

Research Director

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Parliament House

George Street

Brisbane Qld 4000

Terms of Reference for Inquiry

- 1. existing practices in Queensland concerning termination of pregnancy by medical practitioners;**
- 2. existing legal principles that govern termination practices in Queensland;**
- 3. the need to modernise and clarify the law (without altering current clinical practice), to reflect current community attitudes and expectations;**
- 4. legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods; and**
- 5. provision of counselling and support services for women.**

1. Summary

My submission is in support of Rob Pyne MP's Bill to remove abortion from Qld's Criminal Code, ie I write in support of the removal of Sections 224, 225 and 226. I write as a mother, a grandmother, a woman who has had an abortion and a long time supporter of women's rights to self-determination.

Women's right to determine if and when they have children is an inalienable right.

Evidence from Australia and other countries shows that outlawing abortion does not stop women having abortions. It never has, it never will. Restrictive abortion laws does not even reduce the numbers of abortions. <https://www.guttmacher.org/fact-sheet/facts-induced-abortion-worldwide>

What outlawing abortion does is to make it less safe for women to have abortion, it also prevents particular groups of women from accessing safe abortion: the very young, those from rural backgrounds, those on low incomes, those from culturally diverse backgrounds.

Qld and NSW are the only two jurisdictions in Australia where the criminal law still outlaws abortion – in Qld through the Criminal Code, in NSW through the Crimes Act. Efforts are underway in NSW to reform abortion law. Qld needs to bring itself up to date with the law in the other States of the Commonwealth.

2. Background

Only one medical procedure is included in the Qld Criminal Code – that's abortion and it's been there since 1899, based on the UK law of 1861 (but of course the UK has long since liberalised its approach to abortion). Abortion should be regulated in exactly the same way that other medical procedures are regulated – through Health legislation.

The provision of good abortion care is not facilitated by having abortion in the Criminal Code rather than in Health legislation.

3. How Common is Abortion and What are the Existing Abortion Practices in Qld?

Abortion is a common medical procedure. Between one in three and one in four women of reproductive age in Australia will have an abortion. See for example the reports from the Pregnancy Outcome Unit in the South Australian Department of Health; they are available online at <http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/health+statistics/pregnancy+outcome+statistics>.

I am one of those women. In the 1970s when I was in my 20s I had an unplanned, unwanted pregnancy. I lived in Brisbane at the time but there was no abortion clinic operating openly in Qld and I had to go to Sydney to get a simple, safe procedure that should have been easily available in my home city.

Contraception is not 100% effective or reliable. About half of all Australian and NZ women who present at clinics for abortion were using contraceptives at the time of becoming pregnant.

The legal availability of abortion does not lead to increased numbers of abortions – international statistics show that following abortion being made legal, abortion numbers are likely to remain stable or they reduce. See Guttmacher Institute Factsheet above. The reason for this is that in jurisdictions where abortion is readily available, so also is access to up to date reliable information about sexuality and contraception.

However the absence of legal abortion does put barriers in the way of women determining their own lives. It reduces the availability of SAFE abortion and it denies abortion to particularly vulnerable groups of women. It also increases the financial cost of abortion and this too is a barrier for vulnerable groups of women.

The women who are hardest hit by the absence of LEGAL abortion are low income women (public hospitals generally refuse abortion because its legal status is unclear) who frequently cannot afford the cost of clinic abortions, very young women (often on low incomes, often have reduced access to up to date and correct information), rural women (clinics generally operate only in urban centres and public hospitals won't assist), women from culturally and linguistically diverse backgrounds (particularly affected by the absence of clear, correct information about abortion availability, particularly affected by fear and confusion regarding the legal status of clinics in Qld). The legal situation needs to be resolved.

Abortion is a simple and safe procedure – when conducted legally. Early term abortion, most likely when abortion is legal, is generally done under a local anaesthetic. My own abortion, conducted under lawful conditions in Sydney in the mid 1970s, was done under a local anaesthetic. I was in full control,

able to ask questions of the doctor and the support person throughout the procedure. The procedure itself took about 20 minutes.

Once the abortion laws have been repealed, there should be no impediment to having abortions performed in public hospitals. This will ensure the current economic barriers that cause so many problems for low income and other particular groups of women in accessing abortion are removed.

