

Canberra Declaration

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SUBMISSION:

Human Rights (Children Born Alive Protection) Bill 2022

Senate Standing Committee on Community Affairs

To Whom It May Concern:

Enclosed is a copy of our submission in response to the Inquiry into the Human Rights (Children Born Alive Protection) Bill 2022. Thank you for providing us with the opportunity to contribute on this critical issue.

We stand in wholehearted support of this Bill. Available statistics reveal that hundreds of babies are being left to die in Australia following failed abortion attempts. This egregious status quo puts Australia in breach of key international obligations. It is an affront to human rights, ethics and basic decency. Moreover, public support for this Bill is extremely strong. Our challenge to the Committee is: on what grounds could this Bill conceivably be opposed?

The Canberra Declaration is a community of caring Australians who have a vision for a better Australia where everyone can enjoy the prosperity, peace and freedom that

come from the revitalisation of the Judeo-Christian values that formed the foundation of Australia.

Along with our over 90,000 signatories, we at the Canberra Declaration implore you to recommend the strongest protections possible for the most vulnerable human beings who, planned or not, enter this world with the same sacred and inherent right to life, liberty and security of person as every other member of the human family.

Thank you for taking the time to review our submission.

Yours sincerely,

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Executive Summary

While the aim of an abortion is to terminate the life of the fetus, there are instances where a baby may be born alive. Indicators of life in a baby that may be observed after a failed abortion include the presence of a heartbeat, breathing and crying. It is an undeniable fact that children are being left to die in hospitals and abortion clinics around Australia in just such circumstances. These babies, like all others, are human persons who possess the right to life and every other sacred and inalienable human right. Under its international obligations, Australia is bound to protect the lives of these children and provide for their safety, health and wellbeing. The Australian public is overwhelmingly in favour of babies who are born alive in abortion attempts being given the same medical care as other premature babies. On these grounds, there is no reason anyone should object to the Human Rights (Children Born Alive Protection) Bill 2022. We strongly urge the Committee to ensure that babies born alive following an abortion are provided with proper care, and that statistics on such cases are made available nationally.

1. Children are Being Left to Die

A 2018 research paper published in the *Journal of Obstetrics and Gynecology* examined 241 instances of late-term abortions performed on fetuses between 20-24 weeks gestation, where feticide was not carried out. The study found that over 50 per cent of the babies were delivered alive, with an average lifespan of 32 minutes, and with one baby surviving for more than four hours (267 minutes).¹

¹ Stephanie Springer et al, 'Fetal Survival in Second-Trimester Termination of Pregnancy without Feticide' (2018) 131(3) *Obstetrics & Gynecology* 575.

Better-known examples of babies born alive following an abortion include:

- Tim, a Down Syndrome diagnosis survivor who was left to die without medical care for 9 hours but survived.²
- Gianna Jessen, who survived a saline abortion, and now advocates for the rights of babies born alive following abortion.³
- Melissa Ohden, who was found crying among medical waste at a hospital by a nurse and went on to live a healthy life.⁴
- Sycloria Williams' baby, who was delivered alive, but the clinic owner cut the umbilical cord and threw the baby in a plastic bag without her consent.⁵
- An unnamed baby zipped into a medical bag while still breathing at Westmead Hospital, Sydney.⁶
- Jessica Jane, who lived for around 80 minutes after a failed abortion in the Northern Territory.⁷

² Derek Scally, 'German Man Who Survived Abortion Dies Aged 21', *The Irish Times* (online, 9 January 2019) <https://www.irishtimes.com/news/world/europe/german-man-who-survived-abortion-dies-aged-21-1.3752247>.

³ Lindsey Bever, "'The Only Reason I am Alive is the Fact that the Abortionist Had Not Yet Arrived at Work'", *The Washington Post* (online, 30 September 2016) <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/09/27/the-only-reason-i-am-alive-is-the-fact-that-the-abortionist-had-not-yet-arrived-at-work/>.

⁴ Adam Eley and Jo Adnitt, 'The Failed Abortion Survivor Whose Mum Thought She was Dead', *BBC News* (online, 5 June 2018) <https://www.bbc.com/news/health-44357373>.

