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To the Community Affairs Legislation Committee

This submission is lodged on behalf of Genesis Pregnancy Support Inc, an organisation that has been caring for women and babies through our range of pregnancy support services for over thirty years. In my role as Executive Officer, I have personally worked with Genesis in this field for twenty-two years.

As a not-for-profit organisation, Genesis is heavily invested in the compassionate care of women experiencing an unplanned or unsupported pregnancy, and also their babies. We incorporate a holistic approach by providing support through preventative education, emergency resources, postnatal material assistance and parenting support.

Re: The Human Rights (Children Born Alive Protection) Bill 2022

Referring to these aspects of the Bill summary:

- 1. Children born alive are persons.**
- 2. Health practitioners to provide medical care and treatment.**

It beggars belief that the statement 'children born alive are persons' even requires any inquiry and certainly not debate. The truth of this fact is undeniable.

The current abortion law in South Australia (*Termination of Pregnancy Act 2021*) already contains the intent of these provisions proposed in this bill as indicated in the Clause below.

7—Care of person born after termination

- (1) This section applies if a termination results in a person being born.*
- (2) Nothing in this Act prevents the medical practitioner who performed the termination, or any other registered health practitioner present at the time the person is born, from exercising any duty to provide the person with medical care and treatment that is—*
 - (a) clinically safe, and*
 - (b) appropriate to the person's medical condition.*
- (3) To avoid doubt, the duty owed by a registered health practitioner to provide medical care and treatment to a person born as a result of a termination is no different than the duty owed to provide medical care and treatment to a person born other than as a result of a termination*

The reason that this amendment to the Termination of Pregnancy Bill passed is simply because it would be inhumane not to pass it. Why?

- No child or human being of any age should be put aside and left to die when in desperate need of assistance to survive. This is inhumane to the baby born alive after a termination who is at the mercy of its mother and the medical team to show compassion.

- No medical personnel, trained to provide care and treatment for those in need, should be expected to stand by and watch the most vulnerable of all human beings, a newborn child, struggling to survive, gasping for breath, and be legally rendered powerless to provide any life-saving help. This is inhumane towards health professionals.
- No mother should be granted the power to end her living child's life. This is unconscionable. The termination attempt has resulted in a 'failed procedure', like so many others that occur in the health profession. Patients are warned of this possibility beforehand and the failure cannot be rectified by taking an innocent human life. This is inhumane as a medical profession.

Relevance of South Australia's Abortion Law Reform 2021

The South Australian Law Reform Institute's (SALRI) was nominated as the body 'to inquire and report' and to provide 'recommendations' that directly informed South Australia's Termination of Pregnancy Act 2021. In the report: 'Abortion: A Review of South Australian Law & Practice' it is stated in the Preface (pg 10)

*'SALRI has framed its recommendations on the foundational premise that women have **autonomy***
[\[https://nla.gov.au/nla.obj-2865779245/view\]](https://nla.gov.au/nla.obj-2865779245/view)

In reference to **Autonomy**:

In the Summary of 'Womens Autonomy, Equality and Reproductive Health', by a United Nations Working Group on discrimination against women and girls, it states;

*'The right of a woman or girl to make autonomous decisions **about her own body** and reproductive functions is at the core of her basic rights to equality, privacy, and bodily integrity.'*

[Office of the High Commissioner for Human Rights - United Nations leading entity in the field of human rights.
<https://www.ohchr.org/en/special-procedures/wg-women-and-girls/womens-autonomy-equality-and-reproductive-health>]

This, and many other authorities on a woman's reproductive autonomy, limits these rights to her 'her own body'. It does not include any rights over another person's body that is completely independent of her own.

It is further stated in the Preface of the SALRI report; (pg 12)

*'SALRI acknowledges the current fundamental legal premise that **'legal personhood' does not acquire until birth'***

*'The common law principle that a fetus is not a person, with legal rights, **until born**', as the VLRC [Victorian Law Reform Commission] noted, **'is a fundamental part of our legal system'**.³³ *'The common law has always taken the view that **legal personhood — possession of the legal rights and protections held by all people — does not arise until a fetus becomes a person by being "born alive"**'.*³⁴*

³³ Victorian Law Reform Commission, Law of Abortion (Report No 15, March 2008) 97 [7.13].

³⁴ Ibid 158 [C.5]. See also R v Hutty [1953] VLR 338, 339; Attorney General (Qld) ex rel Kerr v T (1983) 46 ALR 275, 277; R v Iby (2005) 63 NSWLR 278.

Unlike the ongoing arguments relating to the personhood of the fetus, it is well established that once born, the human child is a 'person' with their own legal and equal rights.

Were these rights not to be legally protected by the government in relation to babies born alive after a termination, this would constitute neglect, allowing one person to determine whether another person should live or die.

Giving a mother the right to wilfully take her living child's life is not a civilised option and violates all other established rights for children as per the United Nations Convention on the Rights of the Child
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

Article 6

1. State Parties recognise that **every child has the inherent right to life**.
2. State Parties shall **ensure to the maximum extent possible the survival and development of the child**

Article 19

1. State Parties shall take **all appropriate legislation, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.**

According to the Convention, which Australia has ratified, the power to request or facilitate by neglect the death of a living child can never be given to the parent or medical personnel, nor knowingly overlooked by 'State Parties', as it is in direct contravention of the Rights of the Child and the responsibilities of the government.

Article 2

1. State Parties shall respect and **ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, **disability**, birth or other status.**

This article precludes any exception for disability of any kind. Even babies with fatal anomalies that cannot be assisted by medical intervention should be afforded standard compassionate comfort or palliative care, not deliberately and cold-heartedly left to die.

Recommendation

The mother's options after a termination resulting in a live birth may include;

1. Participating in comfort care if death is imminent, or not.
2. Parenting the child with all the provisions of the Rights of the Child to receive love and appropriate medical care.
3. Relinquishing the child for adoption, if still unwanted.
4. Other unique alternatives that do not detract from the protective and life-saving care of the child eg placement in the care of the father, or a willing relative.

Summary

A mother's rights regarding the termination of the child end after birth. Reproductive autonomy no longer applies, and established basic human rights ensure the child's protection and care. The responsibilities and obligations of the medical profession to administer appropriate healthcare become paramount and cannot ever be undermined in a society that deems itself civilised.

To do so would violate the most fundamental humane obligations of humankind towards one another.

Not passing this law is unthinkable.

Yours sincerely

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