

**SUBMISSION:**

**Inquiry into the *Human Rights*  
(*Children Born Alive Protection*) Bill 2022**

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**AUSTRALIAN CHRISTIAN LOBBY**

## About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

***ACL Submission to Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022***

[acl.org.au](http://acl.org.au)

**Senate Community Affairs Legislation Committee**



**10 March 2023**

Dear Sir/Madam,

On behalf of the Australian Christian Lobby (ACL), I welcome the opportunity to make a submission to the Senate Community Affairs Legislation Committee's (Committee's) [Inquiry](#) (Inquiry) into the [Human Rights \(Children Born Alive Protection\) Bill 2022](#) (Bill).

We have considered the context for and terms of the draft Bill and associated parliamentary documents (including the [Explanatory Memorandum](#) and the [Second Reading Speech](#)).

The ACL's submission discusses that, in our view:

1. there is a pressing need and strong rationale for the Bill; and
2. the clauses contained within the draft Bill are appropriate and well-directed to its purpose.

We make the following submissions to urge the Government to pass the draft Bill, either in its current form or with minor amendments if necessary.

We would appreciate an opportunity to meet with the Committee to discuss this submission.

Yours Sincerely,

**Wendy Francis**  
National Director of Politics

## ***ACL Submission to Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022***

### **EXECUTIVE SUMMARY**

The fact that babies are being born alive after abortions raises critically important human rights considerations, irrespective of our views on abortion itself. Any child born alive, regardless of the circumstances of their birth, is deserving of human rights. They should be afforded the same rights to life, care and medical treatment afforded to all other babies born at such gestations. This is consistent with the practice of a civilized society and human dignity, and also Australia's international obligations regarding the rights of children to life and to healthcare.

This issue has a distinct importance which goes far beyond the matter of whether abortion is generally good public policy or not. It necessitates direct legislative action, regardless of State and Territory governments in Australia having taken a permissive stance towards abortion generally.

From this perspective, our submission discusses:

- 1. The pressing need and strong rationale for the Bill**
- 2. The appropriateness of the draft clauses in the Bill**

We recommend that the Government pass the draft Bill, in its current form or with minor amendments. Our submission is discussed in more detail below.

### **SUBMISSION**

- 1. There is a pressing need for the passage of legislation protecting the rights of babies born alive following abortions in Australia. Though some may believe this is a rare occurrence, many babies (perhaps hundreds) are being born and left to die in barbarous circumstances following abortions across Australia each year. As such, there is a strong rationale underlying the draft Bill and a clear impetus for its passage by the Government.**

### **Statistics regarding babies born alive after abortions in Australia each year**

There are numerous sources of evidence attesting to the fact that many babies are being born alive and left to die in harrowing circumstances after abortions in Australia.

For example, [this](#) 2020 Victorian Consultative Council on Obstetric and Paediatric Mortality and Morbidity (**CCOPMM**) report indicates that 43 babies (from live births regardless of gestation who showed any signs of life) died after their birth as a result of abortions for suspected or confirmed congenital anomaly.<sup>1</sup> Reports from other years [here](#) show similar figures. For example:

- the [2019 report](#) included a figure of 34<sup>2</sup> and the [2018 report](#) included a figure of 29;<sup>3</sup>
- the [2017 report](#) included a figure of 28<sup>4</sup> and the [2016 report](#) included a figure of 33;<sup>5</sup>
- the [2014 and 2015 report](#) included figures of 38 for 2014 and 31 for 2015;<sup>6</sup>
- the [2012 and 2013 report](#) included figures of 53 for 2012 and 43 for 2013;<sup>7</sup> and
- the [2010 and 2011 report](#) included figures of 24 for 2010 and 40 for 2011.<sup>8</sup>

Clearly, in Victoria alone, hundreds of babies have been born alive after abortions in the last decade and subsequently died, including dozens annually since at least 2010.

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<sup>1</sup> See page 70 of this CCOPMM report in 2020: [This link](#).

<sup>2</sup> See page 50 of this CCOPMM report in 2019: [This link](#).

<sup>3</sup> See page 71 of this CCOPMM report in 2018: [This link](#).

<sup>4</sup> See page 90 of this CCOPMM report in 2017: [This link](#).

<sup>5</sup> See page 111 of this CCOPMM report in 2016: [This link](#).

<sup>6</sup> See page 161 of this 2014-2015 CCOPMM report: [This link](#).

<sup>7</sup> See page 181 of this 2012-2013 CCOPMM report: [This link](#).

<sup>8</sup> See pages 16 and 17 of this 2010-2011 CCOPMM report: [This link](#).

