

“We have to make sure you meet certain criteria”: exploring patient experiences of the criminalisation of abortion in Australia

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Key points

- The criminalisation of abortion in some jurisdictions has significant negative effects for patients accessing abortion care across Australia
- Abortion patients interviewed in this study believe it is essential to decriminalise the procedure in order to combat abortion stigma
- At a minimum, abortion providers in criminalised settings need to explain the legal status to patients so that they can understand the process

Abstract

Introduction: Nine different sets of laws govern abortion in Australia, and the criteria for an abortion to be considered lawful varies considerably by jurisdiction. We explored how the criminal status of abortion affected patients' experiences in accessing care in a country where abortion services are widely available.

Methods: We conducted qualitative, in-depth interviews with 22 people who had an abortion in Australia since 2009 across a variety of legal contexts. We audio-recorded all interviews and transcribed them in their entirety. We carried out content and thematic analyses of the interviews using deductive and inductive techniques.

Results: At the time of their procedures, more than half of our participants ($n = 13$) obtained their abortion in a state or territory that had criminal sanctions associated with procuring an abortion and required abortion seekers to meet strict legal requirements to access care. In general, participants reported confusion about the legal status of abortion. Participants who had an abortion in criminalised settings described significant negative emotional impacts that were directly linked to the law. They were often required to fit their abortion story into a state-mandated narrative. Further, the criminalisation of abortion meant that some participants felt they could not be honest with clinicians for fear of being denied care. The participants were overwhelmingly in support of decriminalisation of abortion and increased consistency of the legal status of the procedure across Australia.

Conclusions: The criminalisation of abortion in some Australian states negatively impacts patients' emotional wellbeing, undermines the patient-clinician relationship, and perpetuates abortion stigma. In the absence of legislative reform, training for clinicians – including abortion providers and general practitioners – to explain the implications of the legal status to their patients appears warranted. Patient-centred resources, such as a website with state-specific information, could fill an important knowledge gap for the public.

Introduction

Prior to federation, abortion in Australia was governed by the United Kingdom of Great Britain and Ireland's *Offences Against the Person Act 1861*, which restricted both the procurement and provision of abortion.¹ Now, the procedure is governed by the states and territories, which means that changes to abortion legislation have occurred – to varying degrees – on a jurisdiction-by-jurisdiction basis.² As a result, despite being both a safe and common medical experience, abortion is governed by nine different sets of laws – state, territory and Commonwealth – and the criteria for an abortion to be considered lawful can vary considerably.² Only the Australian Capital Territory has removed all criminal sanctions associated with abortion, while Victoria, Tasmania, the Northern Territory, Queensland, and most recently New South Wales (NSW) have significantly liberalised their laws and fully decriminalised procuring an abortion.²⁻⁴ However, the legislative changes in these states and territories also ushered in new offences relating to an unqualified person performing, or assisting with procuring, a termination.² South Australia and Western Australia have both made amendments to the *1861 Act*, but abortion remains governed by criminal laws.¹

Despite the patchwork of legislation, safe abortion is provided liberally in many parts of the country through both the public and private sectors.⁵ Leading up to and following the 2019 Australian federal election, the issue of decriminalisation of abortion garnered renewed public interest and media coverage.⁶ Media reports suggest that the criminalisation of abortion affects patients' ability to access care⁷, yet this claim has not been rigorously explored in the Australian context. Research conducted across the country has documented a number of barriers that patients face in accessing abortion care.⁸⁻¹¹ Further, research carried out with stakeholders and clinicians has demonstrated that when having abortion is subject to criminal sanctions, it affects physicians' practices and their willingness to be involved with abortion-related training or provision.^{12,13} There is also broad support – from both the public and clinicians – for the decriminalisation of abortion.^{14,15}

However, there is a dearth of research that focuses specifically on how the criminal status of abortion influences patients' experiences from the patient perspective.⁹ To date, the voices of abortion patients are notably absent from the peer-reviewed literature on this topic. Our qualitative study aimed to address this gap. We wanted to explore differences in the experiences of patients who accessed care in both criminalised and decriminalised settings across Australia. We also aimed to document participants' thoughts about these policies.

Methods

We conducted interviews in early 2019 with 22 women, transgender and gender non-binary people from across Australia who had obtained a medication abortion, a method for terminating pregnancy using pills rather than an aspiration procedure or surgery. The data collected for this study aimed to document the experiences of patients across Australia using the drug mifepristone, which is commonly used for medication abortion.¹⁰ The influence of the legal status of abortion on patient experiences became apparent early on during data collection. This paper focuses specifically on this emergent finding.

