

CHILDREN BY CHOICE
ASSOCIATION INCORPORATED

Submission to
Inquiry on the
Human Rights
(Children Born
Alive Protection)
Bill 2022

10 March 2023

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10 March 2023

To Whom it May Concern,

RE: Submission to the Senate Standing Committees on Community Affairs, inquiry into the *Human Rights (Children Born Alive Protection) Bill 2022*.

On 9 February 2023, the Senate referred the *Human Rights (Children Born Alive Protection) Bill 2022* to the Community Affairs, Legislation Committee for inquiry and report.

Please find attached a submission to the Community Affairs, Legislation Committee, written in direct response to the consultation listed on the committee website.

Kind Regards
Daile Kelleher

Chief Executive Officer

Introduction

Children by Choice is pleased to make this submission to the Community Affairs, and Legislation Committee's Inquiry into the *Human Rights (Children Born Alive Protection) Bill 2022*.

About Children by Choice

Children by Choice is an independent Queensland-based non-profit organisation, committed to providing counselling, information, and education on all pregnancy options – abortion, adoption, kinship and alternative care and parenting. We are recognised nationally and internationally as a key advocacy group for reproductive and sexual health.

Our primary objective is to ensure that women and pregnant people who experience hardship or distress with a pregnancy receive high-quality decision-making counselling, evidence-based information, material aid, and referral. Children by Choice seeks to empower people and communities to exercise reproductive health choices, and to remove the discriminatory social, legal, clinical and policy barriers that women and pregnant people may face when seeking access to accurate information, support, and services for their reproductive choices.

Our work includes:

- Our **pregnancy options counselling service** which assists 1800–2400 women and pregnant people each year in Queensland through our funding from the Department of Justice and Attorney General.
- Our **education and community engagement team** who provide training and information to 1900 professionals and students each year.
- Our **Multicultural project**, co-designing digital, video, and print resources for 4 language groups on pregnancy options, contraception, and reproductive coercion.
- Our work co-designing **Easy English resources** to support women with intellectual and learning disabilities on their pregnancy options, contraception, parenting and reproductive coercion, in partnership with WWILD.
- Our 3-year project in Queensland on **Rural, Regional and Remote Abortion Access project** which supported access to abortion in marginalised areas, completed in 2021.

- Our **Queensland Abortion and Contraception online map**, launched in 2021, aims to increase transparency and accessibility of abortion and contraception services to the public and those supporting people seeking services.
- The development of **an Australian position statement after Roe v Wade** with over 700 individuals and organisations signing on to voice their support for reproductive rights; calling upon state and territory Health Ministers to embed essential reproductive healthcare into our public health services.

We are a member of the **Queensland Sexual Health Clinical Network termination of pregnancy working group** and is developing an action plan for Queensland Health provision of abortion in public and primary health settings. In addition, we are **actively engaged across several relevant government and non-government agencies** to facilitate and coordinate appropriate and consistent responses to women affected by a range of gender-based safety, health, and wellbeing issues. This includes participation in committees and working groups, such as:

- Women’s Health Services Alliance of Queensland
- Ending Violence Against Women Queensland
- SPHERE Coalition for sexual and reproductive health
- Equality Rights Alliance
- Queensland Abortion and Contraception Community of practice
- QCOSS (Queensland Council of Social Service) Women’s Equality and CEO Network
- True Culturally Responsive Health Advisory Group

Our Annual Reports and Strategic Plan are available on our website at www.childrenbychoice.org.au.

Our vision is that people can freely and safely make their own reproductive and sexual health choices without barriers.

Contact

Daile Kelleher
Chief Executive Officer
Children by Choice

Our **Annual Reports and Strategic Plan** are available on our website at www.childrenbychoice.org.au.

Submission Response

Children by Choice provides counselling, information, and education on all pregnancy options – abortion, adoption, kinship and alternative care and parenting. We welcome the opportunity to provide feedback on the *Human Rights (Children Born Alive Protection) Bill 2022*, in particular:

- **Part 2, Section 8** defining that a *child born alive is a person, with born alive defined to include as a result of a termination*; and
- **Part 3, Section 9** outlining the duties of health practitioners to provide medical care to children *born alive as a result of a termination*.

Children by Choice identifies that these provisions and the wider proposed *Human Rights (Children Born Alive Protection) Bill 2022*:

- Is misleading and provides inadequate and inaccurate understandings of terminations, abortion care and fetal viability (1);
- Relies on a disingenuous use of the *Convention of the Rights of the Child, 1989* in order to ensure the bills constitutionality on a subject that is at the discretion of state legislation (2);
- Interferes with the reproductive rights of women and pregnant people; and
- Negatively impacts upon the obligations and duties of health practitioners to ensure patient-centred care when providing accurate information, support, and services for the reproductive choices of women and pregnant people (3).

Understandings of Terminations, Abortion Care and Fetal Viability

Children by Choice submits that the *Human Rights (Children Born Alive Protection) Bill 2022* is misleading and provides inadequate and inaccurate understandings of terminations, abortion care and fetal viability (1).

