# Submission

## Children Born Alive Protection Bill 2022

Thank you for inviting the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) to make a submission to the Senate Standing Committee on Community Affairs (Standing Committee) regarding the Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022 (the Bill).

RANZCOG is the lead standards body in women's health in Australia and New Zealand, with responsibility for postgraduate education, accreditation, recertification and the continuing professional development of practitioners in women's health, including both specialist obstetricians and gynaecologists, and GP obstetricians.

### Background

The 'right to health' is enshrined in a number of International Human Rights Treaties and Covenants including the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 12)[i], the Universal Declaration of Human Rights (UDHR) (Article 25)[ii] etc. Securing sexual and reproductive health including availability of safe abortion respects, protects and fulfils the right to health.[iii] All Australian States and Territories have decriminalised abortion, thereby recognising the right to health.

The Explanatory Memorandum to the Bill outlines that the purpose of the Bill is to enhance Australia's human rights protections for children by ensuring that all children are afforded the same medical care and treatment as any other person, including those born alive as a result of a termination.[iv] Furthermore, the Bill seeks to codify the duty and conduct of medical professionals to a child born alive, as no different to the professional duty owed to any other child, had the live birth not been as the result of a termination. Moreover, the Bill exempts mothers from prosecution.[v]

As the peak body in education, training and advocacy in obstetrics and gynaecology, we support all women and the clinicians who treat them and recognise that abortion is essential healthcare. To this end, RANZCOG strongly opposes any action, or process, including legislation, that limits access for Australian women to healthcare that is their fundamental right. To this end, RANZCOG would like to provide our rational for opposing the Bill, for consideration of the Standing Committee.

### Specific Feedback

Abortion after 20 weeks comprises only about 1% of all abortions, usually resulting from a later diagnosed major structural issues, genetic syndromes, severe fetal growth restriction, or maternal conditions where pregnancy continuation would be significantly detrimental to the mental or physical health of the woman.

Standard, evidence-based practice in Australia determines that where abortion is undertaken at later gestations, then feticide is routinely undertaken. For instance, the contemporary evidence suggest that the vast majority of parents and health care professionals prefer fetal death prior to termination.[vi] Since 1996, the Royal College of Obstetricians and Gynaecologists (RCOG) has recommended consideration of feticide after 21+6 weeks 'to ensure there is no risk of a live birth'.[vii] Queensland maternity guidelines also recommend feticide is preferred over surgical termination beyond 22+0 weeks gestations.[viii]

RANZCOG's clinical practice in abortion care is evidence-based and our Fellows adhere to strict standards and guidelines to ensure medical care is safe and effective, and thus the scenario of a live birth after termination of pregnancy does not occur. As aforementioned, RANZCOG's position on abortion is that it should be available and accessible to all women. Therefore, the Bill is inconsistent with our position as it would impose additional legal duties and obligations on health care providers performing abortion, by prescribing how abortions should be managed.

RANZCOG is of the view that 'care' for a person is incumbent upon a medical practitioner, hence there is no requirement for introduction of a separate Bill to instruct doctors on how to care for a patient in these very specific circumstances. Clinical and ethical considerations should be applied to the same standard, as would apply in any other clinical situation. Thus, RANZCOG feels that this Bill is redundant in the absence of any justifiable evidence or grounds for the introduction of the Bill.

Moreover, given that the clinical practice and scenarios vary, RANZCOG supports that the decisions regarding care of a child born alive, independent of the circumstances, should be a matter between the woman/ pregnant person and their treating health practitioners. To this end, RANZCOG opposes "abortion exceptionalism", namely laws that treat abortion differently from other medical procedures.

