

WESTERN AUSTRALIA ABORTION REFORM - KEY ISSUES

1. BAN ON GENDER-SELECTION ABORTIONS

An [SBS report](#)¹ in 2015 indicated that the gender imbalance between boys and girls being born in some ethnic communities in Australia pointed to gender selection abortions taking place.

In 2018 [Dr Kristina Edvardsson](#)² from La Trobe University reported that some ethnic communities in Australia, are recording 122 to 125 sons for every 100 daughters being born. The UN considers the normal rate to be 102-106 sons to 100 daughters. While it is not known whether these sex-selection abortions are taking place in Australia or whether women travel overseas to have these gender-selection abortions, the law should reflect the community value that terminating an unborn baby's life simply because she is female, is abhorrent.

When South Australia updated its abortion legislation in 2021, it included a prohibition on-sex selection abortion as follows:

12—Health practitioner must not terminate pregnancy for sex selection

- (1) Subject to subsection (2), a registered health practitioner must not perform a termination of a pregnancy for the purposes of sex-selection.
- (2) Subsection (1) does not apply to the performance of a termination if the registered health practitioner is satisfied that there is a substantial risk that the person born after the pregnancy (but for the termination) would suffer a sex-linked medical condition that would result in serious disability to that person.

Such a provision in the WA legislation would protect doctors who refuse to do sex-selection abortions. In 2013 Dr Hobart was [threatened with deregistration](#)³ by the Victorian Medical Board for refusing to refer a couple on who came to him wanting a sex-selection abortion.

In South Asia there are over [100 million missing girls](#)⁴ missing due to couples wanting a boy rather than a girl. Due to the large disparity of boys being born compared to girls, India has passed laws that makes it a

¹ Could gender-selective abortions be happening in Australia? SBS 28/08/2015

² Edvardsson K et al 'Is Prenatal Sex Selection an Issue in Australia? Journal of Paediatrics and Child Health Vol 54 , Issue s1, March 2018

³ Natasha Bitá; PerthNow 27/04/2013 ; and

<https://www.dailymail.co.uk/news/article-2449568/Doctor-Mark-Hobart-struck-refusing-abortion.html>

⁴ <https://www.nytimes.com/1991/11/05/science/stark-data-on-women-100-million-are-missing.html>

criminal offence for a doctor to divulge the sex of the baby prior to birth. Signs to that effect are displayed in every doctor's surgery in India.

2. THAT ANY BABY BORN ALIVE FOLLOWING A LATE-TERM ABORTION PROCEDURE MUST BE PROVIDED WITH THE SAME MEDICAL ATTENTION THAT WOULD BE PROVIDED TO A WANTED BABY BORN PREMATURELY

In WA we are told that the 70-80⁵ late term abortions carried out under the 1998 legislation are mostly done on account of the baby having a condition not compatible with life. However, we understand some are conducted on account of a likelihood that the baby has Down Syndrome.

Answers to [parliamentary questions](#)⁶ reveal that between 20 May 1998 and 31 December 2021, 31 babies had shown signs of life after an abortion procedure in Western Australia.

Data from abortions after 20 weeks in Victoria indicates that 44% of unborn babies killed at this gestation are physically healthy and their mothers are physically healthy making it clear that they have been aborted for a "psychosocial reason".⁷

Under the terms of the Abortion Reform Bill 2023, the current restrictions for post 20-week abortions will be removed (as they have been in Victoria) , and so we would expect WA to have statistics for babies born alive from late term abortions similar to other states that have introduced similar laws. In 2020, Qld recorded 41 babies born alive as a result of a late term abortion, and Victoria 43.

The current practice of leaving babies born alive as a result of a late term abortion procedure to die without any medical assistance is unacceptable. This issue was addressed in the South Australian *Termination of Pregnancy Act 2021* Section 7 and makes it clear that medical staff owe such a baby the same level of care as a baby born by normal means.

A small, but significant number of babies survive a late term abortion. As adults, some of these have told their stories. A group of survivors have a [website](#)⁸ on which they recount their stories. Those that survived, survived into adulthood because they were provided with medical care.

⁵ Abortion Legislation- Proposal for reform in Western Australia – Discussion Paper (Dept of Health) p 7 states 0.9% of abortions are late term. Given 8,500 abortions per year ,this equates to around 70-80.

