

Termination of Pregnancy (Live Births) Amendment Bill 2024

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CHILDREN BY CHOICE
ASSOCIATION INCORPORATED

**Submission to
Health, Environment and
Agriculture Committee**

*Termination of Pregnancy (Live Births) Amendment
Bill 2024*

13 May 2024

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About Children by Choice

Children by Choice is an independent Queensland-based non-profit organisation, established in 1972, committed to providing counselling, information, and education on all pregnancy options – abortion, adoption, kinship and alternative care and parenting. We are recognised nationally and internationally as a key advocacy group for reproductive and sexual health.

Our vision is that people can freely and safely make their own reproductive and sexual health choices without barriers.

Our primary objective is to ensure that women and pregnant people who experience hardship or distress with a pregnancy receive high-quality decision-making counselling, evidence-based information, material aid, and referral. Children by Choice seeks to empower people and communities to exercise reproductive health choices, and to remove the discriminatory social, legal, clinical and policy barriers that women and pregnant people may face when seeking access to accurate information, support, and services for their reproductive choices.

Our work includes:

- Our pregnancy options counselling service which assists over 2400 women and pregnant people each year in Queensland through our funding from the Department of Justice and Attorney General.
- Our education and community engagement team who provide training and information to 1900 professionals and students each year.
- Our Multicultural project, co-designing digital, video, and print resources for 4 language groups on pregnancy options, contraception, and reproductive coercion.
- Our work co-designing Easy English resources to support women with intellectual and learning disabilities on their pregnancy options, contraception, parenting and reproductive coercion, in partnership with WWILD.
- Our 3-year project in Queensland on Rural, Regional and Remote Abortion Access project which supported access to abortion in marginalised areas, completed in 2021.
- Our Queensland Abortion and Contraception online map, launched in 2021, aims to increase transparency and accessibility of abortion and contraception services to the public and those supporting people seeking services.
- The delivery of sexual and reproductive health education sessions in schools and youth centres nationally, training for GPs and other health and community professionals on pregnancy options, reproductive coercion, and post abortion counselling across Australia. Recently we partnered with Women's Health Tasmania to deliver our education and professional development for health and community service workers in a Tasmanian context.
- The development of an Australian position statement after Roe v Wade with over 700 individuals and organisations signing on to voice their support for reproductive rights; calling upon state and territory Health Ministers to embed essential reproductive healthcare into our public health services.
- Our Reproductive Coercion and Abuse Resources and website is about to be released for General Practitioners and pregnancy people alike.
- Reproductive Access across the Gender Spectrum resources are about to be launched in June 2024.

We have continued to advocate for access to legal, safe, timely, compassionate healthcare and protections for reproductive rights in conjunction with supporting bodily autonomy and reproductive justice.

In addition, we are actively engaged across several relevant government and non-government agencies to facilitate and coordinate appropriate and consistent responses to women affected by a range of gender-based safety, health, and wellbeing issues. This includes participation in committees and working groups, such as:

- Expert Stakeholder Group Queensland Health Clinical Excellence – Termination of Pregnancy Action Plan
- Department of Health and Aged Care Sexual and Reproductive Health Steering Committee
- Queensland Health Sexual Health Clinical Network – Termination of Pregnancy working group
- Women’s Health Services Alliance of Queensland (WHSA)
- Ending Violence Against Women Queensland (EVAWQ)
- SPHERE Coalition for sexual and reproductive health
- Equality Rights Alliance (ERA)
- Queensland Abortion and Contraception Community of practice
- QCOSS (Queensland Council of Social Service) Women’s Equality and CEO Network
- True Culturally Responsive Health Advisory Group

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**Our Annual Reports and Strategic Plan are available on our website
www.childrenbychoice.org.au.**

Introduction

Children by Choice provides counselling, information, and education on all pregnancy options — abortion, adoption, kinship and alternative care, and parenting. Children by Choice welcomes the opportunity to provide feedback on the *Termination of Pregnancy (Live Births) Amendment Bill 2024*.