⁵ 'Doctor Investigated in Badly Botched Abortion', *NBC News* (online, 6 February 2009) <https://www.nbcnews.com/id/wbna29037216#.UZyw3YKOf9I>.

⁶ Andrew Bolt, 'Ethicists Argue Case for Post-Birth Abortion, Too', *Perth Now* (online, 5 March 2012) <https://www.perthnow.com.au/opinion/ethicists-argue-case-for-post-birth-abortion-too-ng-d30c192faf006f73dcdbfd9f85ec404e>.

⁷ Inquest into the death of Jessica Jane [2000] NTMC 37 (10 April 2000).

- Kiyo Bleu Watson, who was diagnosed with Edwards Syndrome and was aborted at 18 weeks and 4 days but was born alive and lived for 10 hours.⁸
- Another baby who survived an abortion and was discharged from the hospital in a healthy state at 10 months.⁹

With the exceptions of Jessica Jane and the baby at Westmead, information on such cases in Australia is not readily available. However, at the request of George Christensen, the former MP who drafted the Bill under inquiry, the Parliamentary Library uncovered a series of chilling facts that this Committee must not ignore.¹⁰

In Victoria, 396 babies aborted after 20 weeks' gestation were born alive in the years 2010–2020. All were left to die.¹¹

In Queensland, 328 babies were born alive as a result of an abortion in the years 2010–2020.¹² Doctors in Queensland are not required to provide medical assistance to

⁸ Chloe Morgan, 'Mother, 27, Who Aborted her Baby at 18 Weeks due to a Rare Condition Reveals he was Born Alive When the Procedure Failed and Says it was "Torture" Watching him Die for 10 Hours', *Daily Mail* (online, 11 May 2021) <https://www.dailymail.co.uk/femail/article-9565609/Devastated-mothers-tiny-baby-born-alive-abortion-18-weeks-lived-ten-hours.html>.

⁹ P Clarke, J Smith, T Kelly and M J Robinson, 'An Infant who Survived Abortion and Neonatal Intensive Care' (2005) 25(1) *Journal of Obstetrics and Gynaecology* 73 <https://www.tandfonline.com/doi/epdf/10.1080/01443610400025945?needAccess=true&role=button>.

¹⁰ Department of Parliamentary Services, "Client Advice to Mr George Christensen," 9 October, 2020,

¹¹ Consultative Council on Obstetric and Paedatric Mortality and Morbidity, *Victoria's Mothers and Babies: Victoria's Maternal, Perinatal, Child and Adolescent Mortality Annual Reports, 2010-2020*. For a breakdown of the statistics, see Cody Mitchell, "Are Babies Really Being Born Alive Post-Abortion? Here Are the Data", *The Daily Declaration*, 2022, <https://blog.canberradeclaration.org.au/2022/12/12/babies-born-alive-post-abortion/>, accessed 28 February 2023.

¹² Queensland Health, Queensland Government, *Perinatal Annual Reports for 2010–2020*, Table 10.13 (in each report). For a breakdown of the statistics, see Cody Mitchell, "Are Babies Really Being Born Alive Post-Abortion? Here Are the Data", *The Daily Declaration*, 2022, <https://blog.canberradeclaration.org.au/2022/12/12/babies-born-alive-post-abortion/>, accessed 28 February 2023.

children born alive as a result of an abortion, meaning that those hundreds of babies were also left to die.

Tragically, as Associate Professor Joanna Howe (University of Adelaide) points out, at present, babies in this situation in Queensland and Victoria have no legal rights, including rights to palliative care or, where relevant, life-saving medical treatment.¹³ In fact, the Queensland abortion of Pregnancy Guidelines state the following: “If live birth occurs... do not give life-sustaining treatment... document date and time end of life occurs.”¹⁴ This is an unacceptable state of affairs in a democracy that ostensibly promotes human rights.

In total, between Victoria and Queensland, from 2010 to 2020, 724 children were born alive and left to die in late-term abortions.¹⁵ Put another way, on average, every week in Queensland and Victoria a baby is born alive and left to die following an abortion.

