



Preliminary Submission

in support of a

Petition Against Late Term Abortions

to the

Environment and Public Affairs Committee

prepared by

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on behalf of

the petitioners

and of the

Coalition for the Defence of Human Life

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1. Abortion at 20 weeks of pregnancy and later

Prior to 26 May 1998 when the *Acts Amendment (Abortion) Act 1998* received the Royal Assent and came into effect it was unlawful in Western Australia to perform an abortion at any stage of pregnancy. The *Acts Amendment (Abortion) Act 1998*, while retaining abortion as an offence in the *Criminal Code* (section 199), created an exception for abortions “performed by a medical practitioner in good faith and with reasonable care and skill” and where “the performance of the abortion is justified under section 334 of the Health Act 1911.”

Section 334 of the *Health Act 1911* provides in subsection (3), (4), (5) and (6) conditions necessary for any abortion to be justified. Subsection (7) imposes additional conditions that must be complied with in order for an abortion performed when “at least 20 weeks of the woman’s pregnancy have been completed”.

(7) If at least 20 weeks of the woman’s pregnancy have been completed when the abortion is performed, the performance of the abortion is not justified unless —

(a) 2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that the mother, or the unborn child, has a severe medical condition that, in the clinical judgment of those 2 medical practitioners, justifies the procedure; and

(b) the abortion is performed in a facility approved by the Minister for the purposes of this section.

The names of medical practitioners appointed by the Minister to the panel have never been officially published.¹

King Edward Memorial Hospital is the only facility approved by the Minister to perform abortions at 20 weeks of pregnancy or later.

During parliamentary debate on the bill to legalise abortion in 1998 it was variously reported that between six abortions and 15 abortions at 20 weeks gestation or more were performed annually at King Edward Memorial Hospital and the Hon Cheryl Davenport and other proponents of the bill gave assurances that that this number was not expected to increase under the new legislation.²

Subsequent data suggests that **these assurances were unfounded** as the number of abortions at 20 weeks gestation or more averaged 37 in the years 1999-2010 increasing to 43 in the most recent six years 2005-2010. **This is nearly three times the highest number reported in the debate for such abortions prior to legalisation.**³

2. Babies born alive following abortion at 20 weeks or later

Between July 1999 and 20 January 2011 fourteen babies have been born alive following induced abortions in Western Australia. None of these babies were resuscitated or received any other treatment.⁴

At least one of these live births following abortion occurred at post 26 weeks gestation.⁵

During debate on the bill to legalise abortion in 1998 assurances were given by proponent of the bill and then Attorney General, the Hon Peter Foss MLC that “Once the process of termination actually leads to birth, it does not matter when it occurs – it is a live person, and is treated as such by the law.” He also pointed out that the Criminal Code included “some sections [which] provide that some people are liable for not taking positive measures to prevent death”.⁶

These deaths are NOT being investigated by the Perinatal and Infant Mortality Committee, which is charged with investigating “all stillbirths and deaths of infants of 26 weeks or greater gestational age”, on the grounds that the terminations of pregnancy have been approved by the Ministerial panel.⁷

However, this leaves unanswered important questions such as whether or not any of these babies could have survived if given resuscitation and/or other treatment. After all, the panel is only authorised to approve an **abortion**, not the subsequent **homicide by neglect** of a child born alive after an approved abortion.

All babies born at 20 weeks gestation must have their birth registered. It is not fitting that no-one has investigated the deaths after live birth of these fourteen babies.

3. Premature survival

Infants born as young as 21 weeks are reported to have survived (Frieda Mangold)⁸ and flourished (James Gill)⁹. Thanks to the excellence of the services at King Edward Memorial Hospital and Princess Margaret Hospital, Western Australia has the best survival rate in Australia for prematurely born infants.¹⁰

The abortion of infants at a gestational age at which children are capable of living outside the womb raises particular issues of concern. After over 12 years and nearly 500 abortions at 20 weeks gestation or later this issue needs to be reconsidered.