4. Existing legal principles that govern termination practices in Queensland

The legal status of abortion in Qld is grey, there is a great deal of confusion and incorrect information circulated even by pro woman groups.

Only a few days ago I read incorrect information on a feminist Facebook page concerning both abortion charges laid against a young Cairns couple in 2009-10 and the significance of the absence of abortion rights in Qld. According to the Facebook page, the Cairns couple were charged “only” with an importation offence – in actual fact they weren’t charged with importation, they were charged with procuring an abortion. But once that issue was cleared up, the Facebook page insisted that having anti abortion law in place was not a significant barrier to women as they could still access clinic abortions at affordable cost. For this particular feminist Facebook page, anti abortion law that criminalises women and doctors is simply a minor irritation. These claims are so wrong at all levels and reflect the position of middle class women only. If claims like this can be made on a feminist site how much more extensive is the confusion and promulgation of incorrect abortion information in the wider community.

Confusion, fear, lack of clarity – these are the things that surround abortion access in Qld. They are the reasons why public hospitals generally refuse to do abortions in Qld. Despite claims to the contrary, it is likely that only 1% of Qld abortions are done in public hospitals. <https://prochoiceqld.org.au/why/>

The rest are done in private clinics, which are concentrated in centres of high urban population.

4. a) Cost

Medication abortion, ie non surgical abortion through a GP generally has an out of pocket cost of between \$250 and \$400 depending on the provider, and a surgical procedure can cost into the thousands of dollars depending on a woman’s location and the gestation of her pregnancy. These are not inconsequential sums of money, they are frequently unaffordable. They frequently involve desperate searches for donations and loans to cover the costs. This may be of no concern to middle class women, but for women on moderate to low incomes, or women on no incomes, they represent a huge barrier.

As the Pro Choice Queensland site says:

“Women in rural and regional areas of the state often face long travel distances and additional costs for accommodation on top of higher procedural costs, as well as having to take time off work and arrange for care of children or family members. It’s not uncommon for a first trimester surgical abortion to cost a woman from rural or regional Queensland in excess of \$2000 with all these things taken into account.”

Women pregnant after sexual assault, those with serious health conditions, those experiencing severe violence, and women who are homeless, are regularly turned away from Queensland public hospitals when requesting abortion.

Information on abortion services and legality can be hard to find, and GPs and other health professionals are under no obligation to refer women onwards if they themselves are personally opposed to abortion.

In short, the state of access currently means that women living in metropolitan areas who are financially well resourced and can find the information they need are generally able to have an abortion in Queensland.

Women living in poverty, or those in rural or remote areas of the state, younger women, those with little access to social or financial support, and those living with violence, are finding it increasingly difficult to access services, and for a growing number it is just too hard.

Abortion access should not be a postcode lottery. Women deserve equal access to health services no matter where they live or how much money they earn.”

4. b) Confusion, lack of clarity

On the one hand, Sections 224, 225 and 226 clearly outlaw abortion in Qld – although Section 282 provides a defence of sorts (a defence for the doctor, not the woman), a defence that was interpreted via a liberal lens by the Qld Court in 1986.

Qld did not get its liberal interpretation of preservation of woman’s life from Section 282 of the Criminal Code until 1986 (the McGuire ruling) and while this interpretation did not go as far as the NSW case (Levine ruling 1971) which included consideration of socio-economic conditions, it did at least include preservation of mental and physical health. It is on the basis of the 1986 McGuire ruling that clinics operate in Qld today, despite Sections 224, 225 and 226 which criminalise women who have abortions, doctors who provide them and others who support and assist.

In 2009 a young Cairns couple were charged with obtaining an unlawful abortion. The young woman was charged under S 225, her partner under S 226. No woman had ever before been charged with procuring an abortion in the history of Qld. The significance of this cannot be overestimated and it should never be allowed to happen again. In 2010, after a gruelling and horrific 18 month period for this young couple when they were harassed by opponents of women’s right to abortion, had to move house, had their car burned down, lost jobs, the jury found them not guilty, based on evidence provided by a Government witness for the Prosecution. It is widely considered that the jury didn’t convict in spite of the law. Legally, it seemed apparent the couple had broken the law. However, the jury voted with community opinion. This case is the clearest illustration of the law being in conflict with community views – and the law being ignored. The law needs to be either enforced (the community has no taste for this) or reformed.