It is also well accepted that a majority of Australians – approximately 76%- support both a woman's right to choose abortion and the provision of safe, legal accessible services to make that choice possible.[ix] Thus, given that medical opinions vary, a practitioner who believes that palliation is appropriate, could be considered negligent, and possibly criminally liable as well, if another practitioner is of the view that the child should have been actively resuscitated. This would be particularly relevant, though not limited to, circumstances where termination of pregnancy was conducted in the absence of a fetal anomaly. To this end, RANZCOG is of the view that the Bill inappropriately increases regulation of abortion, creating barriers, and anxiety, for patients. It also interferes with the doctor-patient relationship. Furthermore, it potentially disincentivises health care providers from providing abortion care, for fear of prosecution. Thus, the Bill is an unnecessary legislative barrier that interferes with the person's right to access lawful abortion.

## Impact of the Bill on rural and remote communities

Around 7 million people – 28% of the Australian population live in rural and remote areas, who face unique challenges in terms of resources and access to medical services than people living in metropolitan areas.[x] In RANZCOG's view, the Bill further increases the existing disparities for rural and Aboriginal women and their families. For instance, while intracardiac injections are available in many tertiary centres, they are unavailable in regional areas. This in turn increases the risk for rural women having children born alive, if abortions are undertaken in rural areas. Furthermore, it also limits Aboriginal women's' opportunity to deliver 'on country' which is an important cultural aspect in their lives. Moreover, it is also important for babies to 'die' on country. Hence, in RANZCOG's view the Bill implicitly disadvantages the rural and remote populations seeking a lawful abortion and also it adversely impacts the Aboriginal people's right to practice their culture.

Moreover, the Bill discourages rural health care providers to perform abortion services based on maternal choice or major congenital abnormalities, due to fear of criminal liability. Also, finding a service provider to perform a legal abortion would be a challenge that would take away rural and Aboriginal women from their communities, families and support networks during such psychologically and physically challenging times. Furthermore, the Bill will have a ripple effect on added costs, lack of access and many women may be forced to abandon what they would elect to do, due to the inability to find a service locally. The physical and socio-economic stressors to visit a larger centre with abortion services will place an extreme and unreasonable burden, especially for remote Aboriginal women.

Additionally, maternal health will be jeopardised, given that the rural health care providers will seek to consider potential need to resuscitate a baby, in the event that the delivery is solely to preserve a mother's life. For instance, a common pregnancy complication in a rural setting is the mother suffering from 'chorioamnitis' – a bacterial infection of the placenta and the amniotic fluid, that results in significant maternal, perinatal, and long-term adverse outcomes[xi]. Under such circumstances, the health care providers will face a dilemma seeking to provide best possible care for the delivery and also deciding on provision of a high standard of resuscitation, if the baby is born alive. As a result, the maternal life is at risk, as the health care providers may elect to transfers or delay induction, which then will result in very suboptimal treatment.

Considering all the above factors, RANZCOG is of the view that the Bill unduly deprives rural and Aboriginal women's opportunities, freedom of choice and freedom to access, birth and die on country. The Bill will also hinder rural abortion services, which in turn will lead to limiting patient choice and adding an unnecessary emotional, physical, and economic stress on women and their families. Thus, the health care providers are barred from providing 'the best evidence-based care' possible.

## Summary

The 'right to health' is enshrined in a number of International Human Rights Treaties and Covenants and safe abortion services and post abortion health care interventions in pregnancy have profound implications for health of women and children. RANZCOG recognises and upholds that abortion is lawful and is essential health care. RANZCOG opposes the Bill on the premise that it will limit access for Australian women to healthcare, that is their fundamental right. Furthermore, the Bill imposes additional burden on already disadvantaged rural and remote communities for resources and access to essential abortion care. In addition, the Bill will adversely impact rural and Aboriginal women's opportunities, freedom of choice and freedom to access, birth and die on country. To this end, RANZCOG is of the view that this Bill is an unnecessary legislative barrier that inappropriately increases regulation of abortion, affecting the doctor-patient relationship and also curtailing a person's right to a lawful abortion in Australia.

RANZCOG acknowledges with thanks, the contribution of Professor Kirsten Black, Dr Vijay Roach, Dr Jared Watts and Ms Julie Hamblin for this submission.

Yours sincerely,

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President

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