4. Capacity for pain

In evidence given on behalf of the US Department of Justice paediatrician and expert on fetal pain Kanwaljeet S. Anand states that:

*... the human fetus experiences the ability to experience pain from 20 weeks gestation if not earlier and the pain experienced by a fetus is possibly more intense than that experienced by term newborns or older children.*¹¹

Much more is known about this aspect of fetal experience today than in 1998. Several US States have recently banned virtually all abortions at 20 weeks of pregnancy or later in response to this new evidence on fetal pain.

5. Eugenic abortions

The legislation allows abortion at 20 weeks of pregnancy or later if “*the unborn child, has a severe medical condition that, in the clinical judgment of ... 2 medical practitioners, justifies the procedure*”. An article by Associate Professor Jan E. Dickinson, *Late pregnancy termination within a legislated medical environment*, reports on a series of 219 abortions approved by the Ministerial panel and performed at King Edward Memorial Hospital from June 1998 to December 2003.¹²

From this article it appears that many of the abortions are performed for non-lethal malformations, including 10 abortions for non-lethal conditions at 24 weeks gestation or later. Two of these abortions were for trisomy 21 or Down syndrome. It is well known that people with Down syndrome are able to live happy and fulfilled lives. The decision by the panel to authorise the abortion of these and other children with disabilities raises grave concerns that the panel is making decisions based on discriminatory, eugenic grounds that a child is better off dead than alive with disabilities such as Down syndrome.

Such discrimination is not in accordance with Australia’s commitments under Article 10 of the *United Nations Convention on the Rights of Persons with Disabilities*. Consideration needs to be given to preventing abortions based on eugenic, discriminatory grounds.

6. Conclusion

Widespread community concern about abortions performed at 20 weeks gestation and later is evidenced by the almost 5000 signatures received to date on this petition. It is timely for the committee to investigate the matters raised by the petitioners.

Note: The matters raised in the petition have not been referred to the Ombudsman.

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7. Endnotes

1 See answer from the Parliamentary Secretary representing the then Minister for Health, the Hon Bob Kucera given on 20 March 2002 to Question on Notice No. 397 asked by the Hon Barbara Scott MLC.

2 Hansard, Legislative Council, 1 April 1998, p. 1207

3 Health Department of Western Australia, Induced Abortion in Western Australia 1999-2005, November 2006, Table 9 on p. 12, [http://www.health.wa.gov.au/publications/documents/AbortionReport1999-2005FINAL\(4\).pdf](http://www.health.wa.gov.au/publications/documents/AbortionReport1999-2005FINAL(4).pdf); Health Department of Western Australia, Induced Abortion in Western Australia 2006-2009, May 2011, Table 14 on p. 16 http://www.health.wa.gov.au/publications/documents/Abortion_Report_06-09.pdf

4 See answers to Questions on Notice asked by the Hon Ed Dermer MLC, No. 3806 given on 24 May 2011 and No. 3211 given on 15 February 2011.

5 The 12th Report of the Perinatal and Infant Mortality Committee of Western Australia: Deaths 2002-2004, p. 37, <http://www.health.wa.gov.au/publications/documents/mortality.pdf>

6 Hansard, Legislative Council, 1 April 1998, p. 1205

7 The 12th Report of the Perinatal and Infant Mortality Committee of Western Australia: Deaths 2002-2004, p. 17-18, <http://www.health.wa.gov.au/publications/documents/mortality.pdf>

8 Kink, J.F.W. "World's youngest premie goes home", iVillage, 25 April 2011, <http://www.ivillage.com/worlds-youngest-preemie-goes-home/6-a-343563>

9 "Miracle child", 11 February 2006, Canada.com, <http://www.canada.com/topics/bodyandhealth/story.html?id=db8f33ab-33e9-429f-bedc-b6ca80f61bdc>

10 O'Leary, C, "New neonatal unit open", The West Australian, 14 July 2011, <http://au.news.yahoo.com/thewest/a/-/wa/9840143/new-neonatal-unit-opens/>

11 Expert report of Kanwaljeet S. Anand, M.B.B.S., p.5 http://www.nrlc.org/abortion/fetal_Pain/AnandPainReport.pdf

12 Dickinson, J.E., "Late pregnancy termination within a legislated medical environment", Australian and New Zealand Journal of Obstetrics and Gynaecology 2004; 44: 337-341