

Termination of Pregnancy (Live Births) Amendment Bill 2024

Submission No: 124
Submitted by: Cherish Life Queensland
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:



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12th May 2024

Submission to the Health, Environment and Agriculture Committee

Re: Termination Of Pregnancy (Live Births) Amendment Bill 2024

Introduction

Cherish Life Queensland wishes to make a submission to the Health, Environment and Agriculture Committee in respect to the Termination of Pregnancy (Live Births) Amendment Bill 2024.

We are a non-party political educational organisation formed in 1970 to uphold, defend and work towards the advancement of respect for human life from conception until natural death. Our membership and supporter base numbers in the thousands and consists principally of people residing in Queensland.

Over the years since our formation, we have made many submissions to both federal and state Bills of interest to us.

Why A Baby May Be Born Alive Following A Failed Abortion Procedure

The common practice for later term abortions ie past 20 weeks in QLD is that they are performed in tertiary hospitals regulated for this purpose i.e. they are not done at private stand-alone clinics or in most public hospitals. Due to the definite possibility that babies may be born demonstrating signs of life, it has become common practice to offer feticide which is the injection of potassium chloride into the foetal heart using ultrasound guidance. This causes the baby to die in utero and the mother will be delivered either there or at another hospital soon after. However, not all parents agree to this, and the baby has a chance of being born alive, depending upon the gestational age and the reason for the abortion.

Reasons Why Should This Bill Should Be Passed

1. Heartbreaking Statistics: Queensland Health Figures

In November 2023, MP for Oodgeroo Dr. Mark Robinson asked a question on notice to the Minister of Health, Mental Health and Ambulance Services and Minister for Women Shannon Fentiman regarding:

“the total number of live births following termination between 2018 and 2022 (reported separately by year) and (c) how many of these cases were induced abortions (i) prior to 20 weeks,(ii) from 20 to 28 weeks and (iii) after 28 weeks?”ⁱ

The table below demonstrates the figures:

Calendar Year	< 20 Weeks	20 to 28	> 28 Weeks	Total
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		Weeks		
2018	11	17	0	28
2019	5	42	0	47
2020	7	34	1	42
2021	10	30	1	41
2022	13	35	1	49

This is clear empirical evidence that in just four years 207 children have been born alive following a failed abortion procedure and left to die in Queensland. That roughly equates to four children every month - for over four years, it must be stated that even if it was one child over four years, this Bill would still be of critical importance!

Even more harrowing, as we will discover in a moment, prior to October 2023, the Queensland Health Guidelines with regards to what should happen in the event of a live birth stated, 'Do not provide life-sustaining treatment (e.g. gastric tubes, IV lines, oxygen therapy).' All 207 children would have fallen under that category.

2. Heartbreaking Cases

Alongside the statistics, we also have numerous reports from within Australia and overseas ranging from healthcare practitioners and parents who have witnessed such an ordeal. One website in particular that provides conclusive evidence regarding the reality that babies can survive the abortion procedure is abortionsurvivors.org.ⁱⁱ In addition, below are three tragic examples from Australia:

A. Jessica Jane

“Jessica Jane” a baby born in the Northern Territory on 14 July 1999 survived an abortion at the gestational age of 22 weeks. Jessica lived, moved, and cried for approximately 80 minutes before succumbing. We encourage anyone associated with this Bill to read the coroner report from Mr Greg Cavanagh, his conclusive comments are significant and invaluable concerning the Bill:

In my view, it is important to not let semantics confuse the matter. The deceased was not, and should not be described as a “foetus”, an “aborted foetus”, an “abortus”, a “living foetus” or a “living abortus”, “nonviable foetus”, “live neonate” or anything else that diminishes her status as a human being. Similarly, the purpose of the induction procedure (which was to abort the delivery of a live baby) should not be allowed to diminish her status as a human being. Her life was unexpected and her death was inevitable ... The deceased having been born alive deserved all the dignity, respect and value that our society places on human life ...