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[https://www.parliament.wa.gov.au/Hansard/Hansard.nsf/0/86440e017b85e16f48258813002be26d/\\$FILE/C41+S1+20220324+p1414d-1414d.pdf](https://www.parliament.wa.gov.au/Hansard/Hansard.nsf/0/86440e017b85e16f48258813002be26d/$FILE/C41+S1+20220324+p1414d-1414d.pdf)

⁷ Late Term abortion in Australia, Ass Prof Joanna Howe & Dr Debbie Garratt (provided as Appendix 2)

⁸ <https://abortionsurvivors.org/>

One such example is Melissa Ohden who wrote a book about her life and whose story was [reported by the BBC](#).⁹ In her case, she was left to die, but a nurse took pity on her and carried her to the ICU, which resulted in her life being saved, and she was adopted by a family, and eventually connected with her birth mother, who had been coerced into having the abortion which resulted in Melissa's delivery as a living baby.

The legislation should be amended to include wording contained in the *South Australian Termination of Pregnancy Act 2021* Section 7:

7—Care of person born after termination

(1) This section applies if a termination results in a person being born

(2) Nothing in this Act prevents the medical practitioner who performed the termination, or any other registered health practitioner present at the time the person is born, from exercising any duty to provide the person with medical care and treatment that is—

- (a) clinically safe, and
- (b) appropriate to the person's medical condition.

(3) To avoid doubt, the duty owed by a registered health practitioner to provide medical care and treatment to a person born as a result of a termination is no different than the duty owed to provide medical care and treatment to a person born other than as a result of a termination.

3. MANDATORY CONSIDERATIONS TO BE TAKEN INTO ACCOUNT PRIOR TO ANY LATE-TERM ABORTION

Given the advances in medical science, a baby born at 23 -24 weeks gestation has a reasonable chance of survival and to grow up to live a normal life. The Bill as presented to parliament allows a doctor to terminate a post 23 week pregnancy (Section 202ME) without any significant checks. (The current law requires the approval of 2 doctors from a panel appointed by the Minister for Health). The Bill provides (202ME (1)(b) that the doctor doing the abortion can proceed after consulting at least one other medical practitioner, who after considering all the circumstances also believes that *the abortion is appropriate in all the circumstances*. However, 202ME(4)(b) states if the doctor consulted does not believe the abortion is justified, the doctor wishing to do the abortion,

⁹ Available at <https://www.bbc.com/news/health-44357373>

can continue to canvas any number of doctors until he finds one who agrees with him/her that the termination is justified.

The Bill (Section 202ME (2)) provides very little guidance as to when a post 23 week abortion would be appropriate. Indeed Section 202ME(2) (b) allows the doctor to take into account *the person's current and future physical, psychological and social circumstances* – which effectively amounts to the right to abortion to birth for any and no reason. We therefore believe the Bill would be significantly enhanced by the inclusion of wording similar to Section 6 of the South Australian *Termination of Pregnancy Act 2021*:

6—Terminations by medical practitioner after 22 weeks and 6 days

- (1) A medical practitioner may perform a termination on a person who is more than 22 weeks and 6 days pregnant if—
- (a) the medical practitioner considers that, in all the circumstances—
 - (i) the termination is necessary to save the life of the pregnant person or save another foetus; or
 - (ii) the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the pregnant person; or
 - (iii) there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy; and
 - (b) a second medical practitioner is consulted and that practitioner considers that, in all the circumstances—
 - (i) the termination is necessary to save the life of the pregnant person or save another foetus; or
 - (ii) the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the pregnant person; or
 - (iii) there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy; and
 - (c) the termination is performed at a prescribed hospital.
- (2) In considering whether a termination is medically appropriate, a medical practitioner must consider—
- (a) all relevant medical circumstances; and
 - (b) the professional standards and guidelines that apply to the medical practitioner in relation to the performance of the termination.

(3) Without limiting section 13 of the *Consent to Medical Treatment and Palliative Care Act 1995*, a medical practitioner may, in an emergency, perform a termination on a person who is more than 22 weeks and 6 days pregnant, without complying with paragraphs (b) and (c) of subsection (1).

4. MANDATORY PAIN RELIEF FOR BABIES ABORTED POST 13 WEEKS

In 2020 Dr Robert Pierucci, a neonatologist, provided a layman's overview of the [scientific evidence for the reality of foetal pain](#)¹⁰ including the references to scientific journal articles he cites.

