Abortion law in Queensland: the facts

Queensland’s abortion law is the oldest in the country, remaining unchanged in our 1899 Criminal Code. Case law rulings and advances in medical practice have created inconsistencies and confusion in how this antiquated law is applied today.

Abortion is contained in sections 224, 225 and 226 of Queensland’s Criminal Code, which make it a crime to perform an abortion, access an abortion, or supply drugs or instruments to be used in an abortion.1

Under this law, which dates from 1899, a woman does not even have to be pregnant for charges to be laid.

Section 224: 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.

Section 225: 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.

Section 226: 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.

Section 282 of the Criminal Code provides a defence to doctors for providing treatment where they believe it is necessary to save the patient’s life. This section does not apply specifically to abortion but is the section upon which doctors would rely if charged with providing unlawful abortion.

In 1986, doctors Bayliss and Cullen were prosecuted for performing an unlawful termination. The doctors were both acquitted.

Following the judgement in the Bayliss and Cullen case, abortion is understood to be legal if it is performed a) to save a woman’s life, or b) to prevent serious harm to her physical or mental health.

It should be noted that rape, incest and the diagnosis of severe fetal anomaly are not grounds for a legal abortion in Queensland, except insofar as the threat they pose to a woman’s mental or physical health.2 Neither are exceptions granted for economic or social reasons, despite these exceptions existing in other Australian states.
Pro Choice QLD:
Our Choice, Our Voice is a group of organisations and individuals committed to campaigning collectively for the removal of abortion from Queensland’s Criminal Code.

We believe that laws criminalising abortion are the single biggest barrier to women’s reproductive choice in this state.

We are determined to pursue a reform of abortion law which would:
- maximise women’s reproductive rights and freedoms,
- provide the legal certainty necessary for doctors to provide best patient care for Queensland women, and
- reflect advances in medical practice and community attitudes

More information on Pro Choice Qld and on abortion law and access is available on our website, at prochoiceqld.org.au.

In April 2009, a 19-year-old Cairns woman was charged under section 225 in the Queensland Criminal Code, for procuring her own miscarriage. Her partner was charged under section 226 for assisting her.

The Cairns case was committed to trial in September 2009, and the trial began on 12 October 2010 in the Cairns District Court, with the couple facing potential jail terms of seven and three years respectively if convicted. It is believed to be the first prosecution of a woman for an abortion in the law’s 111-year history.

The charges were related specifically to medication abortion, not to the importation of medication. The couple were not charged under any importation law.

They were both acquitted by a jury in less than an hour, after two days of court hearings. The case attracted national and international media attention, and prompted calls for a review and reform of the outdated laws. None were forthcoming.

Amendments to s282

Prior to 2009, Section 282 of the Criminal Code stated that doctors were not criminally liable for performing a ‘surgical operation’ if they believed it necessary to save a patient’s life. This section does not relate specifically to abortion, but is the defence on which doctors would rely if they were to be charged with abortion offences.

With the advent of medication abortion, where no surgery takes place, this clause became a grey area. Concerned by the prosecution in Cairns, which related specifically to medication abortion, doctors in public hospitals across the state suspended abortion services.

To resolve this issue, the Government committed to reforming this section of the Code to allow for the provision of medication. The revised section 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 medical treatment is reasonable, having regard to the patient’s state at the time and to all circumstances of the case.

The sections pertaining specifically to abortion remain in the Code, and were not examined or altered in any way. The changes were passed in Parliament and were supported by both major parties, on the proviso that they did not increase the availability of abortion in Queensland, but rather served only to clarify current medical practice. It remains doubtful that this aim was achieved.

References: