



## **SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE'S INQUIRY INTO THE HUMAN RIGHTS (CHILDREN BORN ALIVE PROTECTION) BILL 2022, MARCH 2023**

### **Introduction**

1. Women's Forum Australia is an independent think tank established in 2005 that undertakes research, education and policy advocacy on issues facing women and girls. Our primary focus is economic, social and health policies and to be a driving force for positive reform to protect and deliver pro-woman outcomes. The issues we address include the sexualisation and objectification of women and girls, pornography, prostitution, human trafficking, violence against women, adoption, abortion and the erasure of women and their rights through harmful policies that disregard biological sex.
2. Women's Forum Australia welcomes the opportunity to address the Senate Community Affairs Legislation Committee on *The Human Rights (Children Born Alive Protection) Bill 2022*.
3. Women's Forum Australia has previously made submissions on abortion law reform [across Australia](#) both at the state and federal level.<sup>1</sup>
4. Women's Forum Australia supports the *Human Rights (Children Born Alive) Protection Bill 2022* because all infants deserve equal access to care and medical treatment regardless of whether the pregnancy termination resulted from natural causes or an abortion. This legislation addresses the failures of state legislation across several areas, including:
  - Recognition in law of the personhood of an infant born alive regardless of how the pregnancy is terminated.
  - Recognition of the human rights of infants born alive following a failed abortion and safeguards for their right to medical care and treatment, both lifesaving and palliative.
  - It legislates a framework for medical practitioners and healthcare professionals of best medical practice for an infant and their mother following a failed abortion with criminal repercussions on the medical professionals who fail in their duty of care.

---

<sup>1</sup> Women's Forum Australia, *Abortion*, < <https://www.womensforumaustralia.org/abortion>>.

- It legislates mandatory reporting on the live births of infants born live following a failed abortion.
5. Abortion is currently regulated by state and territory governments. It is the direct, intentional termination of a preborn baby's life in utero, and in all jurisdictions throughout Australia is legal up until birth with few limitations.

### **Impact of late-term abortion and live birth abortions on women and girls**

6. We are concerned about the impact abortion has on women, particularly their health and well-being (see [previous submissions and policy notes](#)<sup>2</sup> for more detail). Abortion providers such as Marie Stopes promote abortion as a safe and standard medical procedure<sup>3</sup> however, we know that abortion can lead to increased adverse mental health outcomes for women.<sup>4</sup> The decision to terminate a pregnancy is often accompanied by external pressures such as those related to family, career, intimate partner violence, or lack of financial, practical or emotional support, making the decision coerced. Considering that late-term abortion is supported by proponents as necessary for foetal abnormality, the physical and mental health of the mother and those fleeing difficult circumstances such as poverty or domestic violence, it is problematic that there are no provisions in state legislation to ensure women under great duress can make clear and informed decisions. A misinformed regretful decision would be detrimental to a woman already in crisis.
7. Late-term abortion carries a greater risk of adverse physical and mental health outcomes for women than early-term abortions. The older the gestational age, the higher the risk for sepsis, heavy bleeding and damage to the womb.<sup>5</sup> Research also shows that women who undergo late-term abortions are more likely to struggle with post-traumatic stress disorder.<sup>6</sup>
8. Given that late-term abortions carry an increased risk of post-traumatic stress disorder and that stillbirths are also linked to adverse mental health outcomes in women, further medical research must be undertaken to assess the impacts live birth abortions have on the health and well-being of women. This will help guide crisis pregnancy counselling as well as improve post-abortion care.
9. There is limited data in Australia on sex-selective abortions. However, there is strong anecdotal evidence that they occur overwhelmingly to females in cultures where males are considered superior.<sup>7</sup> There are two methods to determine sex in pregnancy, the first is through the non-invasive prenatal testing (NIPT) screening test, which is available from 10 weeks gestation, and the second is

---

<sup>2</sup> Women's Forum Australia, *Abortion*, < <https://www.womensforumaustralia.org/abortion>>.

<sup>3</sup> Marie Stopes Australia, *Abortion Services*, 2022 <<https://www.msiaustralia.org.au/abortion-services/>>

<sup>4</sup> Coleman, P.K., 2011. Abortion and mental health: quantitative synthesis and analysis of research published 1995–2009. *The British Journal of Psychiatry*, 199(3), pp.180–186.

