

# Women's Rights Fact Sheet

## » 5 minutes is all it takes

### To learn more about women and reproductive health rights

**The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence<sup>i</sup>.**

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*Reproductive health can be described as a state of complete physical, mental and social wellbeing in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a responsible, satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how to do so<sup>ii</sup>.*

Reproductive health rights encompass many areas of basic human rights. The right to health and health care, the right to information, the right to life, the right to live free from discrimination and the right to privacy are all inherent in comprehensive access to reproductive health rights.

There are also many other aspects to this broad area of health rights, including access to good maternity care, sexual health services, contraception and sexuality education. Health rights should also include access to safe and legal abortion – arguably the most contested of sexual and reproductive health rights for women.

For a woman to have control over her life, she must be able to choose if and when she has children. The possibility of an unplanned pregnancy is a reality women face throughout their reproductive years and can have significant health consequences potentially impacting all aspects of a woman's life including her financial situation, employment, mental and physical health and relationships. There is no contraceptive method that is 100% effective and not all new contraceptive products

<sup>i</sup> United Nations. (1995). *Beijing Declaration and Platform for Action, Adapted at the 16th plenary meeting*. Beijing: Fourth World Conference on Women.

<sup>ii</sup> United Nations Population Fund. (1995). *Report on the International Conference on Population and Development: Programme of Action*. New York: United Nations.

are readily available in Australia<sup>iii</sup>. Accessibility to safe and affordable abortion services ensures the rights of women to reproductive self-determination.

In Australia a woman's right to lawful abortion is determined by which state or territory she lives in.



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### Abortion and Criminal Codes in Australia

Statutory provisions in many Australian states and territories, are based on 19th Century English legislation (since repealed and replaced in the UK), and identify abortion as a crime. This crime can be committed either by the woman or by the person performing the abortion. The Australian Capital Territory (ACT) is the only Australian state or territory which does not refer to abortion in its criminal code. The ACT explicitly allows abortion 'without restriction as to reason' at all stages of pregnancy<sup>iv</sup>.

The location of abortion within criminal codes has meant it has received little serious attention in health policy development, or in the planning and co-ordination of service delivery. As a result, service provision is patchy and inequitable, with a serious under-supply of public sector services, due in part to

<sup>iii</sup> Marie Stopes International Australia. (2008). *Real Choices: Women, Contraception & Unplanned Pregnancy*. Melbourne: Marie Stopes International Australia.

<sup>iv</sup> Office of Parliamentary Counsel. (1995). *Criminal Code Act 1995*. Canberra: Commonwealth of Australia.

**The decision whether or not to bear a child is central to a woman's life, to her well-being and dignity. When the government controls that decision for her, she is being treated as less than a full adult human responsible for her own choices.**

Justice Ruth Bader Ginsburg



legal uncertainties. The current under supply and difficult access to services is more likely to negatively impact the most vulnerable and disadvantaged Australian women<sup>v</sup>.

Eighty five per cent of surveyed Australian General Practitioners believed women should have access to termination services further strengthening the argument that abortion should be lawful if undertaken with the consent of the woman and by a medical practitioner.<sup>vi</sup> It is clear that the current legislation for abortion is inappropriate, out-dated, inconsistent and in need of reform.

## The legal status of abortion in Queensland

The *Queensland Criminal Code* 1899, sections 224,

<sup>v</sup> Taft, A. J., Watson, L. F., & Lee, C. (2004). *Violence against young Australian women and association with reproductive events: a cross sectional analysis of a national population sample*. Australian and New Zealand Journal of Public Health, 28(4), 324-329.

<sup>vi</sup> Marie Stopes International Australia. (2004). *General Practitioners: Attitudes to Abortion*. Melbourne: Marie Stopes International Australia.

225 and 226 state that abortion is a criminal offence. Section 282 of the *Queensland Criminal Code* attempts to define a lawful abortion by stating that a person is not criminally responsible for performing a surgical operation or medical treatment if the purpose of the procedure is to preserve the life of a person or to prevent a serious threat to their physical or mental health. Rape and acts of incest are not sufficient grounds for a legal abortion in Queensland. That is, termination is allowed where the medical practitioner reasonably believes it is necessary to preserve the woman from a serious danger to her life or her physical or mental health (beyond the normal dangers of pregnancy and childbirth)<sup>vii</sup>.