As the scientific evidence has become clear that babies in the womb experience pain from about 13 weeks onwards, some professional medical bodies such as [AAPLOG](#)¹¹ argue that no abortions should be done post 15 weeks. As the Abortion Legislation Reform Bill 2023 will allow abortions post 13 weeks, the legislation should make it obligatory for the abortion provider to provide the unborn child with pain relief before the abortion procedure begins.

The physical dismemberment of the unborn baby in the womb is no longer the normal practice for post 13-week abortions in WA. However, even with the use of misoprostol to induce labour, the unborn baby experiences significant trauma in the process.

Not to provide pain relief to the baby for a post 13-week abortion is barbaric.

Analgesia is routinely provided for many of the procedures performed on unborn babies in utero, in recognition of the possibility that they may cause pain or distress.

5. REQUIREMENT THAT ALL BROCHURES AND WEB PAGES PROVIDING INFORMATION ABOUT ABORTION, ALSO PROVIDE THE CONTACT DETAILS OF COUNSELLING SERVICES AND AGENCIES THAT CAN ASSIST WOMEN EMOTIONALLY AND FINANCIALLY TO KEEP/CARRY THEIR BABIES TO FULL TERM

For a woman to make a genuinely informed decision, she needs to be

¹⁰ <https://lozierinstitute.org/ignoring-the-scientific-facts-doesnt-make-the-pain-go-away/>

¹¹ <https://aaplog.org/the-harms-of-abortion-after-15-weeks-the-medical-perspective/>

given information about, and the contact details of, service providers who can assist her materially, financially and emotionally to carry the pregnancy to full term, with the option of keeping the child herself or offering it for adoption.

A number of NFP organisations provide such support free of charge to West Australian women.

The *Termination of Pregnancy Act 2021* (SA) includes a provision that a woman must be provided with information of where she can access counselling.

8—Requirement for information about counselling

(1) Before performing a termination on a person, a registered health practitioner must provide all necessary information to the person about access to counselling, including publicly-funded counselling.

(2) A registered health practitioner may, in an emergency, perform a termination on a person without complying with subsection (1).

6. UPHOLDING THE RIGHT OF CONSCIENTIOUS OBJECTION BY DOCTORS AND STAFF

The Abortion Reform Bill 2023 does not require a woman to obtain a referral to go to an abortion clinic. A woman seeking an abortion only needs to do a quick google search (e.g. abortion Perth) to find the phone number and address of one of the abortion clinics in WA and make an appointment for an abortion.

Section 202MI(2) requires a medical practitioner with a conscientious objection to refer a woman to another practitioner who will terminate the life of the unborn. This effectively requires the doctor with a conscientious objection into the situation of being an accessory to the death of that unborn child. To force this on a doctor would be a gross violation of their human rights. Freedom to act in accordance with one's conscience is a foundational principle of our democracy.

Removing the current conscientious objection provision would leave doctors vulnerable to activists who do not share their views, to seek a referral for an abortion (even though no referral is needed under the provisions of the Bill) and then report the doctor for not providing a referral.

We therefore urge that the current conscientious objection provisions be retained and Section 202MI(2) be deleted and the remaining parts of the section adjusted accordingly.

7. A BAN ON IMMEDIATE REFERRAL FOR ABORTION WHEN BABIES ARE SUSPECTED OF HAVING DOWN SYNDROME

WA Health statistics show that last year (2022) there were 71 abortions on account of the unborn child being suspected of having Down syndrome.

Persons born with Down Syndrome can live fruitful and fulfilling lives.

Parents inform us that it is standard practice that if a positive test for Down Syndrome is received, the parents are immediately offered an abortion. We are of the view that at the very least they should be referred to Down Syndrome WA to have the opportunity to be informed of the support services that are available, and to be given the opportunity to speak to a family who have a child with Down Syndrome.

This could be implemented by adding a clause to the Bill which requires medical practitioners who break the news to parents that their unborn-baby has a disability such as Down Syndrome, that they must provide referral to the relevant support organisation so that parents have the opportunity to be fully informed of the support service available to them if they choose not to abort the baby.

8. COLLECTION OF DATA ON ABORTIONS PERFORMED

In order for proper policy development around abortion, it is important for the government to collect the anonymised data of the ages of women accessing abortion and the gestational period at which abortions take place. This has revealed that in Qld and Victoria, some 44% of late term abortions are for psycho-social reasons.