

## *Legal issues lead Cairns doctors to cease medical abortion*

*Cairns gynaecologists Caroline de Costa and Michael Carrette write:*

As senior medical practitioners who for the past three years have been offering medical abortion services to women in Far North Queensland, it is with great regret that we announce that we are, at least temporarily, ceasing this practice.

We have decided to cease offering mifepristone(RU486)/misoprostol early abortion to women in Cairns and surrounding areas.

This decision has been taken out of concern at the prosecution of a young Cairns woman and her partner under sections 225 and 226 of the Queensland Criminal Code, the implications of this prosecution for us -- but more especially the implications for our patients and their support persons -- and the complete failure of the Queensland Attorney-General and the Premier and her government to respond adequately to our communications on this matter.

We are also concerned at the implications for other medical practitioners and nursing staff performing medical abortions in Queensland, and for women undergoing these procedures.

We note that Queensland Health states that medical abortion is performed in the following public hospitals:

Biloela Hospital, Bundaberg Hospital, Caboolture Hospital, Cairns Base Hospital, Gladstone Hospital, Redcliffe Hospital, Gold Coast Hospital, Hervey Bay Hospital, Ipswich Hospital, Kingaroy Hospital, Logan Hospital, Mackay Hospital, Maryborough Hospital, Mount Isa Hospital, Nambour Hospital, Queen Elizabeth II Jubilee Hospital, Redland Hospital, Rockhampton Hospital, Royal Brisbane and Women's Hospital, Toowoomba Hospital and Townsville Hospital. (Reference: Brooke Anderson, Director, Executive Services, Office of the Chief Health Officer, Queensland Health: Queensland Health Provision and Policy regarding Termination of Pregnancy).

The vast majority of these abortions are late abortions performed for serious fetal abnormality detected by publicly-offered screening services for pregnant women. A few are performed for severe maternal illness. Late medical abortion for fetal abnormality or severe maternal conditions is also performed in a large number of private hospitals in Queensland.

These late abortions are all medical abortions performed using misoprostol, the drug the Cairns woman is currently charged with using to procure an abortion for herself.

Misoprostol is not registered by the Therapeutic Goods Administration (TGA) for the purpose of abortion in Australia so its use in Queensland hospitals, by us, and by many other practitioners in other states, is "off-label" -- a widespread and accepted practice among medical professionals.

In April 2006 we were granted permission by the TGA to use mifepristone (RU486) together with misoprostol for early abortion in Cairns, for women with "life-threatening or otherwise serious conditions" that would be exacerbated by continuing pregnancy. We have safely and successfully used the drugs in such cases for the past three years.

In all our cases women have first undergone counseling with discussion of the alternatives to abortion, have had appropriate medical examinations and have been appropriately supported through the abortion and follow-up procedures.

We believe that medical abortion had greatly increased the options open to women in the Cairns region who have had to make the difficult decision about abortion for themselves.

We have not witnessed anything in our practice during this time that would suggest that the provision of medical abortion itself is influencing a woman's decision to terminate a pregnancy; we are simply aware that the options for women have increased. Our practice of RU486/misoprostol abortion has been closely overseen by the TGA to whom we report twice yearly.

Nevertheless throughout the past three years we have been very aware of the anomalies in Queensland law with regard to the practice of medical abortion, and indeed the practice of abortion where the indication is severe fetal abnormality.

We have, individually and together, frequently expressed our concerns in writing and in speaking publicly to the media and to our professional colleagues. We, and others, have addressed numerous letters to the previous and current Premier and government Ministers, and to the Queensland branch of the Australian Medical Association (AMA).

Despite our legitimate concerns and our status as members of the medical profession we have received (usually) no response whatever; where there have been responses these have been curt brush-offs from junior bureaucrats, or stock answers such as abortion is "a divisive issue" or "a matter for a woman and her doctor."

Queensland abortion law is contained within the Queensland Criminal Code in sections 224-226. Section 224 states that a doctor who performs an abortion commits a crime, section 225 that a woman procuring an abortion commits a crime, and section 226 that anyone providing any substance or thing to aid the abortion commits a crime. There are substantial terms of imprisonment attached to these sections.

There is a defence for the person charged with one or more of these crimes in section 282 of the Code -- which allows a "surgical operation" for the preservation of the mother's life if the performance of the operation is reasonable. (The term "surgical operation" appears only in the Queensland Code; abortion remains a crime in some other Australian states but the defence is not restricted to surgical procedures.)

Section 282 was broadly interpreted in the case of Dr Peter Bayliss and Dr Dawn Cullen in 1986. These two doctors were acquitted on charges of procuring an abortion, and the judgment from that case, the McGuire Judgment, is the case law on which doctors currently performing abortions in Queensland would rely if similarly charged.

The Queensland Criminal Code dates from 1899, and was in turn based upon the English *Offences Against the Person Act* of 1861, using, in the sections dealing with abortion, virtually the same wording. Section 224 of the Code has been used very rarely since 1899. Section 225 was used in 1955 (probably the only occasion on which it has been used); the woman concerned was convicted in a lower court but the conviction was overturned on appeal. Section 226 have probably never been used, and certainly not in the last 50 years.

At the time the Queensland Criminal Code was introduced, safe abortion using drugs (i.e. medical abortion) was completely unknown.

The law was originally designed to protect women from unsafe backstreet abortions -- it failed to do this at the time it was promulgated and it is completely at odds with the contemporary practice of abortion and the views of the majority of Australians who believe that safe legal abortion should be accessible to all women.

The fact that a woman and her partner have been charged in Cairns under sections 225 and 226 of the Code is a personal tragedy for these two young people, but it also carries major implications for our practice of medical abortion.

While we appreciate that no Australian medical professional appears to have been involved in the case currently before the courts, we had been over the past three years assured privately by politicians and members of the police that no prosecutions would ever be made under sections 224-226, unless a woman was seriously harmed or died, neither of which events appear to have occurred in this case.

We are also aware, from media reports, that there was a period of three months between the date of the alleged offence and the reporting of the matter to the police. Nothing is known to us of who made this report but it appears that the person or persons may have been highly motivated to bring about the public shaming and possible conviction of these people -- who have apparently done nothing more than use a drug widely available to women for the purpose of abortion elsewhere in Australia and overseas. We are concerned that one of our patients might be the next target.

We have therefore jointly sought legal advice, initially from a solicitor. This lawyer has briefed a barrister with expertise in criminal law and we await that person's professional opinion on our position, and even more critically for us, on the position of our patients and their support persons. As medical practitioners we place the highest importance on the physical and emotional wellbeing and safety of our patients. The initial legal advice we have received has led us to our current course of action.

We would also recommend that all our medical colleagues in Queensland currently practising or assisting with medical abortion likewise consider their legal position and that of their patients.

We will also be continuing our efforts to communicate with the Queensland government and the Queensland AMA executive. It is unfortunate that there has so far been no recognition on the part of these elected bodies that this issue is not about the ethics or morality of abortion, and no understanding that the personal opinions of elected officials should not form the basis for response to legitimate public concerns.

This issue is about the current impediments to the safe and accessible provision for Queensland women of services that are much more freely and legally available elsewhere in Australia.

We would like to see the Premier send the existing archaic abortion law to the Queensland Law Reform Commission, for recommendations for updating abortion regulations that can then be considered and voted upon in Parliament. This has happened successfully in Victoria; it should also be possible in Queensland.