Sadly, most other states and territories do not make equivalent data available, so we only have an incomplete and anecdotal picture of what is happening elsewhere. It is therefore vitally important that such statistics be made available nationally.

¹³ Dr Joanna Howe, TikTok video, <https://www.tiktok.com/@drjoannahowe/video/7171721476171730177>, accessed 28 February 2023.

¹⁴ Queensland Health, “Queensland Clinical Guidelines: abortion of Pregnancy”, 2022, https://www.health.qld.gov.au/_data/assets/pdf_file/0029/735293/g-top.pdf, accessed 28 February 2023.

¹⁵ Cody Mitchell, “Are Babies Really Being Born Alive Post-Abortion? Here Are the Data”, The Daily Declaration, 2022, <https://blog.canberradeclaration.org.au/2022/12/12/babies-born-alive-post-abortion/>, accessed 28 February 2023.

Even so, from the data we do have access to, it can be reasonably inferred that at least 100 Australian children (and possibly many more) are left to die every year after failed abortion attempts.

2. Unwanted Babies Also Possess the Right to Life

The fact that unborn babies are human beings is not controversial. As a 2018 doctoral study found, 95 per cent of biologists agreed that “a human’s life begins at fertilization”.¹⁶ As Nancy R. Pearcey puts it, “due to advances in genetics and DNA, virtually no ethicist denies that the fetus is human: biologically, genetically, scientifically human”.¹⁷

Encyclopedia Britannica states the following of a human embryo: “...the term is applied to the unborn child until the end of the seventh week following conception; from the eighth week the unborn child is called a fetus.”¹⁸ According to Merriam-Webster, an “Embryo” is defined as “the developing human individual from the time of implantation to the end of the eighth week after conception”, and a “Fetus” is

¹⁶ “Overall, 95% of all biologists affirmed the biological view that a human’s life begins at fertilization (5212 out of 5502).” Steven Jacobs, “Biologists’ Consensus on ‘When Life Begins’”, 2018, Available at SSRN: <https://ssrn.com/abstract=3211703> or <http://dx.doi.org/10.2139/ssrn.3211703>, accessed 8 December 2022; see also J.K Findlay, et al., “Human embryo: a biological definition”, *Human Reproduction*, vol. 22, 2006, <https://doi.org/10.1093/humrep/del467>, accessed 28 February 2023 and a compilation of quotations from scientific literature: Anon. “Life Begins at Fertilization”, <https://www.princeton.edu/~prolife/articles/embryoquotes2.html>, accessed 28 February 2023.

¹⁷ Nancy R. Pearcey, *Saving Leonardo: A Call to Resist the Secular Assault on Mind, Morals, & Meaning*, Nashville, B&H Publishing Group, 2010, pp. 53-55.

¹⁸ Britannica, T. Editors of Encyclopaedia. “embryo.” *Encyclopedia Britannica*, November 22, 2018. <https://www.britannica.com/science/embryo-human-and-animal>, accessed 28 February 2023, emphasis added.

defined as “a developing human from usually two months after conception to birth”.¹⁹
There is no question: an unborn embryo or foetus is a living human being.

If unborn babies are human beings, it can only follow that they possess the same sacred and inherent human rights, dignities and freedoms as every other member of the human family. This fact is put well by Patrick Lee: “What’s at stake in the abortion debate is precisely what was at stake during the nineteenth-century debate about slavery: Where do we draw the line between beings we can simply use for our own purposes and discard when inconvenient, on the one hand, and beings who have fundamental rights, who deserve our respect and protection, on the other?”²⁰

Despite the disturbing insistence of some that not all human beings are equally deserving of the right to life, this question is easily settled from a human rights perspective. Article 3 of the Universal Declaration of Human Rights (UDHR) states that “Everyone has the right to life, liberty and security of person.”²¹ Moreover, human rights are understood to be universal and applicable to every human being, as the preamble of the UDHR makes explicit: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.²²

¹⁹ “Embryo”, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/embryo>, accessed 8 December 2022, emphasis added; “Fetus”, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/fetus>, accessed 28 February 2023, emphasis added.