<sup>5</sup> NHS, *Abortion Risks*, 2020 <<https://www.nhs.uk/conditions/abortion/risks/>>

<sup>6</sup> Coleman PK, Coyle CT, Rue VM. *Late-term elective abortion and susceptibility to posttraumatic stress symptoms*. *J Pregnancy*. 2010;2010:130519. doi: 10.1155/2010/130519. Epub 2010 Aug 1. PMID: 21490737; PMCID: PMC3066627.

<sup>7</sup> SBS, *Could gender-selective abortions be happening in Australia?*, 2015

<<https://www.sbs.com.au/news/article/could-gender-selective-abortions-be-happening-in-australia/titr4ckz>>

through the 20 week ultrasound, where the sex characteristics are more visible.\ An example of this is the high-profile case where a Victorian doctor was threatened with losing his medical licence after he refused to refer an Indian couple for an abortion at 19 weeks after an ultrasound determined they were having a girl.<sup>8</sup> More research needs to be undertaken regarding the relationship between sex-selective abortion practices and live birth abortions.

### **Foetal development and abortion methods**

10. By 12 weeks, the preborn baby (or foetus) is fully formed.<sup>9</sup> All organs, muscles, limbs and bones are in place, and the sex organs are developed. While previous consensus on when preborn babies can feel pain was around 24 weeks, new medical research based on the development of the nervous system at 12 weeks indicates there is a window of 12-24 weeks when the baby may start to feel pain.<sup>10</sup>
11. The procedure for abortion is dependent on the stage of the pregnancy. For pregnancies nine weeks and under, medical abortion is performed using mifepristone and misoprostol (RU486) to expel the baby from the womb. The drugs themselves do not end the baby's life but rather the labour trauma.<sup>11</sup> The alternative option for first-trimester pregnancies up until 14 weeks is a surgical abortion called a suction curette which uses a vacuum force through the cervix to remove the baby.<sup>12</sup>
12. Abortions performed in the second and third trimesters are considered late-term due to the advanced development of the baby. There are two methods, dilation and evacuation, which is a surgical abortion where the cervix is dilated and the doctor uses instruments to remove the baby, and an Induction Abortion. In the latter, medical abortion, mifepristone and misoprostol are administered to induce labour. Induction abortions can be accompanied by feticide, where drugs such as potassium chloride and fentanyl or morphine are injected through the mother's stomach into the baby's heart or the amniotic fluid to end the baby's life in utero before the pregnancy termination. There has been a decline in surgical abortions since the introduction of medical abortions in 2006.<sup>13</sup>
13. Due to the lack of mandatory reporting, there is limited data on how many live births occur in Australia following a failed abortion. We have some limited statistics in Victoria and Queensland, indicating approximately one live birth following an abortion occurs every week in each state.<sup>14</sup> The likelihood of a live birth following

---

<sup>8</sup> Devine M, *Doctor risks his career after refusing abortion referral*, Herald Sun, 2013

<<https://www.heraldsun.com.au/news/opinion/doctor-risks-his-career-after-refusing-abortion-referral/news-story/a37067e66ed4f8d9a07ec9cb6fd28cf5>>

<sup>9</sup> NHS, *You and your baby at 12 weeks pregnant*, 2021 <<https://www.nhs.uk/pregnancy/week-by-week/1-to-12/12-weeks/>>

<sup>10</sup> Derbyshire SW, Bockmann JC, *Reconsidering fetal pain*, Journal of Medical Ethics 2020;46:3-6.

<sup>11</sup> Derbyshire SW, Bockmann JC, *Reconsidering fetal pain*, Journal of Medical Ethics 2020;46:3-6.

<sup>12</sup> Australian Government, Department of Health, *Abortion*, 2021 <<https://www.healthdirect.gov.au/abortion>>

<sup>13</sup> Family Planning Australia, *Induced abortion across Australia*, 2021 <<https://www.fpnsw.org.au/media-news/media-releases/induced-abortion-across-australia>>

<sup>14</sup> This finding is based on the data with the Queensland Health, Queensland Government, Perinatal Annual Reports for 2010–2020 (sample: table 10.13 p.96 from 2020), and Victoria's Mothers and Babies Victoria's Maternal, Perinatal, Child and Adolescent Mortality Annual Reports, 2010–2020 (sample: p.70 from 2020).