As a bitter and ironic twist to this case, what this young couple were unaware of is they could have obtained a medication abortion via a Cairns GP at the time. This provides yet another example of information that is hidden and not widely known because of the status of abortion under the law. When the abortion laws have been repealed, there will be an improvement in the provision of accurate information openly, without apology, without secrecy.

There are three possible reasons to criminalize abortion in Qld:

1. To ensure women don't undergo unsafe procedures. The best way to ensure abortion is safe is to remove it from the Criminal Code and regulate it via the Health Act;
2. Heterosexual sex should take place only in marriage and only to produce children. This view is one that few adhere to today;
3. Human life begins at conception. This is a minority view but it is still respected when abortion is decriminalised.

[file:///C:/Users/ANNA/Downloads/SPEECH AGM CarolineDeCosta 5Oct10 Abortion Law Reform.pdf](file:///C:/Users/ANNA/Downloads/SPEECH%20AGM%20CarolineDeCosta%205Oct10%20Abortion%20Law%20Reform.pdf)

5. The need to modernise and clarify the law to reflect current community attitudes and expectations

It is very important to base community attitudes on well designed and well conducted community surveys, rather than on numbers of responses to this inquiry or on media statements by vocal representatives from extremist groups that have rigid and narrow views about women's role. What is often not recognised is the undercurrent of bullying that is directed by these groups to silence those who support women's abortion rights. For example over coffee yesterday I briefly suggested to two friends that we should put submissions into this inquiry. One of my friends, a confident, professional woman in her 50s, said: "O I couldn't do that – my relative is standing for the Federal election next month from a right wing party that opposes abortion". In other words, a young man from a fringe group with views that are not reflected by mainstream Australia, is able to silence his relative who, like most people, actually supports women's right to abortion. Without needing to say a word.

Community attitudes have been measured by surveys over several decades. Simple yes/no surveys can be misleading but there are a number of more thorough surveys. Consistently, community surveys have shown a high level of support for women's access to early abortion. Support for later term abortion is not as strong but most people still support this (fewer than 2% of abortions take place at 20 weeks or later in Australia).

The Australian Survey of Social Attitudes (AuSSA) is Australia's main source of data for the scientific study of the social attitudes, beliefs and opinions of Australians, how they change over time, and how they compare with other societies. It is managed by the Australian Consortium for Social and Political Research Incorporated, a consortium of universities and government research agencies. Based on random samples from the Australian Electoral Roll, this survey is widely respected for its methodology and professionalism.

In the 2003 AuSSA, 81% of respondents strongly agreed or agreed with the proposition that women should be able to decide whether or not they obtain abortion, 9% disagreed or strongly disagreed, and the rest were neutral or could not decide. Results of the 2005 AuSSA were virtually identical: 79% of respondents agreed or strongly agreed that women should decide whether or not to have an abortion and 10% disagreed or strongly disagreed.

The 2003 AuSSA also found that religious belief and support for legal abortion are not mutually exclusive, with 77% of those who identify as religious also supporting a woman's right to choose.

A survey conducted by Auspoll in 2009 of over 1000 Queenslanders found that almost 4 out of 5 voters wanted the law changed so abortion is no longer a crime.

A review of over 20 years of data on attitudes to abortion published in October 2009 found that "more than half the electorate in Australia and in Queensland support freedom of choice, and a further third support the availability of abortion in special circumstances... As far as attitudes are concerned, Queensland is no different from the rest of Australia." K Betts "Attitudes to Abortion: Queensland and Australia in the 21st Century" People and Place vol 17, 2009.

