

Submission to
Working Committee
Queensland Parliament
in response to the
Abortion Law Reform
(Women's Right to Choose)
Amendment Bill 2016

Introduced by Independent Mr R Pyne

About Us

Unborn Children's advocacy Network (UCaN) is a registered non-partisan, non-denominational and not-for-profit organisation (ABN 39 118 752 458 – Dec. 2013) promoting respect and protection for human life from conception to birth.

UCaN operates solely on the in-kind generosity of altruistic individuals and serves as a platform for like minded people to speak for the voiceless and vulnerable in our society – the unborn. This commitment to respect for human life at such a vulnerable stage runs contrary to any belief that such life can be deliberately and knowingly extinguished.

We are based in Queensland Australia and have a worldwide network of contributors.

We provide platforms for sharing information via website www.ucan.org.au and Facebook.

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Opening Statement

The Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 (the Bill) was introduced to parliament on 10/05/2016 by Independent Mr R. Pyne. This Bill ostensibly aims to omit provisions of The Criminal Code Act 1899 (the Code).

The *Criminal Code Act 1899 (Qld)* is the primary instrument for the source of criminal law in Queensland. The Code was largely the product of Sir Samuel Walker Griffith, then Chief Justice of the Supreme Court of Queensland (and formerly Premier).¹ This Act has served Queensland well over many decades and maintains as much relevance today as it did when produced.

Protagonists of this Bill will present the argument that these provisions are outdated, have no place in a modern liberal democracy and can criminalize women and doctors for a basic human right. However, there is no such human right that gives one individual approval to take the life of another, least of all by a simple choice. Society does not tolerate the ending of a born Child's life simply by choice because they are no longer wanted, disabled, or even burdensome. The unborn are simply that same Child, just at an earlier stage of development, and deserving of the same consideration.

The study of Embryology teaches that a new and unique human life starts their journey shortly after conception when male gamete fuses with female ovum.² This is the start of the journey of a human life. After about nine months gestation, this rapidly developing individual is birthed and continues their journey toward independent living. At this early part of the human journey, they are dependent on the community for care and protection. We do this by supporting the mother during pregnancy.

A new human life gestating in the womb is neither more nor less significant than that of the Mother. Both lives are deserving of support and protection. However, unlike the mother, the unborn have no voice and are reliant on goodwill of the community and their Mother during this vulnerable stage of existence.

The Bill attempts to remove perceived obstacles to abortion, but in fact, it serves to diminish protection for women. We will examine each of these provisions and respond to them individually.

1 https://en.wikipedia.org/wiki/Criminal_law_of_Australia

2 https://embryology.med.unsw.edu.au/embryology/index.php/Timeline_human_development

Abortion in Australia

Abortion access in Australia varies from state to state.³

State or Territory	Status	Exceptions
Australian Capital Territory	Legal on demand	
New South Wales	Criminal offence	Legal if a doctor finds any economic, social or medical ground or reason that abortion is required to avoid serious danger to the pregnant woman's life or to her physical or mental health.
Northern Territory	Criminal offence	Legal up to 14 weeks if two doctors agree that the pregnant woman's physical and/or mental health endangered by pregnancy, or for serious foetal abnormality. Legal up to 23 weeks in a medical emergency.
Queensland	Criminal offence	Legal up to 22 weeks if necessary to preserve the woman from a serious danger to her life or health beyond the normal dangers of pregnancy and childbirth or if the foetus has a defect which is considered to be "inconsistent" with life.
South Australia	Criminal offence	Legal up to 28 weeks if two doctors agree that a woman's physical and/or mental health endangered by pregnancy, or for serious foetal abnormality.
Tasmania	Legal on demand up to 16 weeks	Beyond 16 weeks, legal if two doctors agree the abortion is required medical or psychological grounds.
Victoria	Legal on demand up to 24 weeks	Beyond 24 weeks, legal if two doctors agree that it is appropriate, based on the woman's current and future physical, psychological and social circumstances.
Western Australia	Legal on demand up to 20 weeks	Beyond 20 weeks, legal under very strict circumstances, requiring approval by a panel appointed by the Minister for Health.