**ACL Submission to Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022**

Data from QLD is similar. For example, in an answer to a question on notice asked in 2016, [this answer](#) gave an indication of livebirths following abortions after 20 weeks' gestation between 2005 to 2015. In total, 204 babies were born alive and subsequently died in QLD from 2005 to 2015 alone:<sup>9</sup>

Calendar year	Termination with livebirth outcome
2005	8
2006	16
2007	20
2008	15
2009	13
2010	17
2011	20
2012	20
2013	23
2014	25
2015	27

QLD Health also publishes annual perinatal statistics [here](#). Data from [2016](#), [2017](#) and [2018](#) show that 31,<sup>10</sup> 35<sup>11</sup> and 29<sup>12</sup> babies respectively were born alive after abortions and then subsequently died.

After a similar question on notice in 2020, [this answer](#) also gave an indication of livebirths following abortions in QLD in the six months up to 30 June 2019 after the *Termination of Pregnancy Bill 2018* commenced on 3 December 2018. 19 babies were born alive in public hospitals following abortions:<sup>13</sup>

Termination of Pregnancy<sup>(a)</sup> resulting in livebirths by outcome and gestation weeks for admitted patients by sector in public and private facilities<sup>(b)</sup>, Queensland for the period 3 December 2018 to 30 June 2019<sup>(c)(d)</sup>

Sector	Status	Gestation (weeks)		Total
		0-22 weeks	23+ weeks	
Public	Liveborn	17	2	19
Private	Liveborn	0	0	0

Further perinatal data collections by QLD Health in [2019](#) and [2020](#) also indicate that a total of 48<sup>14</sup> and 41<sup>15</sup> babies respectively were born alive after abortions and subsequently died in those years. Clearly, dozens of babies are born alive and subsequently die in QLD each year after abortions, with numbers apparently only increasing recently. FamilyVoice estimates that this occurs in between 1 in 4 and 1 in 5 late-term abortions in QLD, and the “statistics are likely to be similar in other states”.<sup>16</sup>

This also occurs in WA. In [this answer](#) to a question in the Legislative Council in 2017 about babies born alive after abortions from 20 May 1998 to 31 December 2016, it was stated that, as at 19 May 2017, 27 cases of abortions resulting in a live birth had been reported between July 1999 and December 2016. 21 of these babies were at 20 weeks' gestation or later. There was no record of medical intervention or resuscitation in these cases.<sup>17</sup> [This answer](#) to a similar question asked in 2018 also reiterated that there had been 27 such cases between July 1999 and December 2016 (and “a number less than 5 for the number of cases in 2017”). It also confirmed, among other things, that there were 6 induced abortions at 26 weeks gestation or later from July 1999 to December 2017 who showed signs of life.<sup>18</sup> This sort of WA information led to calls for a parliamentary inquiry.<sup>19</sup> Cases of babies born alive after abortions are *not* rare. Every year a significant number of babies are born alive after abortions (dozens in certain states across Australia at least). In Victoria and QLD alone, from 2010

<sup>9</sup> QLD Parliament, 2016: [This link](#).

<sup>10</sup> See page 13 of this 2016 Perinatal Data Collection: [This link](#).

<sup>11</sup> See page 13 of this 2017 Perinatal Data Collection: [This link](#).

<sup>12</sup> See page 13 of this 2018 Perinatal Data Collection: [This link](#).

<sup>13</sup> QLD Parliament, 2020: [This link](#).

<sup>14</sup> See page 13 of this 2019 Perinatal Data Collection: [This link](#).

<sup>15</sup> See page 13 of this 2020 Perinatal Data Collection: [This link](#).

<sup>16</sup> Family Voice, 2019: [This link](#).

<sup>17</sup> Parliament of WA, 2017: [This link](#).

<sup>18</sup> Parliament of WA, 2018: [This link](#).

<sup>19</sup> WA Today, 2018: [This link](#).

## ***ACL Submission to Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022***

to 2020 over 700 babies were born alive and subsequently died following abortions. This is without factoring in figures from other states.

Australian health authorities confirm that these babies are tragically left to die without any attempts to provide life-sustaining care. For example, these [QLD Clinical Guidelines](#) tell practitioners, “if a live birth occurs... [d]o not provide life sustaining treatment” but simply “[d]ocument date and time end of life occurs”.<sup>20</sup> These [SA Government Guidelines](#) also state that “Where there are overt signs of life at birth ... palliative care may be provided in a separate room by a health practitioner, ensuring comfort measures are maintained without prolonging life”.<sup>21</sup> Many of these babies would have had a chance of life had they been wanted but born prematurely at those gestations, or had they been given life-sustaining treatment. To leave a child who may be capable of life outside the womb to die without any medical assistance is barbarous. This is not the practice of a civilized society. A baby born alive during an abortion should be given medical care appropriate to a child of its development. The fact that some babies may be denied comfort or pain relief as they die only adds to the horror of such situations. This is at odds with rights to life, care and medical treatment afforded to all other babies born at such gestations.