Eligibility criteria

To be eligible for the study, participants were required to: have had at least one abortion using the drug mifepristone while living in Australia; be at least 18 years old at the time of the interview; be sufficiently fluent in English to answer interview questions; and have access to a telephone or Skype.

Recruitment

We used a multimodal recruitment strategy that included liaising with community groups and organisations to share information about our study, posting on social media (such as Facebook and Instagram), and posting on the online classified advertising website Gumtree. After verifying eligibility, researcher KL scheduled a mutually convenient time to talk with anyone who expressed interest in participating in the study.

Data collection

KL, a Canadian PhD student in Population Health with training in medical anthropology from Macquarie University, was responsible for data collection with regular feedback from LW and AF. LW is an American–Australian cultural anthropologist and AF is an American medical anthropologist and medical doctor; both have extensive experience conducting qualitative research related to abortion. Researcher KL conducted all the participant interviews while she was living in Australia. Participants gave permission for audio-recording of the interviews, which lasted 60–90 minutes and took place by phone or Skype.

We modelled our interview guide on a large-scale qualitative study on abortion patients' experiences in Canada.¹⁶ The interviewer began by asking open-ended questions related to the participant's background and general sexual and reproductive health history. She then asked about the respondent's abortion experience including the circumstances surrounding the pregnancy that resulted in abortion, the abortion decision-making process, and the steps involved in locating a provider.

The interviewer discussed the details of the participant's abortion experience(s) and reflections on the overall process. Participants who had more than one lifetime abortion were asked to provide information about each termination.

Early on in the interview process, participants organically brought up how the legal status of abortion in their state or territory influenced their process of locating a provider. After we interviewed the second participant, we modified the interview guide to include specific questions about legal issues, such as: "Were you aware of the legal status of abortion in your state at the time?" We also asked participants whether they were aware of legal reform efforts and their opinion on decriminalisation of abortion.

The interviewer took notes throughout the interviews and wrote a memo shortly thereafter to identify key ideas and reflect on her positionality and the co-construction of information during the interview.^{17,18} A member of the study team then transcribed interviews in their entirety. We offered participants an AU\$40 supermarket voucher to thank them for their time.

Data analysis

We began reviewing data as they were collected to identify common themes, draw initial connections between ideas, and establish thematic saturation. We had regular team meetings throughout the life of project which provided an opportunity to debrief on the interviews and discuss themes as they emerged.

Drawing on interview transcripts, notes and memos, we conducted content and thematic analyses of the interactions using both a priori (predetermined) codes and categories based on the research questions and inductive analysis techniques to identify emergent ideas. We used ATLAS.ti (Berlin: ATLAS.ti Scientific Software Development GmbH; version 8.1.3) to manage our data and developed initial codes from the literature and the interview guide; we refined initial codes and added new codes as we became more familiar with the data. Guided by regular team meetings and discussion, our analysis centred on grouping categories of information, drawing connections between ideas, and understanding relationships. We resolved rare disagreements through discussion.

Throughout the paper, we use pseudonyms for participants, omit all personally identifying information and refer to participants by their self-identified pronouns and age at the time of the interview.

We received ethics approval for this study from the Macquarie University Human Research Ethics Committee (#3491).

Results

Participant characteristics

There were 22 participants who discussed their first-trimester medication abortion experiences that took place between 2009 and 2019 across all states and the ACT. Participants ranged in age from 19 to 46 years at the time of the interview and the vast majority identified as white ($n = 20$). More than half of the participants ($n = 13$) obtained their abortion in a state where procuring a first-trimester termination was subject to criminal law at the time of their procedure. Table 1 describes characteristics of the participants' abortions.

Table 1. Participants' abortion characteristics ($N = 22$)

State/territory in which the participant obtained an abortion	Number of participants	Number of reported abortions subject to criminal law
Australian Capital Territory	1	0
New South Wales ^a	6	6
Northern Territory ^a	0	0
Queensland ^a	6	6
South Australia ^a	1	1
Tasmania ^a	4	0
Victoria ^a	2	0
Western Australia ^b	2	0
TOTAL	22	13

^a In these states/territories, at the time when the participant obtained the abortion, abortion seekers were required to meet certain criteria in order to receive a lawful abortion. If these criteria were not met, an abortion would be subject to criminal law.

^b In Western Australia, the offence of "unlawful abortion" can only be committed by the persons involved in performing the abortion. The person procuring the abortion is not subject to any legal sanctions.