... In my view, the fact that her birth was unexpected and not the desired outcome of the medical procedure, should not result in her, and babies like her, being perceived as anything less than a complete human being. Similarly, the fact that her death was inevitable should also not have the same result. The old, the infirm, the sick, the terminally ill are all entitled to proper medical and palliative care and attention. In my view, newly born unwanted and premature babies should have the same rights. The fact that her death was inevitable should not effect her entitlement to such care and attention.ⁱⁱⁱ

B. Unnamed Baby at Westmead Hospital

At Sydney's Westmead Hospital there was a case of an unnamed baby, who was later discovered in a medical waste bin.^{iv} NSW coroner Janet Stevenson criticised Westmead Hospital staff for failing to care for the baby, she stated:

There is a serious issue which arose as to the way in which the deceased was treated after signs of life were detected. Not the least of these being the non-acceptance by medical staff that they had a duty to treat the situation in a manner different than they did ... There appears to me to have been a total abrogation of responsibility, let alone common humanity, on the part of those who should have borne the burden of dealing with the child.^v

C. Queensland Baby Xanthe

Baby Xanthe, posthumously named by her mother, survived an abortion at 19 weeks. The mother stated:

she suffered severe mental torment following a pregnancy termination that resulted in her not being informed her baby had been born alive, depriving her of holding her daughter as she died.^{vi}

Xanthe, who had Down's Syndrome, was left to die in an empty room for 7 minutes without any comfort care in 2020 at the Royal Brisbane and Women's hospital.^{vii}

Both Jessica Jane and Xanthe were aborted for 'social' reasons not due to any life-threatening conditions. All three of these examples underscore the barbaric reality of what will happen without any legislative care and protection provided.

3. Queensland Health Guidelines Amendment (October 2023)

In October 2023, Queensland Health amended their Termination of Pregnancy guidelines regarding what should happen in the case of a 'live birth'. Prior to October 2023, the guideline section 5.4.3 was as follows:

1. Handle baby gently and carefully and wrap to provide warmth
2. Offer opportunities and support the family's wishes to engage in care provision
3. Do not provide life-sustaining treatment (e.g. gastric tubes, IV lines, oxygen therapy)
4. Provide sensitive emotional support and reassurance to parents throughout the process and afterwards
5. Document date and time end of life occurs

Without any notice or statement from Queensland Health these guidelines were amended in October 2023 to the following:

5.4.3 Born with signs of life

Live birth following a termination of pregnancy is an uncommon outcome. If a baby is born with signs of life, provide care appropriate to the individual clinical circumstances and in accordance with best practice guidelines.

Table 23. Born with signs of life

Aspect	Consideration
Information sharing	<ul style="list-style-type: none"> • If appropriate to clinical circumstances, discuss with the woman before the procedure, the potential for live birth including: <ul style="list-style-type: none"> ○ Preferences for awareness of live birth (e.g. informed immediately at time of birth or information delayed) ○ The woman's wishes and preferences for care of the baby, which it is acknowledged may change during the course of the termination and following birth ○ Desire for engagement in any subsequent care ○ Expected fetal appearance and/or clinical course relevant to circumstances ○ Legal requirements for birth registration and management of fetal remains ○ Refer to Definition of terms and Section 5.4.1 Birth registration
If born with signs of life	<ul style="list-style-type: none"> • Provide care appropriate to the individual clinical circumstances and in accordance with best practice guidelines
Palliative care	<ul style="list-style-type: none"> • Where the baby is born with signs of life and survival is determined to be unlikely, active treatment (e.g. gastric tubes, IV lines, oxygen therapy) is not indicated or recommended as these may prolong palliation and cause distress <ul style="list-style-type: none"> ○ Handle gently and carefully, wrap and cuddle/hold to provide warmth and comfort ○ Offer opportunities to engage in care provision (e.g. cuddling/holding) as desired • If parents do not wish to be involved in palliative care provision, healthcare providers may provide comfort support strategies
Service support	<ul style="list-style-type: none"> • Establish local procedures for the management of live birth • Provide sensitive emotional support and reassurance to parents • Offer counselling and support services to women, partners and healthcare professionals involved with care of a live born child

As demonstrated above, table 23 contains a heading entitled, 'If born with signs of life'. The consideration is to 'provide care appropriate to the individual clinical circumstances and in accordance with best practice guidelines.'^{viii}

The changing of the Queensland Health guidelines indicates emphatically that the previous guidelines regarding protection for babies born alive as a result of a failed abortion procedure that existed since 2018 were woefully erroneous. Who knows how many of the 207 lives could have been saved if the previous guidelines were not in effect?

Whilst Cherish Life approves of Queensland Health changes to the guidelines, there is still a major issue that remains. The guideline is explicitly described as a 'consideration'. Practitioners, therefore, are not compelled to follow it nor are they likely to face any professional scrutiny for disregarding its recommendations. This Bill would rectify this problem.