Children by Choice, a staunch advocate for reproductive rights and access to safe healthcare, **opposes this bill**.

Children by Choice identifies several critical fallacies where the *Termination of Pregnancy (Live Births) Amendment Bill 2024*:

- fails to align with evidence-based best practice or substantiate its claims with scientific validity;
- disseminates misleading information and perpetuates broad inaccuracies regarding termination of pregnancy (TOP) care and foetal viability;
- seeks to regulate informed decision-making of health practitioners that has long been recognised as best managed by clinical guidelines, and;
- provides no compelling evidence to suggest that the proposed legislation is an effective means of improving patient and workforce well-being.

Within the Australian and Queensland context

The proposed amendment must be contextualised within a broader pattern of legislative initiatives targeting "born alive" children, both on the state, federal, and international level (*Swannell, 2023*). Past attempts to enact similar legislation in Australia have overwhelmingly failed to progress into law. Notably, the federal *Human Rights (Children Born Alive Protection) Bill 2021*, which bore similarities to the current proposal, languished and ultimately lapsed during dissolution in April 2022. Its subsequent iteration, the *Human Rights (Children Born Alive Protection) Bill 2022*, suffered a similar fate in 2023. Despite its purported aim to safeguard children, these proposed legislations seek to impose undue legal burdens on healthcare providers without offering tangible benefits in terms of child safety or welfare. The recurrent failure of such morally driven bills underscores their inherent flaws and inadequacies.

This Queensland-based amendment proposed in 2024 represents a continuation of this misguided moralistic approach. It offers no substantive rationale to warrant reconsideration of this issue. In fact, the *Termination of Pregnancy (Live Births) Amendment Bill 2024* seeks to override current informed models of care to perpetuate a harmful narrative that jeopardises the rights and autonomy of pregnant people while failing to address the complex realities of reproductive healthcare.

Considering these concerns, Children by Choice urges lawmakers to reject the proposed amendment and instead focus on policies that prioritise evidence-based approaches to reproductive health, enhance access to reproductive healthcare and medical treatment equitably across Queensland and uphold the fundamental rights of all individuals. Any legislation must be grounded in a comprehensive understanding of medical ethics, informed by the expertise of healthcare professionals, and centred on the needs and autonomy of patients to succeed.

The Termination of Pregnancy (Live Births) Amendment Bill 2024 is not evidence-based

The *Termination of Pregnancy (Live Births) Amendment Bill 2024* falls short of evidence-based best practices in several critical aspects. Notably, the absence of evidence-based justification raises concerns regarding the necessity and potential benefits of the proposed changes. Moreover, reliance on perinatal data, which does not accurately capture Termination of Pregnancy (TOP) outcomes due to its non-routine collection in Queensland, further undermines the bill's evidentiary basis. The bill demonstrates a fundamental misunderstanding of TOP outcomes by conflating "live birth" with signs of life, a distinction clearly delineated in TOP clinical guidelines.

The proposed legislation completely overlooks the principles established already in the *Termination of Pregnancy Act 2018*, as well as analogous legislation across Australia, which affirm that decisions regarding abortion care are the purview of healthcare professionals and pregnant patients, not legislative bodies. This legal framework acknowledges that healthcare professionals are best equipped to determine the most suitable course of care for individuals seeking abortion services beyond a certain gestational age. By contrast, the proposed amendment seeks to undermine the ability of healthcare professionals to deliver evidence-based, patient-centred, and compassionate care solely in this sector of healthcare. This discrepancy raises significant concerns regarding the bill's potential impact on the provision of quality, patient-centred healthcare services for Queenslanders seeking abortion services.

Misrepresentation of public sentiment

Rather than referencing evidence-based practice, the *Termination of Pregnancy (Live Births) Amendment Bill 2024* seeks to utilise emotional arguments, particularly through the framing of the example of "Xanthe," in an attempt to polarise public sentiment and garner support for legislated intervention in third-trimester termination of pregnancy.