Surveys conducted by the Southern Cross Bioethics Institute Survey (2004) and the Australian Federation of Right to Life Associations (2005) have been criticised for their questionnaire design – many questions were loaded. Both organisations are clear that they are opposed to women's abortion rights. Even so the Right to Life Survey still found strong community support for women's abortion rights, with 60% of respondents supporting 'abortion on demand'. <http://www.lawreform.vic.gov.au/content/4-surveys-attitudes>

Attitudes towards abortion have liberalised over time. As long ago as 1972 a McNair Anderson survey found only 19% of Australians supported abortion rights in all circumstances. http://tapri.org.au/wp-content/uploads/2016/02/v17n3_3betts.pdf Today, depending on the survey design, majority support for women's right to abortion is clearly somewhere between 60% and around 80%. The time for change is overdue. Women are not childlike creatures who are incapable of making decisions in their own and their families' best interests. They are mature adult human beings with adult capacity for decisionmaking.

It is significant too that professional groups also support women's right to abortion. The Royal Australian College of Obstetricians and Gynaecologists, the Public Health Association of Australia, and Sexual Health and Family Planning Australia all advocate for the decriminalisation of abortion and equity of access to abortion services. A 2010 survey published in the Medical Journal of Australia found that 85% of practicing obstetricians and gynaecologists are not opposed to abortion, and 90% of these doctors agree that abortion should be available through the public health system in all states and territories. <http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/public-opinion-on-abortion>

6. Legislative and regulatory arrangements in other Australian jurisdictions including regulating terminations based on gestational periods

The only jurisdictions in Australia today that continue to outlaw and criminalise abortion are Qld and NSW.

I indicated earlier that in the mid 1970s I travelled to Sydney from Brisbane for a 'lawful' abortion. In fact, this is not quite true. At that time the NSW Crimes Act still outlawed abortion; technically abortion was still criminalised in NSW. However, at least by the mid 1970s, NSW had had a liberal interpretation of the meaning of preservation of the woman's "life" (Levine ruling 1971), to include physical and

mental health and socio-economic conditions. So while abortion remained in the NSW Crimes Act, doctors (but not women) could have some confidence that if they were charged, the 1971 Levine ruling would provide them with a defence. In Victoria the 1969 Menhennit ruling also provided a liberal interpretation of the concept of preservation of the woman's life to include mental and physical health. Qld did not get its own liberal interpretation until 1986 (McGuire ruling, along the same lines as Victoria's).

6. a) Current law across Jurisdictions

In the **ACT**, abortion law was reformed in 2002. Abortion is not a crime. It must be carried out in a medical facility.

Victoria reformed its abortion law in 2008. Women are able to decide to get an abortion up to 24 weeks gestation. After this, abortion is available with a second doctor's agreement.

In **South Australia** abortion is obtainable to 28 weeks gestation in a prescribed public hospital provided certain conditions are met.

Tasmania reformed its law in 2013. Abortion is available to 16 weeks gestation and, after that, with the agreement of two doctors.

In **Western Australia** abortion remains in the Criminal Code but is also in the Health Act. Under 1998 reforms, abortion is available to 20 weeks.

In the **Northern Territory** abortion is available to 14 weeks gestation, but only if certain conditions are met.

The Victorian model, of all those outlined, appeals because it seems to place confidence in women's capacity to make decisions for themselves and their families.

7. Provision of counselling and support services for women

Some women choose to have counselling prior to making a decision about whether or not to have an abortion, others, probably most, do not. Counselling should be available; it should not be mandatory.

Counselling and support services for women faced with unwanted and/or unplanned pregnancy should be independent, impartial, non judgemental and be fully supportive of client self-determination. They should provide accurate, up to date information and not use emotiveness or bias to attempt to direct women's decisions.

Children by Choice is an agency that offers independent, impartial counselling services for women faced with unwanted pregnancy. It is the **ONLY** independent, impartial pregnancy counselling service in Qld.

From time to time 'counselling' agencies with an ideological view that says women should not be able to access abortion services are established. They are strongly opposed to abortion rights. They use various names. They do not advertise their ideological position and sometimes women approach them looking for bias-free counselling that supports client self-determination. These agencies should be required to

meet truth-in-advertising standards. They should not be funded via the public purse because they breach standards of client self-determination and non-directive practice.

Children by Choice do not push an ideological agenda, their counsellors are professional, skilled, non-directive, up to date in their knowledge. They support client self-determination. These services, not linked to an unstated agenda, not linked to clinics, need to be supported. The only agenda Children by Choice counsellors have is to provide information so that women can make their own decisions and to facilitate women's decision making.

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