



Submission to Senate Standing Committee on Community Affairs

*Human Rights (Children Born Alive Protection)
Bill 2022*

March 2023

-  106 Victoria St, West End Q 4101
-  GPO Box 1289, Brisbane Q 4001
-  (07) 3840 1444
-  (07) 3844 9387
-  qnmu@qnmu.org.au
-  www.qnmu.org.au

submission

Contents

Introduction	3
Recommendations	3
Objective of the Bill	4
Overview	4
Key issues	4
Bibliography	6

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Senate Standing Committee on Community Affairs for the opportunity to comment on the Human Rights (Children Born Alive Protection) Bill 2022 (the Bill).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our over 70,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

Through our submissions and other initiatives, the QNMU expresses our commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity and ensure the voices of Aboriginal and Torres Strait Islander nurses and midwives are heard. The QNMU supports the Uluru Statement from the Heart and the call for a First Nations Voice enshrined in our Constitution. The QNMU acknowledges the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

Recommendations

The QNMU recommends:

- That the Bill not be passed as seeking to regulate in this space is not helpful and relies on inaccurate and misinformed understanding of the complexities of foetal gestation and survival, health care providers professional roles and women/persons vulnerabilities.

Objective of the Bill

The stated objective of the Bill (from the Explanatory Notes) is:

“... to enshrine an offence for health practitioners that contravene the duty to provide medical care or treatment to a child born alive. More explicitly, the Bill codifies 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.”

Behind this objective is the assumption that there are high numbers of babies, resulting from terminations, being born alive – and by implication viable. A further justification of the Bill is that it will provide additional data on this issue – although there is no detail justifying such an assumption.

Further, approval to progress a medical termination at a late stage requires medical assessment and approval. This is undertaken around the recognition of extreme impacts on the foetus – potentially non-viable due for example to extreme abnormalities – and/or the mother. In such cases the rights of the mother, and also the child are taken into account, but a broad consideration of real rights and associated direct and indirect implications while needed has not been provided in the Bill.

Overview

- The Bill will impact on the rights of women and pregnant people.
- The Bill lacks contemporary understanding of termination of pregnancy services, care provision and complexities.
- The Bill does not reflect the issues with foetal viability and why women/people may choose to terminate a baby after 20 weeks.
- And if the Bill were progressed it is likely it would also have an impact on the rights of a range of others directly or indirectly associated.

Key issues

This Bill is not supported by the QNMU as it is inaccurate and demonstrates inadequate understandings of terminations, abortion care and foetal viability. The proposed Human Rights (Children Born Alive Protection) Bill 2022 relies on a disingenuous use of the Convention of the Rights of the Child, 1989. The Convention's inclusion in this Bill serves the purpose to ensure the Bills' constitutionality on a subject (reproductive rights and termination) that is the responsibility of individual 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. 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 (e.g., dependant on the identification of disability).

The example provided in the Bill 2022 of the 27 live births following abortion in QLD in 2016 is misleading and medically inaccurate. These procedures were performed if the foetus had lethal or significant abnormalities or if a birth posed a risk to the mother and the foetus had zero chance of survival. In these situations, women are offered medication to euthanise the foetus in the womb prior to delivery, or in some cases the baby is delivered alive for medical or personal reasons and then given palliative care (e.g., if a woman wants the opportunity to hold the baby as it dies).

This potential scenario whereby a health practitioner, after a significant medical and psychological assessment process, participates in assisting with a termination of pregnancy and is then involved in the provision of medical care and treatment to that baby is an extraordinary and complex issue. It also excludes midwifery care which is provided to women in these scenarios, again reflecting a lack of understanding of the reality of the provision of these services.

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. A small proportion of terminations (about 1%) are performed after 20 weeks' gestation, usually because of late diagnosed major structural anomalies, genetic syndromes, severe foetal 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.

What purpose does the Bill serve? Health practitioners are already well aware of their duty to provide care. This Bill will clearly lead to distress in those progressing a termination, in particular through projecting a distressing narrative, and additionally it will place undue pressure on medical staff. One assumption behind the Bill is that no statistics are being collected on this issue and passing this Bill will produce evidence. This doesn't appear justified.

This Bill is progressed around an emotive argument with little evidentiary support and thus its progression could create a dangerous precedent. The issues around which it is based have been considered for some time with legislation in all states supporting medical terminations. There are clear directions for this situation and health care practitioners do not require a Bill to understand their role and the complexities of women seeking terminations who are over 20 weeks gestation. Midwives are professionally well positioned and most appropriate to provide the palliative and after death care to this cohort, a critical human rights consideration.

Bibliography

Bates P (1983). Legal criteria for distinguishing between live and dead human fetuses and newborn children. *University of New South Wales Law Journal*, 6(1):143-151.

Children by Choice (2021). Australian abortion law and practice. <https://www.childrenbychoice.org.au/factsandfigures/australianabortionlawandpractice>

Guillén U et al (2015). Guidelines for the management of extremely premature deliveries: A systematic review. *Pediatrics*, 136(2):342-350.

Robertson, J. (2016). Live births after abortion misleading Queensland legal reform debate, says specialist. *The Guardian*. <https://www.theguardian.com/australia-news/2016/oct/14/live-births-after-abortion-misleading-queensland-legal-reform-debate-says-specialist> | Abortion | The Guardian

South Australian Law Reform Institute (2019). Abortion: A Review of South Australian Law and Practice. <https://law.adelaide.edu.au/system/files/media/documents/2019-12/Abortion%20Report%20281119.pdf>

United Nations. (2013). Convention on the rights of the child, General Comment No. 15, On the right of the child to the enjoyment of the highest attainable standard of health <https://www.refworld.org/docid/4a61696d.html> (refworld.org)