²⁰ Patrick Lee, “Human Embryos are Human Beings: a Scientific and Philosophical Case”, *The Public Discourse*, 2019, <https://www.thepublicdiscourse.com/2019/09/56416/>, accessed 28 February 2023.

²¹ Article 3, United Nations, *Universal Declaration of Human Rights*, <https://www.un.org/en/about-us/universal-declaration-of-human-rights/>, accessed 28 February 2023.

²² Preamble; see also Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, United Nations, *Universal Declaration of Human Rights*, <https://www.un.org/en/about-us/universal-declaration-of-human-rights/>, accessed 28 February 2023.

Babies born alive after failed abortion attempts are most assuredly members of the human family who possess the same rights as the rest of us.

3. Australia’s International Obligations

In 1990, Australia ratified the United Nations Convention on the Rights of the Child, with the view to protecting our nation’s most vulnerable.²³

Article 6 of the convention commits Australia to recognising that “every child has the inherent right to life”; and ensuring “to the maximum extent possible the survival and development of the child”.

Article 24 of the convention commits Australia to recognising “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”. Our nation has agreed “to strive to ensure that no child is deprived of his or her right of access to such health care services”. Further, Article 24 says Australia shall “take appropriate measures” to “diminish infant and child mortality”.

In 1980, Australia ratified the United Nations International Covenant on Civil and Political Rights.²⁴ Therein, we agreed with Article 6 that “Every human being has the

²³ United Nations, *Convention on the Rights of the Child*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, accessed 28 February 2023.

²⁴ United Nations, *International Covenant on Civil and Political Rights*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, accessed 28 February 2023.

inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

In short, Australia has committed to reducing the deaths of babies, to giving every child access to healthcare, and ensuring that every child’s sacred right to life is protected.

Australia has long been regarded as a world-leading nation in protecting human rights. It goes without saying that we will always have room for improvement. Nowhere is this fact more obvious than in regards to children who are born alive as a result of abortion and are subsequently left to die. This is a moral stain on our nation and a serious breach of our international human rights commitments.

4. Public Support for the Bill is Strong

National polling about children born alive after a late-term abortion reveals that the majority of Australians think these babies must be given medical care. Among those who express a view on this issue, three times as many say they support care for babies born alive in these circumstances as oppose such care.

The survey in view was commissioned by Cherish Life Queensland and conducted on 14–17 July 2021 by YouGov with 1,506 Australian voters, with a margin of error of plus or minus 2.9 per cent.²⁵

²⁵ YouGov, “Cherish Life Queensland,” https://d3n8a8pro7vhmx.cloudfront.net/qld/pages/355/attachments/original/1626905281/Cherish_QLD_Late_Term_Abortion_Results_July_2021_expanded.pdf?1626905281, accessed 28 February 2023.

Respondents were asked the following question: “Termination of pregnancy is permitted in all Australian states and territories under various circumstances after 20 weeks of pregnancy. This is referred to as a ‘late-term abortion.’ Sometimes a baby is born alive in a ‘late-term abortion’ procedure. Which is closer to your own view about babies born alive after a late-term abortion procedure?”

56 per cent of respondents answered that “They must be given medical care to the same extent as other premature babies. This would be life-sustaining care if they are viable and compatible with life.”

Only 18 per cent of respondents answered that “They should not be given medical care and can be allowed to die.” 26 per cent of respondents indicated that they were unsure.

Given the strong public sentiment in the Australian community on this issue, it is incumbent upon the Committee to recommend robust protections for children born alive after failed abortion attempts.

5. On What Grounds Could This Bill Be Opposed?

To advise against this Bill is to deny the most rudimentary protections for the most vulnerable persons in Australia. Several objections have been raised against the Bill but they are entirely without substance.

The Bill will not require doctors, under threat of legal penalty, to keep non-viable babies alive, as some have claimed. Section 9 of the Bill would preclude such an outcome.

Others argue that babies who are viable but have congenital deformities should not be kept alive. By the same logic, however, all children born with disabilities should be left to die — an atrocious and unimaginable scenario.