The referenced news article, "Hospital failures pushed my wife over the edge" (*Sinnerton, 2023*), upon closer examination, does not support the narrative portrayed in the proposed bill. Contrary to its implications, the article highlights that the distress experienced by the parents stemmed from systemic failures in healthcare delivery, particularly the lack of opportunity to be present with their child during the termination procedure. The distress was not attributed to the neonate being "born alive" or the absence of medical interventions, but rather to the denial of the opportunity to bid farewell to their child in a compassionate and dignified manner. This article suggests further conversation of the need for appropriate resourcing and implementation of current Queensland clinical guidelines in hospital services than "live births".

Therefore, citing this example as representative of public concern regarding the necessity for legislated medical intervention in second- and third-trimester termination of pregnancy is disingenuous and misleading. It is essential to recognise the true sentiments and experiences of individuals impacted by such decisions and refrain from exploiting their narratives for political purposes. The proposed legislation should be based on accurate and transparent representations of public sentiment rather than emotional manipulation.

Understandings of terminations, abortion care and foetal viability

Children by Choice submits that the *Termination of Pregnancy (Live Births) Amendment Bill 2024* is misleading and provides inadequate and inaccurate understandings of terminations, abortion care and foetal viability.

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. This legislation makes clear that termination of pregnancy is a health procedure that is best managed by trained professionals operating within clinical models of care, not legislation. A miniscule proportion of terminations (<2% in Australia, and 1-3% globally) are performed over 20 weeks' gestation (*Flowers, 2020*).

Queensland research has found this can be attributed to the late diagnosis of major structural anomalies, foetal abnormalities, 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 (*Rosser et. al, 2022*).

The small proportion of people seeking abortions presenting in the second or third trimester are more likely to be experiencing severe disadvantage or distress. Patients are more likely to present with complex health circumstances that create barriers to access to healthcare, such as physical, emotional and/or sexual violence, reproductive coercion and abuse, financial or socioeconomic disadvantage, geographic isolation in rural or remote areas, and unsupportive health practitioners (*Flowers, 2020; Vallury et al. 2023*). Laws that knowingly target and legislate health care available to pregnant people experiencing disadvantage, and to pregnant people and their families experiencing distressing diagnoses, is inequitable and creates further barriers in an already-stigmatised area of healthcare.

Finally, foetal viability has been demonstrated, at 22 weeks of gestational age, to range from 0-34%. Babies who are born at this age have a heartbeat, but no other indicators of survivability (*Guillén et. Al, 2015; Rosser et. Al, 2022*). Legislative interventions like the *Termination of Pregnancy (Live Births) Amendment Bill 2024* fail to consider these low survival rates, and the medical expertise, availability and financial resources required to enable advanced neonatal care for premature births.

Abortion care providers, like all medical practitioners in Australia, adhere to rigorous medical protocols aligned with current evidence-based standards for abortion-related clinical care. Therefore, mandating supposed "human rights" measures for fetuses with medical conditions incompatible with life or detrimental to the mother's health violates prevailing medical and ethical care standards.

Central to clinical practice is the delivery of patient-centred care, which prioritises alignment with patients' personal goals, preferences, and wishes regarding their care. The provisions outlined in the *Termination of Pregnancy (Live Births) Amendment Bill 2024* demonstrate a lack of comprehension regarding clinical decision-making realities and are fundamentally at odds with patient autonomy and patient-centred care principles.

The *Termination of Pregnancy (Live Births) Amendment Bill 2024* demonstrates inadequate and inaccurate understandings of these gestational limits, the disadvantage demonstrated by those seeking termination outside of these gestational limits, and low likelihood of survival due to foetal gestational age.

This proposed legislation restricts and undermines the informed decision-making principles of healthcare providers

The determination of prenatal and post-abortion care should not be subject to legislative intervention but rather guided by best practice clinical guidelines and evidence-based approaches. This includes recognising the pivotal role of trained healthcare professionals in making care decisions, as is standard practice across all aspects of healthcare.