Confusion about the criminal status of abortion has a negative emotional impact, necessitates secrecy and reinforces stigma

Few of our participants were aware of the legal status of abortion in their state prior to the pregnancy that resulted in abortion. Indeed, our participants usually became aware of the issue during the process of trying to locate a provider. For many, this added confusion to the process; there was a lack of clarity about what it would mean to access a service that was subject to criminal law. For several others, the criminalised nature of abortion made

them feel defiant in the face of what they perceived to be an unfair law.

"I was very much like, that's stupid and you're not stopping me. I'll figure it out." (Elisabeth, 30, from NSW)

Many participants found the piecemeal nature of abortion legislation across Australia to be difficult to interpret and noted that it was challenging to find state- or area-specific information.

"I didn't realise beforehand and after all of the research I found out [about the criminal status of abortion] and it was quite disturbing actually. But then to find out that all of these clinics are still running... and the change of regulations in each state, which all didn't make much sense to me." (Charlotte, 25, from NSW)

Box 1. Simone's story: NSW

Simone was 24 years old and living in NSW when she found out she was pregnant for the first time. Although she knew almost immediately that she wanted to have an abortion, she did not have any prior knowledge about where or how to locate a provider. When searching online to try to find a clinic that did not require a referral, Simone found out that abortion was still listed on the state's criminal code (prior to decriminalisation in 2019). She found this information both shocking and intensely distressing and it coloured her entire abortion experience. Simone said her only frame of reference for abortion was that it was illegal and she thought her experience would mimic what she had seen on American television shows. She expected there to be protestors and to experience harassment when she went for her abortion.

When Simone arrived at the clinic, the legal status of abortion was never explicitly discussed. However, she felt that the clinicians were looking for certain answers during her counselling session. She described herself as being "terrified" to give the wrong answer and feared that she would be forced to continue with her pregnancy if she said the wrong thing. She also felt that the clinicians she interacted with inherently did not trust her.

The clinic requested that someone come to pick up Simone after she took the first pill of the medication abortion regimen in their office. Simone had not previously shared information about her pregnancy or abortion decision with anyone. However, she interpreted the clinic's request as a legal requirement and she did not think she was permitted to leave the clinic without an escort. Simone described herself as stressfully "hovering" around the waiting room for her friend to join her, but feared that either she or her friend would be implicated in some way for obtaining an illegal service.

The confusion that stemmed from the legal status of abortion had a significant emotional impact on a number of participants that affected their experience of accessing care. As Simone's story shows (Box 1), she experienced fear and confusion throughout her entire experience because she was unsure how the legal requirements of obtaining care in NSW would affect her.

For many participants, the criminal status of abortion felt like a moral judgment and contributed to the feeling that abortion was something that should not be talked about.

"I believe that they're very hush-hush and they have to be because it is illegal to have abortions in NSW." (Elisabeth)

Similarly, another participant said:

"Yeah, [the community organisation that helped me find services] said where I was going to [have my abortion] was a legal place, but what I was doing was illegal... They said just not to speak too much about it." (Ruby, 22, from Queensland)

Multiple participants brought up this issue of secrecy and in their retelling, they recalled it as being directly linked to the legal status of abortion. This is indicative of the relationship between the legal status of abortion and abortion stigma, and how the two contribute to and perpetuate each other in a cycle of silence.

Legal status influences patients' abortion narratives and creates a hierarchy of deservedness

Overwhelmingly, participants cited similar reasons for wanting to terminate their pregnancy, regardless of whether or not the procedure was subject to criminal sanctions in their jurisdiction. This included not feeling ready to parent, not wanting to be pregnant or parent, not wanting to parent in their current relationship or with their current partner, career and/or educational aspirations, and a lack of financial stability.

However, participants who accessed care in states where abortion was criminalised were often required to fit state-mandated narratives about what constituted an acceptable reason for wanting to have a termination. Inherently, this created a hierarchy of deservedness, where abortion seekers with certain personal circumstances "deserved" information and care more than others. This imbued a sense of judgment about whether or not a particular patient's reasoning was sufficient.

Frankie's experience in NSW encapsulates this dynamic well. When Frankie was asked about why they wanted to have an abortion at the clinic, their first response did not meet the state requirements for an exception to obtain a legal abortion.

"I said I was too young and my life wasn't set up for having a kid and they flipped back to the page with my date of birth on it. They were like 'Twenty-seven is not too young, wait too long and you won't be able to have children.' I said I feel too young and I don't have a stable job and... they checked [ticked] the money box. Financially I wouldn't be able to have a child." (Frankie, 33, from NSW)

In contrast to Frankie's experience, at age 16, Ruby was never required to justify her decision during her experience in Queensland (Box 2). Indeed, her story already fit neatly into state narratives about the circumstances in which it was acceptable to have an abortion. Ruby's experience was a stark contrast to other participants who obtained care in Queensland, most of whom were required to explain and defend their decision-making process in order to obtain care.