Whilst abortion is fully decriminalised in all Australian states and territories, gestational age limits (from 14–24 weeks) exist in most jurisdictions, with the approval of two doctors required beyond these gestational limits (4). A small proportion of terminations (about 1%) are performed after 20 weeks' gestation, usually because of late diagnosed major structural anomalies, genetic syndromes, severe fetal growth restriction, or maternal conditions in which continuation of the pregnancy would be significantly detrimental to the mental or physical health of the woman or pregnant person (4).

Submission Response

Although people seeking abortions presenting into the second trimester make up a minority of those seeking termination of pregnancy, they are more likely to be experiencing disadvantage or distress (4). Their circumstances are more likely to include maternal and fetal health concerns, violence and coercion, financial or other disadvantage, dramatic and unforeseen changes in life circumstances, and obstructed access to earlier termination through geographic isolation and/or unsupportive health practitioners. Later recognition and diagnosis of pregnancy can also be more common in younger women and in those whose pregnancies have resulted from contraceptive failure, as some contraceptives can mask the symptoms of early pregnancy (4).

Ultrasound screening for fetal health is routinely recommended around midway through pregnancy, at 18–21 weeks gestation, and many anomalies are not diagnosed until this time (5). Implicit in this practice is that if those tests return an unexpected or negative diagnosis, women and pregnant people will be supported to make a decision regarding the pregnancy given the knowledge that testing has afforded to them.

Finally, fetal viability (the ability to survive outside the womb) has been demonstrated, at 22 weeks of gestational age, to range from 0–34% (3,4). Babies who are born at this age have a heartbeat, but no other indicators of survivability. From 23 weeks, there is less than 10% chance of survival, and prolonging life or providing significant medical intervention is unnecessary and inhumane (4,5). Legislative interventions like *Human Rights (Children Born Alive Protection) Bill 2022* fail to consider these low survival rates, and the medical expertise, availability and financial resources required to enable advanced neonatal care for premature births.

The *Human Rights (Children Born Alive Protection) Bill 2022* demonstrates inadequate and inaccurate understandings of these gestational limits, the disadvantage demonstrated by those seeking termination outside of these gestational limits, and low likelihood of survival due to fetal gestational age.

Submission Response

Constitutionality

Children by Choice has identified that *Human Rights (Children Born Alive Protection) Bill 2022* relies on a disingenuous use of the *Convention of the Rights of the Child, 1989* (2). The *Convention's* inclusion in this bill serves the purpose to ensure the bill's constitutionality on a subject (reproductive healthcare and termination of pregnancy) that is at the discretion of state, not federal, legislation.

Further, the *Convention of the Rights of the Child, 1989*, deliberately leaves open the discussion and decision around terminations, abortions and family planning to nation states (2,6). It does not indicate the starting point of childhood (at birth, conception, or somewhere in between) and only comments on implementation of *Article 6* of the *Convention* by requiring that where abortion is permitted, its use is appropriately regulated and subject to no discriminatory variation in the term at which it is permitted (eg. dependant on the identification of disability) (6).

The *Committee on the Rights of the Child* strongly advocates for the realisation of children's right to reproductive health services, including access to safe abortion and post-abortion care services (2,6).

Duties of Health Practitioners

Children by Choice identifies that health practitioners are to provide patient-centred care. This includes providing accurate information, support, and services for the reproductive choices of women and pregnant people, including termination of pregnancy.

The *Human Rights (Children Born Alive Protection) Bill 2022* indicates an understanding of the duties of health practitioners that is at odds with patient-centred care. Currently, sexual and reproductive health practitioners must adhere to standards of practice that do not permit the legislative gaps proposed in the *Human Rights (Children Born Alive Protection) Bill 2022* (7). Even under the false assumption that living births from terminations were statistically significant, the *Human Rights (Children Born Alive Protection) Bill 2022* is unnecessary for health practitioners to maintain duty of care (7). The difference between birth and "born alive" are not distinguishable terms when ensuring human rights of care (7), and practitioner guidelines do not allow for active negligence of patient-orientated health.

Submission Response

There is no existing legal or clinical precedent where practitioners could dismiss the medical needs of a live birth, particularly when the birth is directly linked to patient care and wellbeing (7). *The Human Rights (Children Born Alive Protection) Bill 2022* seeks to persuade lawmakers of this fact to outright restrict established reproductive rights.

The *Human Rights (Children Born Alive Protection) Bill 2022* is part of a larger precedent of proposed legislation aimed at “born alive” children in Australia and abroad. Other introduced legislations have largely failed to progress into law, and in Australia, have been entirely unsuccessful. One such example was the similarly titled *Human Rights (Children Born Alive Protection) Bill 2021* that lapsed in dissolution in April 2022 (8). The unsuccessful bill would not have adequately enforced child protections upon termination providers—rather, it was designed to act as a barrier to access for women and pregnant people seeking termination pathways.

In this regard, the *Human Rights (Children Born Alive Protection) Bill 2022* does not divulge from its predecessors (8). In fact, the *Human Rights (Children Born Alive Protection) Bill 2022* seeks to threaten providers by undue legal burden without practical benefits of child safety. This could discourage health practitioners from offering termination services within judiciary boundaries, and thus, further exacerbates physical and mental distress for patients in a landscape where state and territory Health and Hospital Services are often disjointed and difficult to navigate for terminations.

References

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