³ https://en.wikipedia.org/wiki/Abortion_in_Australia

Criminal Code Act 1899

The Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 (the Bill) aims to omit three provisions of the Code. We respond to each section of the Bill marked for omission.

Section 224 - Attempts to procure abortion

Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime, and is liable to imprisonment for 14 years.

This section clearly attempts to protect women from being forcibly administered any poison or noxious thing with intent to cause a miscarriage, whether pregnant or not. This provision is a protection mechanism to ensure that any woman cannot be forced against her will. It is worthy of noting that in this section, the woman herself is not denied taking anything to procure a miscarriage.

While an unborn human Child does have some protections under this section, the focus is clearly on protecting women from being forced against their will. Removing this protection has the potential to expose women, vulnerable or not, to mistreatment with dire consequences for the unborn Child..

Scenario 1

A young disabled woman, in the custody of a government health institution, meets with a male patient and a relationship blossoms. As a result of their liaison, the young woman becomes pregnant. Institutional hierarchy decide that the young woman is unfit or incapable of being a Mother and decide abortion is the best course of action - despite the woman's objections. Doctors will then be sanctioned in forcing this woman to imbibe a substance to bring about a miscarriage. In this scenario, the young woman will have no protection from force against her will.

Scenario 2

A 17 year old student becomes pregnant to her high school sweetheart. They are both madly in love and plan to raise their Child together, regardless of the difficulties they face. The girls parents are outraged at the news of her pregnancy and do not support her decision to continue the pregnancy to

full term. Despite objections from the girl, the parents decide that the pregnancy must end for her own good and demand she take medication to procure a miscarriage. Facing ostracism and rejection from her parents, the girl reluctantly complies. This young woman will lose protection from force against her will should this section be omitted.

Scenario 3

A young professional couple striving to follow their dreams without Children suddenly find out they are pregnant. The woman is initially shocked but warms very much to the idea of having her Child. The husband however, remains insistent about not wanting Children as it will disrupt their lifestyle. The woman refuses to have an abortion and attempts to sway her husbands mind. The husband remains unmoved and seeks out abortifacients. When the woman refuses to take them, her husband stands over her in a threatening manner and demands she take them. Out of fear for her safety, the woman unwillingly complies. The husband will face no penalty if this section is omitted.

For these reason, among others, omitting this provision from the Code will expose women to force against their will with no prescribed penalty for perpetrators.

Section 225 - The like by women with child

Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a crime, and is liable to imprisonment for 7 years.

This section clearly serves to demonstrate the States consideration for the unborn human life and further confirms the underlying sentiment of section 224 in so far as protection for unborn human life. The key word in this section is 'unlawfully'.

It is quite clear from this provision that unlawful procurement of a miscarriage by any woman is a criminal offense, as it is in section 224, although penalties are only half those of section 224. Technically, under this provision, any woman who currently attends a medical facility to undergo an abortion procedure could be guilty of a crime. Of course, our jails are not filled with women who have procured an abortion. Despite this provision, abortion procedures *are* performed in QLD.

Although there is no standard data collection in QLD regarding the numbers of abortions carried out each year, nor is there routinely-collected national data that give accurate figures for elective abortions in Australia,⁴ Medicare records for QLD for the year of 2009 show that around 15,500 procedures took place.⁵ The fact that procurement of an abortion by a woman is unlawful in QLD, thousands of women have achieved termination of a pregnancy - and funded from the public purse.

