

# Young Australian girl forced to go to Supreme Court to seek abortion

Mary Beadnell

16 May 2016

In a demonstration of the backwardness and reactionary character of Australian capitalist law, a 12-year-old child from the regional city of Rockhampton was forced to apply to Queensland's state Supreme Court recently for the right to an abortion.

The girl, named by the Court as "Q," was nine weeks pregnant to a 12-year-old boy, who was reported by the court to have no knowledge of the pregnancy. "Q" had a history of mental ill health and self-harm and was seen by her parents, social workers, doctors, obstetricians and psychiatrists as being at grave risk should the pregnancy proceed.

Despite that, the girl was forced to take her case to court, due to the continued presence of antiquated laws criminalising abortion. Ultimately, after an anguishing month-long delay, the court allowed the abortion to go ahead, agreeing the child was mature enough to grant consent to the termination.

Queensland public health officials took the matter to court after doctors, the girl and her parents all agreed that continuing the pregnancy could cause her physical and emotional harm.

In a judgment delivered on April 20, Justice Duncan McMeekin ordered that she be allowed to take the drugs Mifepristone and Misoprostol to terminate the pregnancy by April 23. If the drugs failed to cause the abortion, the court ordered that the pregnancy be terminated by surgery.

Earlier this year, according to an affidavit, "Q" had run away from home, attempted suicide and found pregnancy "very stressful emotionally." Her mother told the court there was "a very real risk of self-harm and or suicidal behaviour, if the pregnancy was to continue."

In the state of Queensland abortion remains a crime

under the Criminal Code for both the woman having the procedure and doctors performing it. It can result in a sentence of up to seven years' imprisonment for the woman and 14 years for the doctors involved. Abortion can only be considered lawful if a doctor believes the mother's mental or physical health was in serious danger if she continued the pregnancy.

Justice McMeekin stated: "Q's consent to the procedures does not of course make them lawful ... [sections] 224 and 225 [of Queensland's Criminal Code] still make those actions unlawful unless authorised or justified by law." However, he said the risk of harm to the girl meant the court could legally order the abortion.

Yet, in effect, abortion is readily available to those who can afford it—in privately-run clinics. The cost of an abortion in Queensland is between \$480 and \$1,370. Even if the woman qualifies for a rebate under the Medicare health insurance scheme, the cost can be up to \$800. That is nearly double the fortnightly income of someone on Newstart unemployment benefits.

This highlights the class nature of abortion law. Wealthy women have long been able to have abortions, but working-class women and girls can be denied the procedure in public hospitals, potentially leaving them in the hands of backyard operators.

Governments, both Labor and Liberal-National, pander to right-wing forces that denounce access to abortion, which is a basic democratic right. The Australian Christian Lobby spoke out publicly against granting the girl an abortion, saying she should give birth and put the baby up for adoption. It also raised the issue of informing the father of the pregnancy.

A similar case was heard in the Queensland Supreme Court in 2008 when a 12-year-old girl with a mental capacity of a six-year-old, sought to have a pregnancy

terminated in a public hospital. In that case too, the court ordered that doctors be allowed to end the girl's pregnancy, because it was in her best interests.

State government lawyers, representing the girl's doctors, brought the matter before court. The court heard that because of the girl's age and mental capacity, neither she nor her parents were legally able to give consent for a termination and a court order was required. The court ordered doctors to use the drug Misoprostol to induce labour, because there was a high risk that other methods could seriously harm the girl.

Abortion is still the subject of criminal law in all Australian states and territories, except the Australian Capital Territory, where it is legal, provided that it is performed in a medical facility, by a registered medical practitioner.

Victoria, South Australia, Western Australia, Tasmania and the Northern Territory have legislation defining when an abortion is lawful. In these states, common law interpretations of the Crimes Act or Criminal Code have had the effect of making lawful abortion generally available, but the time limits for seeking the procedure differ, ranging from 14 weeks gestation to 24 weeks.

In the Northern Territory, abortion is only legal up to 14 weeks, if two doctors agree a woman's physical or mental health will be endangered by the pregnancy or the unborn child were to be born with a serious disability. There is further provision for an abortion to be performed up to 23 weeks gestation in an emergency to prevent grave injury to the woman.

In Queensland, due to a torturous history of prosecutions and the retention of ambiguous legislation by successive governments, many public health facilities are unwilling to carry out abortions, for fear of criminal sanctions.

In a historically significant case, Doctors Peter Bayliss and Dawn Cullen, a doctor and anesthetist from a clinic at Greenslopes in Brisbane, the Queensland state capital, were charged with providing unlawful abortions in 1985, following police raids on the clinic.

After months of public outcry, they were both acquitted when the case came to trial in early 1986. Due to the court's verdict, an abortion is considered lawful in Queensland, if carried out to prevent "serious" danger to the woman's physical and mental health from the continuance of the pregnancy. This

ruling, however, did not specifically refer to "abortion," only surgical procedures, leaving particularly unclear the issue of abortions procured by the prescription of medications that result in miscarriage.

Another significant case regarding Queensland's abortion law involved a young couple in the northern city of Cairns, Tegan Leach and Sergio Brennan. They were tried for procuring an abortion in 2010, and only acquitted after months of protests. This prosecution, which occurred under Premier Anna Bligh's state Labor government, involved the use of miscarriage-inducing medications to cause miscarriage.

In 2009, Bligh's government enacted section 282 of the state's Criminal Code to define a lawful medical procedure, but avoided specifically mentioning abortion. This led to the expansion of expensive private abortion clinics, but many public health facilities will not perform procedures without court orders, leaving access patchy for working-class women.

Hence, the shocking ordeal suffered by the 12-year-old girl from Rockhampton.



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