Most Australians oppose this barbaric practice. A YouGov Galaxy survey showed a strong majority (70%) believed that a baby who survives a late-term abortion should be cared for like any other premature baby. Only 10% of voters disagreed. 19% of respondents indicated they “don’t know”.<sup>22</sup>

### **The pressing need and rationale for the passage of legislation such as the Bill**

Given the above information, there is clearly a pressing need for the passage of legislation to protect the rights of babies born alive following abortions in Australia.

As the Second Reading speech for the Bill points out,<sup>23</sup> there are still some people who believe that it is a myth that children are born alive following abortions. However, the above data strongly suggests that this is completely incorrect. In any case, if it somehow is not, the Bill would not do any harm – if no viable child is ever born alive as a result of an abortion, then the Bill would have no real effect.

In any case, regardless of its statistical frequency, there is a strong human rights rationale for introducing a bill that specifically requires the protection of any babies born alive following abortions. The issue of babies born alive after abortions raises critically important human rights considerations. Any child born alive, regardless of the circumstances of their birth, is deserving of human rights.

Such a bill would also be consistent with Australia’s international obligations regarding the rights of children to life and to healthcare. It would give effect to Australia’s obligations under various international instruments. In fact, we strongly agree with clause 7 (‘Constitutional basis of this Act’) of the draft Bill which indicates that the relevant Act would give effect to Australia’s international obligations under the [Convention on the Rights of the Child \(CRC\)](#) (in particular Articles 6 and 24) and the [International Covenant on Civil and Political Rights \(ICCPR\)](#) (in particular Articles 24 and 26).

Under the CRC, Australia has a duty to “recognize that every child has the inherent right to life” and to “ensure to the maximum extent possible the survival and development of the child”. Australia also has a duty to recognise the rights of children to “the enjoyment of the highest attainable standard of health”, to “ensure that no child is deprived of his or her right of access to such health care services”, to reduce infant mortality, to “ensure the provision of necessary medical assistance and health care

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<sup>20</sup> See page 24 of this Queensland Clinical Guideline: [This link](#).

<sup>21</sup> See, for example, pages 5 and 9 of this South Australian Perinatal Practice Guideline: [This link](#).

<sup>22</sup> See page 7 of this publication: [This link](#).

<sup>23</sup> See page 2585 of the Hansard extract: [This link](#).

## ***ACL Submission to Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022***

to all children”, etc. Parties to the CRC are in fact required to “pursue full implementation of this right”. In our view, these duties specifically and clearly apply to ‘every child’, and would include those born after abortions. This provides a clear underlying rationale for the Bill.

Under the ICCPR, Parties are also required to ensure that “every child shall have, without any discrimination as to ... birth” the right to measures of protection, that “every child shall be registered immediately after birth”, etc. The ICCPR also prohibits any discrimination against any person “on any ground”, including “... birth”. In our view, such provisions also clearly build a rationale for the Bill and support that the Government must provide protection for children born alive in any circumstances.

As such, we agree with the Explanatory Memorandum that “Denying babies born alive medical care and treatment places Australia in breach of its international obligations under the CRC and the ICCPR, which codify the right to life and adequate, quality healthcare”.<sup>24</sup>

The introduction of such a bill would also provide much-needed clarity to health practitioners about their specific duties to children born alive following abortions and promote consistency between their duty to provide medical care or treatment to children born alive in normal circumstances and those born alive as a result of abortions.

**2. The specific clauses contained in the draft Bill are well-directed to its purpose. We strongly support the passage of the Bill in its current form, or with minor amendments if necessary.**

### **Our support for the clauses in the draft Bill**

- **Title:** It is appropriate that the title specifically reflects that the Bill is about the ‘human rights’ of children born alive. This Bill is not just about resolving competing views but an inherently important matter of clarifying that babies born alive in any circumstances deserve human rights.
- **Commencement:** We support the apparent intention that the whole of the Act commence the day after it receives Royal Assent. The Bill should come into effect without unnecessary delay.
- **Definitions:** Each of the definitions provided in clause 3 seems generally appropriate to us. However, we wish to emphasise that:
  - It is essential that the definition of “**born alive**” specifically clarify that it “includes born alive as a result of a termination” (phrasing also reflected in the Bill’s general description). It is essential that the Bill address and regulate this particular circumstance, given that many babies are being born alive and left to die following abortions in Australia each year.
  - We agree that the definition of “**engage in conduct**” should cover both positive acts and omissions. As the Explanatory Memorandum confirms, this definition would, as drafted, “include a health practitioner failing to provide lifesaving treatment to a child born alive”.<sup>25</sup> This is essential, because the issue at the very heart of this Bill relates to health practitioners *omitting* to provide medical care to babies born alive following abortions.