Furthermore, and perhaps most importantly, this guideline is vulnerable to arbitrary changes. Therefore, it is crucial for legislative action to firmly establish that the responsibilities a healthcare practitioner owes to a baby born from a termination are identical to those owed to any other newborn. This legislative intervention is essential to ensure consistent and equitable medical care. Again, as also mentioned in the explanatory notes, this Bill would rectify this particular problem.^{ix}

4. Establishes Basic Human Rights

A newborn baby possesses independent legal and human rights upon its separation from its mother. To object to this is in effect to say that because an abortion is intended to result in the death of the unborn child, the law has no interest in the ultimate outcome for the child if he/she is born alive. In the Queensland Criminal Code, Section 292 “when a Child Becomes a Human Being” it states that:

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not or not and whether it has an independent circulation or not, and whether the navel string [ambilocal cord] is severed or not.^x

It would seem from legal standpoint that in the cases in which a normal “viable” baby is born alive from an abortion, not to legislate that healthcare practitioners must act to at least assess their chances of life could be construed as willing infanticide on behalf of the state itself.

In summary, any child born alive because of an abortion is entitled under the law

to the same level of medical care as any other newborn child, thus endeavouring to ensure that his or her human right to life is respected and upheld, as is required under international human rights treaties to which Australia is a signatory.

Conclusion

Cherish Life Queensland urges the Health, Environment and Agriculture Committee to recommend the passage of the Termination of Pregnancy (Live Births) Amendment Bill 2024. This legislation is crucial for addressing the profound and distressing issues surrounding live births following abortion procedures. The evidence provided clearly shows the urgent need for consistent and humane treatment of all newborns, irrespective of the circumstances of their birth. Passing this Bill will solidify the inherent human rights of these infants, ensuring they receive the same standard of medical care as any other newborn. This is not only a matter of ethical duty but should also be a legal obligation in line with both domestic and international human rights standards. We implore the committee to act decisively to safeguard these vulnerable lives and uphold the principles of justice and human dignity.

Finally, please know Cherish Life would welcome an invitation to provide testimony in the Public Hearing.

Dr. Donna Purcell - Cherish Life President

Matthew Cliff - Executive Officer

ⁱ "Question on Notice No. 1496 Asked on 16 November 2023," Queensland

Parliament, accessed May 10, 2024.

<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2023/1496-2023.pdf>

ⁱⁱ “The Abortion Survivors Network”. Accessed 13 May, 2024.

<https://abortionsurvivors.org/>

ⁱⁱⁱ Greg Cavanagh, “Inquest into the death of Jessica Jane”. Northern Territory Government. Accessed 13 May, 2024.

https://justice.nt.gov.au/_data/assets/pdf_file/0017/206702/baby-j.pdf

^{iv} Houghton, Des. “Qld MP Robbie Katter calls for human rights of babies born alive after abortions,” The Courier Mail, accessed 13 May, 2024.

<https://www.couriermail.com.au/news/opinion/des-houghton/qld-mp-robbie-katter-calls-for-human-rights-of-babies-born-alive-after-abortions/news-story/051fdd6d9fe9e3a87229944aa1fe7a9f>

^v Houghton, Des. “Qld MP Robbie Katter calls for human rights of babies born alive after abortions,” The Courier Mail, accessed 13 May, 2024.

<https://www.couriermail.com.au/news/opinion/des-houghton/qld-mp-robbie-katter-calls-for-human-rights-of-babies-born-alive-after-abortions/news-story/051fdd6d9fe9e3a87229944aa1fe7a9f>

^{vi} Jackie Sinnerton, “RBWH maternity under fire after mother not told baby briefly survived,” The Courier Mail, accessed 10 May, 2024.

<https://www.couriermail.com.au/news/queensland/qld-politics/rbwh-maternity-under-fire-after-mother-not-told-baby-briefly-survived/news-story/7511c9d29a7cc76b6adac23bee16b26b>

^{vii} Jackie Sinnerton, “RBWH maternity under fire after mother not told baby briefly survived,” The Courier Mail, accessed 10 May, 2024.

<https://www.couriermail.com.au/news/queensland/qld-politics/rbwh-maternity-under-fire-after-mother-not-told-baby-briefly-survived/news-story/7511c9d29a7cc76b6adac23bee16b26b>

^{viii} Queensland Health. "Queensland Clinical Guidelines: Termination of pregnancy," Accessed 11 May, 2024, 24.

https://www.health.qld.gov.au/__data/assets/pdf_file/0029/735293/g-top.pdf

^{ix} Queensland Parliament. "Termination Of Pregnancy (Live Births) Amendment Bill 2024," Accessed 11 May, 2024, 3.

<https://documents.parliament.qld.gov.au/tp/2024/5724T411-9FFD.pdf>

^x Queensland Government. "Criminal Code Act 1899," Accessed 11 May, 2024, 212.

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1899-009>