Box 2. Ruby's story: Queensland

Ruby found out she was pregnant for the first time at age 16. She was homeless, working part-time, and trying to finish high school. Although she did not feel ready to parent, Ruby assumed at first that she would have to continue with the pregnancy because she had heard abortion was illegal in Queensland. Because of the legal status, she thought abortion was something that could not be talked or asked about and she was unsure how to go about finding a provider. She was worried that she could get in trouble for even asking about it.

Ruby was never asked to justify her decision to have an abortion at the clinic. She felt that her interactions with the clinicians were surprisingly non-judgmental; but felt that it was obvious why she could not continue with her pregnancy. She remembers being referred to as a "child", which may have influenced how she was treated.

Ruby is very much in favour of decriminalising abortion across Australia and she followed the media coverage about abortion law reform closely in Queensland. She thinks that if abortion is decriminalised across Australia, people will finally be able to speak openly about their experiences.

Multiple participants recalled how they were required to frame their desire for a termination in a way that checked certain boxes.

"Because [the nurse] was like: 'You know, we have to make sure you meet certain criteria because of the legality surrounding abortion in NSW.' I think she ended up listing mental health and financial." (Laura, 40, from NSW)

Another participant felt strongly that patients should not have to justify their decision to have an abortion. She recalled this as the one drawback of the care that she otherwise described positively.

"I think it was incredibly professional, minus that one question about why you're having the abortion... I just said because I want one." (Amanda, 23, from Queensland)

The criminalisation of abortion undermines the patient–clinician relationship

Participants repeatedly recounted that the perception of abortion as an illegal activity interfered with the patient–clinician relationship at some point in obtaining care. For many patients, it introduced a sense of wariness about how honest they could be with the physician; this same guardedness was not reported by participants who obtained their abortion in decriminalised settings. Several participants reported being dishonest with their abortion-providing clinician because they were fearful about repercussions.

For example, Amanda from Queensland had her termination when abortion was criminalised in that state. She said:

"I was very aware of [the legal status of abortion]. I didn't see my GP [general practitioner] before making my decision and I lied to the [abortion] doctor [at the clinic] because she asked what my GP said. I told her I had seen my GP because I didn't want that to slow down the process... especially because of the law, I didn't know how that would affect me." (Amanda)

Consistent with Amanda's experience, in all of the cases of dishonesty described by participants, the truth of their situation would not have influenced the participant's ability to access legal care. However, the criminalisation of abortion made the participants in this study feel as if they had to lie to their provider.

The criminalisation of abortion also introduced the expectation that the clinicians providing care were required to be judgmental or act in a way that was not in the patient's best interest.

"In Australia because of the legal status of it, they need to pass some judgment... Like, why can you not have a child? It's not about 'Okay, you're here to not have a child.' You have to give your reason." (Frankie)

Frankie was also shown the ultrasound image from their pregnancy.

"Yeah I think they had to, like they have to show you the heartbeat [because of the law]." (Frankie)

Hannah's story (Box 3) also reflects how the law made her feel as if the clinician was not acting either in her best interest or in a way that was congruent with the clinician's standard of practice.

Other participants also recalled interactions with clinicians that felt unnecessarily rigid or strict.

"It was weird, but like I am assuming because of the criminalised nature of it at the time, it had to be done that way. I didn't feel like she didn't trust me, it was like how they had to do it." (Jessica, 27, from Queensland)

Box 3: Hannah's story: NSW–Queensland border

Hannah was in her early 20s and living on the NSW–Queensland border when she became pregnant. She was certain that she did not want to continue with her pregnancy, but initially feared contacting a provider because she was worried about being judged. As well, she did not understand what would be involved in accessing abortion because, at the time, it was listed on the criminal code in both states where she could access care. Hannah feared she would be told she could not have an abortion because it was illegal and delayed contacting the clinic, despite her high level of certainty about the decision.

Once Hannah actually called to make an appointment, the clinic spoke openly with her about the legal status of abortion and what criteria she would be required to fulfil in order to have a legal termination. This was a relief. However, when Hannah was confronted with the questions and asked to justify her decision to terminate, she still felt that the questions were unhelpful and stigmatising. She expressed that she understood why she had to be asked those questions, but she did not want to answer them. She also felt like the clinician did not want to be asking the questions and was uncomfortable doing so. This dynamic made it seem as though the legal requirements of providing and receiving abortion care in Queensland superseded the needs of both her as a patient and the clinician.