We would query whether the definition of “**health practitioner**” does or is intended to capture things like midwifery specifically (eg. under subsection (c) regarding the ‘nursing’ profession). In our view, it is not immediately clear whether this is the case, and clarity would be helpful.

- **Clause 8:** We strongly support the inclusion of clause 8, which expressly clarifies that a child born alive is a person. This clause is foundational to the Bill.

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<sup>24</sup> See page 2 of the Explanatory Memorandum: [This link](#).

<sup>25</sup> See page 3 of the Explanatory Memorandum: [This link](#).

**ACL Submission to Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022**

- **Part 3 – Duty of health practitioners:** We support the approach of the clauses in Part 3. For example, clauses 9(1) to 9(3) in our view appropriately clarify that the duty to children born alive after terminations no different than to those born alive in other circumstances. This position accords with a proper human rights perspective. The clauses also provide much-needed clarity to health professionals about the nature of their duty and what to do in the event of conflicting professional standards or guidelines. We also support clause 9(4) and its confirmation that the medical care or treatment to be provided is that which is appropriate in the circumstances (which might include life-saving emergency treatment, but could also include palliative care). This appropriately recognises the reality that not all babies born alive following terminations may be able to be saved with emergency treatment, and that palliative care may be appropriate instead. As reiterated in the Second Reading speech, the Bill will therefore *not* require doctors to keep non-viable babies alive.<sup>26</sup> However, we strongly support the inclusion of clause 9(5) to support clause 9(4) as well, as otherwise the fact of the abortion might be taken into account when determining the appropriate medical care or treatment. This should not be relevant, as a person’s human rights are not determined by the circumstances of their birth, but the fact that they are alive. As the Explanatory Memorandum confirms, this subclause will “...ensure that the inherent rights of the child are upheld and protected” as codified in the CRC, which is vital.<sup>27</sup>
- **Clause 10 offence:** In our view, the proposed offence provision is appropriate. If a health practitioner owes a duty to a child born alive and contravenes it, then they should be penalised. We agree with the statement in the Explanatory Memorandum that the guidelines in this clause “provide clear areas of conduct, or omission of conduct, for health care practitioners”.<sup>28</sup>
- **Clause 11 duty to report births:** We wish to emphasise the importance of this clause. As indicated above, we have access to some statistics about babies born alive following abortions, but in many states that data is not available. The Explanatory Memorandum correctly explains that obtaining such figures “remains problematic due to differing guidelines between state jurisdictions and recording practices”.<sup>29</sup> In our view, it is imperative that national data be collected about these occurrences, given the important human rights implications at play.

We also support the inclusion of new clauses which require the actual *publication* by the relevant ‘Department’ (which the draft Bill does not appear to specifically define) of aggregate statistics about live births following abortions. Otherwise, under the current drafting, the Bill only apparently requires reporting to *enable* the production of statistics regarding live births after abortions, and not necessarily also their publication to any wider audience. Given the human rights implications and the relevance of such statistics to healthcare and abortion policies, this information is a matter of public interest.

- **Clause 12 regarding mother of child not liable to prosecution:** Clause 12 is an appropriate clause to include because abortion laws do allow pregnant women to terminate their pregnancies. We support the intention discussed in the Explanatory Memorandum<sup>30</sup> that the Bill includes this clause so as not to add to the trauma of mothers who undergo abortions, and to focus instead on a purpose of protecting the rights of children born alive after abortions.

Overall, we strongly support the passage of the draft Bill. We would support the Bill in either its current form, or with minor amendments (such as those we have suggested above, which are not essential, or other minor amendments the Committee favours that do not change the core substance of the Bill).

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<sup>26</sup> See page 2585 of the Hansard extract: [This link](#).

<sup>27</sup> See page 4 of the Explanatory Memorandum: [This link](#).

<sup>28</sup> See page 5 of the Explanatory Memorandum: [This link](#).

<sup>29</sup> See page 2 of the Explanatory Memorandum: [This link](#).

<sup>30</sup> See page 5 of the Explanatory Memorandum: [This link](#).