Historical abortion statistics, Queensland (Australia) compiled by W m Robert Johnston.⁶

year	live births	abortions, legal reported	abortions, legal reported (Medicare)	fetal deaths	abortion ratio	abortion %
1984	40,446		(7,460)		184	15.6
1985	40,437		(7,650)		189	15.9
1986	40,371		(8,020)		199	16.6
1987	39,365		(8,400)		213	17.6
1988	40,561		(9,020)		222	18.2
1989	42,071		(9,950)		237	19.1
1990	44,868		(10,440)		233	18.9
1991	44,160		(10,980)		249	19.9
1992	46,240		(11,860)		256	20.4
1993	46,778		(12,470)		267	21.0
1994	46,578		13,760	259	295	22.8
1995	46,484		13,805	278	297	22.9
1996	47,769		13,859	287	290	22.5
1997	46,965		13,820	271	294	22.7
1998	47,046		13,788	262	293	22.7
1999	46,503		14,129	347	304	23.3
2000	47,278		14,538	354	308	23.5

4 N Grayson, J Hargreaves, & E Sullivan. *Use of routinely collected national data sets for reporting on induced abortion in Australia*. AIHW Perinatal Statistics Unit Sydney, 2005. Perinatal Statistics Series Number 17(AIHW Cat. No. PER 30).

5 Statistics available through the Medicare website at <https://www.medicareaustralia.gov.au/statistics>. Figure cited is generated by adding the numbers of procedures under item numbers 35643 and 16525.

6 <http://www.johnstonsarchive.net/policy/abortion/australia/ab-aust-qld.html>

2001	47,678		14,977		314	23.9
2002	47,771		14,386		301	23.1
2003	48,342		14,349		297	22.9
2004	49,940		13,984		280	21.9
2005	51,661		14,233		276	21.6
2006	52,665		14,502		275	21.6
2007	61,249		15,049		246	19.7
2008	63,132		15,202		241	19.4
2009	66,097		15,453		234	18.9
2010	64,467		13,953		216	17.8
2011	63,253		12,949		205	17.0
2012	63,837		12,752		200	16.6
2013	63,354		12,405		196	16.4
2014			10,077			
year	live births	abortions, legal reported	abortions, legal reported (Medicare)	fetal deaths	abortion ratio	abortion %

The ratio of abortions to live births has decreased from 23.9 per cent in 2001 to 16.4 per cent in 2013. Although availability of abortion services has not declined since 2001, access to these services has diminished. There are a number of reasons for this, one being growing community opinion towards the value and sanctity of early human life. Better access to contraception, availability of educational resources and improving economic circumstances also play a part. Further, there are significant numbers of support services available for pregnant women in need.

Advances in pharmaceutical and medical treatment now ensures a growing number of adverse outcomes experienced by Mother and Child can be remedied, providing quality of life.

Premature babies can now survive outside the womb at 23 weeks,⁷ the same stage abortion is performed in the ACT (at any stage during the pregnancy), along with Victoria, New South Wales, Northern Territory and South Australia (under exceptions).

⁷ King Edward Memorial Hospital - Birth of Your Baby at 23 to 25 weeks - found at:
<http://www.kemh.health.wa.gov.au/services/nccu/guidelines/documents/23to25wksparent%20info.pdf>

Despite being a criminal offense under the Code, abortion procedures are available and accessed by thousands of women in QLD. There are no queues of women awaiting prosecution in our Courts.

Section 226 - Supplying drugs or instruments to procure abortion

Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

This section essentially deals with third-party involvement in the '*unlawful*' supply of anything whatever to procure a miscarriage and serves to remove opportunity to circumvent the previous two sections. If it is '*unlawful*' to force a woman to have an abortion, wrong for a woman herself to procure an abortion, it is also wrong for anyone to '*unlawfully*' supply anything intended to procure an abortion. Removing this provision will allow proliferation of readily available and untested abortifacients that may result in the death of women. This provision offers protection for women.

The abortion drug RU486 (or mifepristone) is currently lawfully available in Queensland with guidelines for its use approved by Queensland Health⁸ and is included on the Australian Register of Therapeutic Goods (ARTG) by the Therapeutic Goods Administration (TGA).⁹ Current Code provisions in force have have no effect in stopping 'lawful' access to abortifacients.

Although not included in the Bill before the Committee, this section of the Code has relevance to the intent of the Bill. Omission of this section raises questions about the Bill's propriety.