Abortion patients feel that decriminalisation is a necessary first step towards improving access and reducing abortion stigma

All participants, regardless of where they resided, expressed overwhelming support for the decriminalisation of abortion across Australia. Participants felt that the current laws were punitive rather than protective.

"I think it makes no sense and I think it's completely ridiculous and super stigmatising... I see it as healthcare that people choose to make some kind of a moral playground." (Sienna, 23, from Queensland)

Although participants acknowledged that decriminalisation in and of itself was insufficient to improving access to abortion, it was generally viewed as a crucial first step.

"[Abortion needs to be] made available in hospitals at no cost, and in rural areas..." (Sienna)

Amanda from Queensland said:

"They need to legalise it, there needs to be more resources, and the government needs to play a role [in making abortion more accessible]." (Amanda)

Participants also articulated the need for legislation surrounding anti-abortion protesting.

Discussion

Calls for abortion law reform across Australia are not new. Indeed, clinicians, scholars and advocates have been urging policy makers to liberalise the abortion laws for more than 20 years.^{19,20} Although success has been incremental, advocates are optimistic that the momentum from the 2019 liberalisation of NSW abortion laws – which took abortion out of the criminal code and reclassified it as a medical procedure – will be useful in continuing to campaign for national decriminalisation. In South Australia, abortion is still subject to criminal laws and must take place in a hospital to be considered lawful. The state also imposes a requirement such that anyone obtaining an abortion in the state must have been a resident for at least 2 months beforehand.²

Our findings echo what advocates of decriminalisation have long argued: the laws in Australia need to change. Despite the fact that abortion is available in a variety of settings across the country, our participants' experiences emphasised the very real and concerning consequences of criminalising a medical procedure. The fact that participants reported feeling obligated to lie to their healthcare provider is both deeply alarming and entirely preventable. Although laws restricting access to abortion are commonly justified as being protective of patients, our findings add to the significant body of literature that shows the criminalisation of abortion is harmful from both a public health and human rights standpoint.^{21,22}

However, the decriminalisation of abortion should not be considered a panacea and instead represents a first step towards advancing health and gender equity. It is imperative that decriminalisation efforts are tied with other efforts to address the variety of logistical, geographical and financial barriers that continue to make abortion difficult to access for many across Australia.⁹⁻¹¹ This includes expanding avenues for reimbursement and financial coverage, better integrating abortion care into the public system, and lifting restrictions on mifepristone and medication abortion providers.^{10,23,24} Improving access for rural and regional populations is also essential.⁸

In the absence of legal reform, our findings highlight a number of strategies that could be used to improve patient experiences. Primarily, the creation of patient-centred, language-accessible resources that include

state-specific information has the potential to fill a considerable knowledge gap. The online resource developed by the group Children by Choice, which details the legal status of abortion in each jurisdiction, serves as a good model that could be more widely distributed.²⁵ This kind of information could also be valuable for clinicians.¹² Ensuring that patients have adequate information about how the legal status of abortion may affect their experience has the potential to demystify the process and reduce the stress that participants described as stemming from confusion and the fear of the unknown. One way to make this information more widely available could be to engage with clinicians – including GPs and abortion providers. Across Australia, it appears that GPs play an important role in helping patients find and access abortion services¹⁰, which makes them a crucial group to involve in these strategies.

Limitations

As is typical of qualitative research, our study is subject to recall bias, and in some cases, participants were commenting on an experience that occurred a decade ago. The issue of decriminalisation of abortion laws in NSW featured prominently in the media at the time that we were conducting the participant interviews and we are unable to assess the potential influence of contemporary media coverage on how participants reported their experiences. As well, we only completed interviews with people who were ultimately able to obtain care. These data cannot illuminate the experiences of those who may have wanted an abortion but were unable to navigate the legal context.

Conclusion

The past and current criminalisation of abortion across Australia has significant implications for patients' experiences accessing care and for abortion stigma. While abortion law reform should not be considered a panacea, it represents a critical step towards advancing abortion rights and health equity in Australia. Our findings suggest that in the absence of – or leading up to – legal reform, it would be beneficial for clinicians to explain to patients what the implications of the law are in order to increase patients' clarity when obtaining care.

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Competing interests

None declared.

Author contributions

KL was responsible for data collection and led the drafting of the manuscript. LW and AF provided substantive feedback, writing and editorial assistance.

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