an abortion increases with the age of the baby in utero due to viability coupled with the fact that mifepristone and misoprostol do not end the life of the baby in a medical abortion. Recent studies also show that survival and long-term morbidity of preterm babies have improved over the past decade.<sup>15</sup>

**Case study: Coronary inquest into the death of Jessica Jane, Northern Territory, 1999**

14. Jessica Jane was born at approximately 22 weeks and placed in a kidney dish following a failed abortion at the Darwin Private Hospital weighing 515g. Despite her prematurity, she appeared healthy, had no apparent abnormalities, and her vital signs were relatively good. Nurse Williams, who delivered baby Jessica, observed movement and crying. Williams received no directive from the doctor responsible for the procedure and felt conflicted about whether to provide care to the infant. She provided a blanket for warmth and monitored Jessica every 10-15 minutes, where she observed movement and crying. After an hour, the baby's heart and breathing slowly began to drop, and Jessica died approximately 80 minutes after birth.<sup>16</sup>
15. There are a key number of issues in this coronary inquest that highlight the need for the *Human Rights (Children Born Alive Protection) Bill 2022*:
  - Although acknowledged as a possibility, the doctor responsible for the abortion believed neonatal survival was slim and that the baby would die during labour.
  - The doctor did not see himself as medically responsible for the infant's welfare, only the mother.
  - The doctor was aware of other procedures, such as feticide, to prevent live births following an abortion, but using them was not his practice.
  - Nurse Williams confirmed to the inquest that similar situations had arisen at the Darwin Public Hospital, where it was not uncommon for abortions in the second trimester to result in live births.
  - Nurse Williams searched extensively to find out what policies other hospitals used in these situations and could not find any.
  - Despite the death of an infant following a live birth after abortion being a reportable death under the Coroners Act, medical professionals were failing their reporting obligations.
16. When the Victoria government decriminalised abortion in 2008, it rejected an amendment requiring appropriate medical care for babies born alive following an abortion. The legislation reportedly led to a six-fold increase in late-term

---

<sup>15</sup> Seri I, Evans J. *Limits of viability: definition of the gray zone*. J Perinatol. 2008 May;28 Suppl 1:S4-8.

<sup>16</sup> Cavanagh, HM, 2000, Inquest into the death of Jessica Jane \*\*\*\*\*[2000] NTMC 37.

<[https://justice.nt.gov.au/data/assets/pdf\\_file/0017/206702/baby-j.pdf](https://justice.nt.gov.au/data/assets/pdf_file/0017/206702/baby-j.pdf)>

abortions and horrific outcomes for babies born alive following a procedure including practices such as plunging the infant into formaldehyde or leaving them on shelves to die.<sup>17</sup> It is wrong that the only difference between whether or not a premature baby is given appropriate medical care is whether they were born wanted or unwanted.

## Conclusion

17. There is inequality and discrimination under Australian law regarding the management and medical treatment for babies born preterm, with the determinant being whether the pregnancy termination is natural or medical. This should not be a deciding factor for the autonomy and human rights of infants born preterm. Indeed, it is not only cruel and unjust, but nonsensical, that at one end of a hospital corridor a preterm baby born naturally could be fighting for her life with the support of medical professionals, while at the other end, one who is the result of a failed abortion is left to die.
18. All infants, regardless of age or how the pregnancy ends, should be able to access the same medical care and treatment under the law. *The Human Rights (Children Born Alive Protection) Bill 2022* protects women from prosecution while also mandating data collection that can be analysed to improve the care of women and their babies.

## Recommendations

19. That the Australian Government recognises in law the personhood of infants born alive following a failed abortion.
20. That the Government legislates the human rights of infants born alive following a failed abortion and safeguards their right to access medical care and treatment, both life-saving and palliative as is the case for all other infants.
21. That the Government legislates frameworks for medical practitioners and healthcare professionals in supporting infants born live following a failed abortion.
22. That the Government legislates mandatory reporting on live births of infants born alive following failed abortions.
23. That the Government undertakes research into the rate of live birth abortions in Australia to date, the way in which babies born alive after an abortion are treated, and the impact of live birth abortions on the health and wellbeing of women.

---

<sup>17</sup> Zwartz, B, *Aborted babies 'being left to die'*, The Age, 2010  
<<https://www.theage.com.au/national/victoria/aborted-babies-being-left-to-die-20101006-167u0.html>>