to 12 weeks gestation. This increases to approximately \$315 - \$550 between 12 and 14 weeks gestation. And for a termination of pregnancy between 14 to 16 weeks gestation the cost can range from approximately \$535 to \$1000.

These costs include the Medicare rebate. Prices for non-Medicare Card holders will be higher. Women are advised to contact clinics for accurate costs. Some clinics may provide concessions for Health Care Card or Pension card holders.

The cost of a termination of pregnancy is higher in Queensland's regional centre, where the costs of a termination of pregnancy up to 12 weeks gestation will cost approximately \$500 for Medicare and Health Care card holders and \$750 without a Medicare rebate.⁶

Children by Choice estimates that the 'out of pocket' expense for a first trimester termination ranges from \$160 to \$600 for services in Queensland. Rural and regional women are particularly disadvantaged as any services provided north of the Sunshine Coast start at \$450.⁷

Note: Prices mentioned above are subject to change.

⁴ Children by Choice website accessed 16 July 2008.

⁵ Dixon (2003), 16

⁶ Summarized from Children by Choice website, Accessed 16 July 2008

⁷ Access to Abortion Services, Children by Choice.
www.childrenbychoice.org.au/nwww/access.htm at 16 July 2008

Are medical abortions available in Queensland?

Mifepristone (RU486), which is used for early medical abortion, can only be obtained in Australia under the Authorised Prescriber legislation of the Therapeutic Goods Act 1989.⁸ There are only a small number of medical practitioners who are Authorised Prescribers in Queensland, as such this method of pregnancy termination is not widely available.

Medical abortion using a combination of either mifepristone or methotrexate and misoprostal 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 very small number of clinics, and can only be used up to 7weeks gestation.

How many abortions happen 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 35643:

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

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 utilized by private medical practitioners providing care to patients in private hospitals or private patients in public hospitals.

Statistics available from HIC for Medicare Item 16525 showed 113 processed claims from July 2007 to June 2008 in Queensland. Medicare Item 35643 showed a total of 15104 processed claims in the same time period.⁹ However, both these Medicare Items also apply to procedures which are not pregnancy terminations, such as those undertaken as a result of miscarriage or foetal death. It is therefore impossible to ascertain the exact number of abortions, either first or second trimester, in Queensland.

⁸Caroline M de Costa, Darren B Russell, Naomi R de Costa, Michael Carrette and Heather M McNamee Early Medical Abortion in Cairns, Queensland: July 2006 April 2007 *Medical Journal of Australia* August 2007 187 (3):171

⁹As provided online by Medicare: Pharmaceutical Benefit Schedule Item Reports www.medicareaustralia.gov.au/statistics. Accessed 19 September 2008

The debate about abortion: what are the issues?

What do Australians think about abortion?

There have been several large surveys on the attitudes of Australians to abortion. The available evidence indicates that the majority of Australians support a woman's right to choose whether to have an abortion¹⁰ and there is wide support for the right of Australian women to medical abortion.¹¹ No more than 10% of the Australian population opposes abortion outright.¹² Even among persons with religious beliefs, supporters of women's right to choose whether to have an abortion remain in the majority.¹³

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 the abortion could be found by a court to be 'unlawful'.

Abortion is an offence under sections 224, 225, and 226 of the Criminal Code 1899 (Qld). 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 (s 226). 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 section 282 of the Criminal Code, which provides a defence to a charge that an abortion has been performed unlawfully. Section 282 states that a person is not criminally liable if the abortion was:

- for the preservation of the mothers life
- performed in good faith
- with reasonable care and skill
- reasonable having regard to:
 - the patients' state at the time and
 - all the circumstances of the case

¹⁰Australian Law Reform Commission (2008) 68.

¹¹De Costa, Russell, de Costs, Carrette and McNamee (2007) 172

¹²De Costa, Russell, de Costs, Carrette and McNamee (2007) 67

¹³De Costa, Russell, de Costs, Carrette and McNamee (2007) 68

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*¹⁴, 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

(a) necessary to preserve the woman from serious danger to her life or her physical or mental health (not being the 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.¹⁵

The ruling of Justice McGuire in Queensland's District court in *R v Bayliss and Cullen*¹⁶ confirmed that the Menhennitt ruling, outlined above, applied in Queensland. However, it is important to note that Judge 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*.¹⁷

Today, in Queensland a women's right to 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.

¹⁴ [1969] VR 667.

¹⁵ Victorian Law Reform Commission (2008), 19

¹⁶ (1986) 9 Qld Lawyers Reps 8

¹⁷ [1971] s DCR (NSW) 25

What is meant by recommending the 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 Criminal Code 1899 (Qld).

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.

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 may 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 by Guttmacher-World Health Organisation concluded that unrestricted abortion laws do not predict a high incidence of abortions. Very restrictive abortion laws that is where it is very hard for a woman to obtain an abortion are also not associated with a low abortion rate.¹⁸ This indicates 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?

Unplanned pregnancies often result from contraceptive failure, e.g. missing contraceptive pills. In order to increase the effectiveness 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. In order to reduce the number of unwanted pregnancies in Australia, we also need comprehensive and effective sexual health education in schools and in the community, including access to a range of affordable contraception, including emergency contraception.

¹⁸ Gilda Selgh Induced Abortions Estimated Rates and Trends Worldwide (2007b) International Family Planning Perspectives 106, cited in Victoria Law Reform Commission (2008), n 1 33