Children by Choice emphasises the importance of patient-centred care, wherein healthcare practitioners prioritise the individual needs and preferences of each patient to ensure quality, compassionate care and optimal patient outcomes. Attempts to legislate determinations of survivability not only stigmatise healthcare providers and pregnant people and their loved ones, but also create confusion and barriers to accessing essential termination of pregnancy care.

Health professionals, guided by clinical care guidelines, are in the best position to assess the survivability of a pregnancy. Implementing legislation in this context not only stigmatises the provision of abortion care but also creates confusion and barriers that hinder access to essential healthcare services. Such measures undermine the trust between patients and healthcare providers and jeopardise the well-being of those seeking abortion care. The *Termination of Pregnancy (Live Births) Amendment Bill 2024* sets a dangerous precedent by imposing unnecessary legislation grounded in emotional arguments and misinformation. It disregards existing professional codes of conduct and frameworks that guide medical professionals in providing compassionate, evidence-based care.

Future-proofing clinical guidelines and medical models of care is not conducive to restrictive, unnecessary legislation

The proposed legislation's concern and unfounded dismissal of the current Queensland Termination of Pregnancy Clinical Guidelines overlooks the essential role of evolving evidence-based care that exists in conjunction with law. Healthcare guidelines must remain responsive to new knowledge to ensure the provision of optimal care — even at an international level, the World Health Organization's (WHO) abortion guidelines have undergone regular changes in line with evolving gold-standard care. (*World Health Organization, 2022*). This underscores the inherent jurisdiction of healthcare professionals in determining clinical practice standards, unfettered by legislative constraints.

International research *and clinical frameworks underscore* healthcare professionals' commitment to remaining abreast of best practices in *second- and third-trimester abortion* (Flowers, 2020). *Restrictive legislation risk hindering the ability of practitioners to deliver* compassionate, evidence-based care, thus impeding patient access and perpetuating stigma surrounding healthcare provision.

Live Births Amendment Bill misinforms and actively opposes the outcomes of patient and workforce well-being

Legislating healthcare and impeding the discretion of healthcare professionals to determine optimal care based on each patient's individual circumstances is not only stigmatising but also introduces ambiguity and undermines patient access to high-quality, legally protected healthcare services. The *Termination of Pregnancy (Live Births) Amendment Bill 2024* preys on the complexity and sensitivity of

abortion care for both patients and providers, and actively does not address the essential support needs of these stakeholders. It is imperative to recognise that abortion care is a fundamental aspect of healthcare, deserving of the same respect and consideration as any other medical procedure.

By obscuring the issue with vague references to "survivability" and shifting blame onto healthcare providers and patients, rather than addressing systemic challenges, the proposed legislation further exacerbates the barriers to access faced by those seeking and providing abortion care. This approach not only fails to safeguard the rights and well-being of patients but also undermines the professional autonomy and ethical obligations of healthcare providers.

Stigmatisation of second- and third-trimester termination of pregnancy, often sought due to foetal abnormalities and varied socio-health contexts, exacerbates the already-complex and emotionally challenging healthcare decision-making process for patients (*Vallury et. al, 2023*). This proposed legislation targets "late gestation" pregnancies — a non-medical term that encourages misinformation and stigmatisation — by adding significant stress and uncertainty for pregnant people who have already navigated the emotionally taxing process of seeking healthcare guidance and support from professionals.

Queensland has made recent strides in expanding abortion access by allowing nurse practitioners and endorsed midwives to prescribe and dispense MS-2Step for medication abortion. The *Termination of Pregnancy (Live Births) Amendment Bill 2024* acts as a desperate countermeasure to these changes and seeks to further stigmatise patients and potentially criminalise health professionals who provide abortion care in Queensland.

We need to improve access to TOP healthcare for all Queenslanders

The challenges encountered by healthcare practitioners providing abortion services are predominantly driven by deficiencies in healthcare capacity, resourcing, education and training, and support mechanisms. Unequivocally, these challenges will not be adequately addressed through uneducated and misinformative legislation such as the *Termination of Pregnancy (Live Births) Amendment Bill 2024*. Instead, there is an urgent need for comprehensive initiatives aimed at enhancing workforce capabilities and resources. Queensland Health is actively engaged in initiatives such as the Termination of Pregnancy Action Plan, which focuses on bolstering the workforce and improving the delivery of abortion care services.