Australia has led the world in the fight against discrimination towards children and adults with a disability, the National Disability Insurance Scheme (NDIS) being a prime example of our nation’s compassion. Regardless of what adults had intended for a child with congenital deformities, we must resist such blatant discrimination against Australia’s most vulnerable. Babies who survive a failed abortion possess the right to life and deserve to live as high a quality life as possible. We urge support of this Bill to ensure discrimination on the basis of disability is eradicated from our shores.

The most vacuous objection to this Bill is that its premise — namely, that children are born alive as a result of abortions in this country — is a “myth” and “nonsensical”.²⁶ The data provided by the Parliamentary Library puts such claims to lie.

Even if such a claim were true (which it is not), this Bill would have no effect — so what harm could it possibly do? The simple fact is that the Bill will have an immense affect and will save many lives. Thus, it is both necessary and right to advise in its favour. As Senator Matt Canavan argued in his Second Reading Speech for this Bill:

²⁶ See Tory Shepherd, “‘He’s Tabling a Bill about a Myth’: Calling Bullshit on George Christensen’s ‘Born Alive’ Abortion Move”, *Crikey* (online, 5 May 2021) <https://www.crikey.com.au/2021/05/05/george-christensen-abortion-bill/> and Paul Karp, ‘George Christensen’s “Nonsensical” Abortion Proposal Could Penalise Doctors up to \$440,000’, *The Guardian* (online, 23 February 2021) <https://www.theguardian.com/australia-news/2021/feb/23/george-christensens-nonsensical-abortion-proposal-could-penalise-doctors-up-to-44000>.

But if one child, just one, was born alive in such circumstances and that child was viable then this bill would not only have an effect, but it would be more important than probably most laws on the books because it would save a life that otherwise would have been discarded like it was medical waste.²⁷

Finally, there are some who hold that a baby born alive as a result of an abortion should be left to die for the simple fact that he or she was intended for abortion. But this is a direct violation of our nation’s international commitments — namely that Australia recognises “that every child has the inherent right to life” and “shall ensure to the maximum extent possible the survival and development of the child”.²⁸

Conclusion

This submission has made a strong case in favour of the Human Rights (Children Born Alive Protection) Bill 2022. First, we established the undeniable fact that many — up to 100 or more — babies are born in Australia each year as a result of an attempted abortion and are subsequently left to die. Second, we argued that even if they are unwanted, babies born alive after an abortion attempt possess the same sacred rights as every other member of the human family. Third, we demonstrated that Australia is obliged, under its international commitments, to provide the strongest possible protections for these children. Fourth, we provided recent and highly relevant survey data showing the strong public mood for such protections in Australia. Finally,

²⁷ *Parliamentary Debates*, “The Senate Bills: Human Rights (Children Born Alive Protection) Bill 2022 Second Reading Speech,” https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/26123/0135/hansard_frag.pdf;fileType=application%2Fpdf, accessed 28 February 2023.

²⁸ United Nations, *Convention on the Rights of the Child*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, accessed 28 February 2023.

we addressed common objections to the Bill, showing that they lack logical substance and legal validity.

In concluding, we strongly urge that:

- Regardless of the conditions of their delivery, all babies born alive in Australia should be provided with medical care, and there must be legal safeguards at the federal level to ensure this.
- National medical protocols should be established to govern medical care provided to newborn babies following an abortion. This should ensure immediate assessment for gestational age and viability, and medical care based on a formal-equality principle that upholds the human rights of newborn babies.
- There should be mandatory national data collection on babies born alive following an abortion, including gestational age at birth, gender, reason for abortion, medical care provided after birth, and length of life.
- All women undergoing a second or third trimester abortion should receive crisis pregnancy counselling and be informed of the risks of late-term abortion and the possibility of a live birth.
- All babies born alive following an abortion who die prior to discharge from the hospital should be referred to the Coroner for an inquest.
- If the death is unavoidable, the baby must be given palliative care, with proper attention given to pain relief and the emotional needs of the dying baby.
- Babies born alive following an abortion who die in hospital after their birth are entitled to a birth certificate, death certificate, and proper burial or cremation.

For the above reasons, we enjoin you to support this Bill's passage so that all of our children can enjoy the rights we all share as adults.