Section 282 - Surgical operations and medical treatment

(1) 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 an unborn child for the patient's benefit; or

(b) a person or an unborn child to preserve the mother's life; if performing the operation or providing the medical treatment is reasonable, having regard to the

⁸ Therapeutic termination of pregnancy - found at: <https://www.health.qld.gov.au/qcg/documents/g-ttop.pdf>

⁹ <https://www.tga.gov.au/behind-news/registration-mifepristone-linepharma-ru-486-and-gymiso-misoprostol>

patient's state at the time and to all the circumstances of the case

(4) In this section—

- medical treatment, *for subsection (1)(a), does not include medical treatment intended to adversely affect an unborn child.*
- patient *means the person or unborn child on whom the surgical operation is performed or of whom the medical treatment is provided.*
- surgical operation, *for subsection (1)(a), does not include a surgical operation intended to adversely affect an unborn child.*

It is quite clear from this provision that a patient can be an unborn Child and is protected from adverse medical treatment and surgical operation. This is further evidence of the State's acknowledgement of the importance and value of early human life.

Subsection (1) (b) could be, and most likely has been, used to permit abortion for the preservation of the Mother's life. However, if the high number of abortions (as quoted earlier) are as a result of this interpretation, our medical service providers are failing badly. Further, C. Everett Koop, M.D.,¹⁰ former U.S. Surgeon General, has this to say about abortion to preserve the Mother's life:

"Protection of the life of the mother as an excuse for an abortion is a smoke screen. In my 36 years of pediatric surgery, I have never known of one instance where the child had to be aborted to save the mother's life. If toward the end of the pregnancy complications arise that threaten the mother's health, the doctor will induce labor or perform a Cesarean section. His intention is to save the life of both the mother and the baby. The baby's life is never willfully destroyed because the mother's life is in danger."

Transport Operations (Road Use Management) Act 1995

Schedule 2: section 226 (Supplying drugs or instruments to procure abortion)

Repealing this section is purely procedural to meet the required outcome of the Bill before Committee.

¹⁰ https://en.wikipedia.org/wiki/C._Everett_Koop

Conclusion

There is no doubt that the subject of abortion is highly emotive and both sides of the argument share passionate positions regarding its legitimacy. Ultimately, the life of another unique and individual human being is at stake.

Women utilize abortion services for any number of reasons. Pregnancy as a result of rape, incest or pedophilia, are all touted as reasons to sanction termination of a pregnancy. But such incidents are not by themselves justification for the taking of another human life. Such offenses are the result of a criminal act and it is the perpetrator that deserves retribution, not the Child. We as a society need to focus more on eliminating such heinous acts rather than simply 'curing' them with abortion.

The Abortion Law Reform (Woman's Right to Choose) Amendment Bill 2016 is clearly an attempt by abortion rights activists to garner absolute and unfettered access to pregnancy termination at any point of a pregnancy with legal legitimacy. By removing Criminal Code provisions supporting the next generation of Australians, it will be demonstrated that the Government supports termination of it's newest citizens and that abortion is a good and proper 'cure' for pregnancy by a simple 'choice'.

If it is unlawful under section 224 of the Criminal Code for anyone to force a woman to have an abortion, it must also be unlawful for a Mother herself. Yet we have demonstrated that thousands of abortions performed each year are already by 'choice' of the Mother. Seeking out abortion for reasons other than to remedy a criminal act (family balancing, disability, genetic disorder, unwanted, etc) would only be encouraged.

Approving this Bill will remove protection for women being forced against their will (s.224), demonstrate Governments lack of commitment to protection and support for the unborn (s.225) and enable lawful third party facilitation of abortion (s.226).

Access to abortion services is on the decline and amending the Code serves little purpose other than potentially exposing vulnerable women to mistreatment. We encourage the Committee to recommend return of this Bill to the Parliamentary office from whence it came for archiving, thus maintaining the status quo.

The lives of future generations and growth of our State are at stake.