To effectively address the needs of healthcare practitioners in this space, Children by Choice proposes to focus on practical strategies to improve clinical and workforce outcomes, including:

- **Enhancing the resources** allocated to services providing termination of pregnancy-related care. This entails ensuring adequate staffing levels to accommodate conscientious objectors, allowing them to withdraw from some aspects of care without compromising patient access or outcomes.
- **Ensuring sufficient funding for TOP care teams** to operate in a holistic manner and deliver evidence-based practice. This includes allocating funds for social workers across all services to enhance the quality of care and promote positive outcomes for both patients and staff.
- **Providing adequate resources and staffing** for services delivering TOP care to establish comprehensive frameworks for staff support, professional supervision, and development. This is essential to prevent burnout among healthcare providers and ensure the delivery of high-quality, sustainable care.
- **Enhancing and expanding training for healthcare professionals** involved in abortion-related care provision is paramount. This includes:
 - *Providing comprehensive training* in the delivery of feticide to ensure its availability for all pregnant individuals who require or request it, while maintaining compassionate care for

all abortion seekers. Modern methods of feticide delivery, such as potassium chloride (KCL), are now available and do not necessitate high-level expertise for safe and effective administration. This is a matter for Queensland Health.

- *Offering training in compassionate abortion care*, emphasising the importance of destigmatising and inclusive healthcare practices. This ensures that all patients receive care that respects their dignity and autonomy.
- *Educating healthcare professionals on conscientious objection* legislation, including its provisions, scope, intention, and the professional obligations of conscientious objectors in Queensland. This ensures that conscientious objection is exercised in a manner that upholds patient rights and access to care.
- *Implementing workforce development and capacity-building initiatives* to foster cohesive, supported teams capable of delivering evidence-based best practice TOP care. This includes specialised training to deliver compassionate second-trimester abortion care, ensuring that patients receive care tailored to their individual needs and preferences.
- *Embedding abortion care into medical and health education* to ensure an adequate supply of trained healthcare professionals in the future. By integrating abortion care into curricula, we can ensure that healthcare providers are equipped with the knowledge and skills necessary to meet the evolving needs of patients.

By prioritising these initiatives, the Queensland government can better equip healthcare practitioners to deliver high-quality, patient-centred, compassionate abortion care, thereby improving access and outcomes for consumers while respecting the autonomy and expertise of providers.

Quality evidence and data are needed

In response to the proposed legislation implying that abortion constitutes “live births”, it is imperative to address the issue of data collection surrounding termination of pregnancy procedures. Currently, the collection of abortion data across Australia and specifically in Queensland is inadequate and inconsistent. Before any further amendments to abortion legislation are considered, it is crucial to prioritise the improvement of data collection practices in this area. Inadequate and non-routine data of abortion services in Queensland can lead to blatant misinformation and the potential misuse of other perinatal data, as evidenced by the manipulation of information in the *Amendment Bill 2024* to support unfounded moralistic arguments.

In Summary

In conclusion, the *Termination of Pregnancy (Live Births) Amendment Bill 2024*, introduced as a private member's bill, represents a blatant attempt to roll back reproductive rights in an era where new health amendment legislation that opens access has been enshrined into law. This legislative proposal attempts to polarise public opinion on what is essentially a matter of legal healthcare.

Children by Choice strongly opposes this bill, recognising its potential to perpetuate stigma, restrict access to essential healthcare services, and infringe upon the autonomy of pregnant individuals.

Instead of pursuing divisive legislative measures, we advocate for upholding the principles established in the *Termination of Pregnancy Act 2018*, which decriminalised abortion and ensured access to safe and legal healthcare for all individuals. By prioritising evidence-based approaches, respecting medical expertise, and protecting reproductive rights, we can foster a healthcare system that prioritises the well-being and autonomy of all individuals across Queensland.

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