It is argued that it is degrading and an insult to the intelligence of a woman to have the decision on whether she will become a mother imposed on her by law, or by a panel, or a doctor, or a priest, and then left to carry out the responsibility of that imposed decision. Repressive laws such as these generate beliefs that women are not capable of making well informed decisions. Issues such as abortion are the measuring sticks by which we can gauge a government's attitude to women and the status of women<sup>viii</sup>.

### In Queensland today

- » access to abortion services is limited as there is only a very small number of private providers delivering abortion services with limited opportunity to access an abortion in public hospitals
- » women on low fixed incomes and those living in rural, regional and remote areas of Queensland have very limited access to abortion services due to cost, distance and travel
- » currently there is no clear policy or guidelines around the provision of, and access to, abortion services within public health services in Queensland.
- » providing and accessing abortion is still a criminal offence.

## Women's Rights and Abortion

The ability for a woman to access safe and low cost abortion is first and foremost a human rights and social justice issue. Current abortion provisions in Australian Criminal Codes are a clear breach of Australia's international obligations under the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) of which Australia is a signatory.

Several articles within CEDAW imply a right to abortion, however, Article 12 is most relevant:

<sup>vii</sup> Office of the Qld Parliamentary Counsel. (1899). *Criminal Code Act 1899*. Brisbane: Queensland Government.

<sup>viii</sup> Holmes, B. (n.d.). *Publications*. Retrieved April 21, 2013, from Australian Institute of Criminology: [http://www.aic.gov.au/media\\_library/publications/proceedings/16/holmes.pdf](http://www.aic.gov.au/media_library/publications/proceedings/16/holmes.pdf)

## Article 12

1. States Parties shall take all appropriate measures to eliminate all discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this Article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

CEDAW is a legally binding international agreement yet so far has failed to sufficiently address the issue of women's access to legal and safe abortions.

Australia is also a signatory to the *Universal Declaration of Human Rights* (UDHR). Unlike CEDAW the UDHR treaty is **not** legally binding, however, it is the most fundamental international document on human rights, and in the years since its proclamation it has served as a moral compass for the world. It is argued that a woman who finds herself with an unplanned pregnancy loses her rights in Articles 1, 3, 12, 18 and 23. That is women are unable to exercise their reason and conscience; they do not have liberty and security of person; they suffer arbitrary interference to their privacy and family and their right to work or their free choice of employment can be negatively impacted<sup>x</sup>.

## International Opinion

Given the ongoing criminality of abortion United Nations Special Rapporteur for Health, Anand Grover, released a report examining the interaction between the right to health and criminal laws as they relate to sexual and reproductive health. The report states that the right to sexual and reproductive health are fundamental to the right to health. It also outlines that criminal and other legal restrictions on abortion violate the right to health and may interfere with a woman's ability to fully realise human dignity. Grover identified that dignity requires individuals be free to make personal decisions without interference from the State, especially in an area as important and intimate as sexual and reproductive health.

Given the physiology of human reproduction and the gendered social, legal and economic context in which sexuality, fertility, pregnancy and parenthood occur the report argues women are more likely to experience violations of their right to sexual and reproductive health. Persistent stereotyping of women's roles within society and the family establish and fuel societal norms. The report strongly advocates for the decriminalisation

<sup>ix</sup> Holmes, B. (n.d.), *ibid*

**"When it comes to a woman's health, no politician should get to decide what's best for you. The only person who should get to make decisions about your health is you."**

President Barack Obama<sup>i</sup>.

<sup>i</sup> Hartman, R. R. (2013). *Obama says Planned Parenthood is 'not going anywhere'*. Yahoo News.



of abortion<sup>x</sup>. The criminalisation of abortion has also been identified as a concern by the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Committee on the Rights of the Child<sup>xi</sup>.

To consistently support human rights, we must firstly campaign for a world in which women are not imprisoned by a culture that dictates that their 'natural' and primary role is to be mothers and secondly that the control of women's bodies must be returned to women and removed from the hands of politicians and other influential decision makers. Women must have reproductive autonomy, that is the right to make decisions concerning their reproductive health free of discrimination, coercion and violence.

<sup>x</sup> Grover, A. (2011). *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. New York: United Nations.

<sup>xi</sup> UN Women. (2011). *2011-2012 Progress of the World's Women: In Pursuit of Justice*. New York: UN Women