

# Q&A FACTSHEET

## LATE-TERM ABORTION IN AUSTRALIA

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### What is abortion?

Elective abortion is a deliberate and intentional act, either through medicine or surgery, to procure the death of an in-utero human being.

### How is abortion regulated?

Abortion is regulated by state and territory governments in Australia. In each jurisdiction, abortion is permitted until birth with the approval of two doctors after a certain gestation. In some jurisdictions, such as Queensland, the second doctor who approves the late-term abortion is not required to examine the pregnant woman.<sup>1</sup>

### What is late-term abortion?

A 'late-term abortion' is an abortion at 20 weeks or more gestation. This is consistent with the definition provided by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists ('RANZCOG') in its practice guideline on late abortion.<sup>2</sup>

This factsheet provides a summary of late-term abortion data from Victoria and Queensland.

**Table 1: Total number of late-term abortions 2010-2020<sup>3</sup>**

Vic	3776
Qld	1153
Total	4929

### Why does late-term abortion occur?

There is disinformation about late-term abortions being provided by some media outlets, politicians and abortion providers who erroneously state that late-term abortions only, or predominantly, occur in the setting of life-threatening situations and serious congenital abnormality.<sup>4</sup> Although some late-term abortions occur for these reasons, other late-term

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<sup>1</sup> Queensland Health, 'Queensland Clinical Guidelines: Termination of Pregnancy' (2022) 9 <[https://www.health.qld.gov.au/\\_\\_data/assets/pdf\\_file/0029/735293/g-top.pdf](https://www.health.qld.gov.au/__data/assets/pdf_file/0029/735293/g-top.pdf)>.

<sup>2</sup> Royal Australian and New Zealand College of Obstetricians and Gynaecologists, 'Late Abortion' (November 2019) <<https://ranzocg.edu.au/wp-content/uploads/2022/05/Late-Abortion.pdf>>. See also Lauren Megaw and Jan Dickinson, 'Feticide and Late Termination of Pregnancy' (2018) 20(2) *O&G Magazine*. The VicHealth healthdirect website states, '[a] late-term or second trimester abortion is when a pregnancy is terminated after 14 weeks', see Healthdirect, 'Abortion' (Web page) <<https://www.healthdirect.gov.au/abortion>>.

<sup>3</sup> Queensland Health, Queensland Government, Perinatal Annual Reports for 2010–2020, Table 10.13 in each report ('Main condition in fetus/neonate by type of perinatal death'). Consultative Council on Obstetric and Paediatric Mortality and Morbidity, Victoria's Mothers and Babies Victoria's Maternal, Perinatal, Child and Adolescent Mortality Annual Reports, 2010-2020.

<sup>4</sup> For example, the previous Attorney-General in South Australia had stated, '[t]he need for a termination at this time is invariably tragic, usually necessitated by a foetal abnormality only capable of being diagnosed after 20 weeks': Vickie Chapman, 'Vickie Chapman: The Bill will Remove Abortion from the Criminal Law, Regulate it as the Health Procedure it is, and Remove Outdated, Inequitable Barriers', *The Advertiser* (online, 14 February 2021) <<https://www.adelaidenow.com.au/news/opinion/vickie-chapman-the-bill-will-remove-abortion-from-the-criminal-law-regulate-it-as-the-health-procedure-it-is-and-remove-outdated-inequitable-barriers/news-story/9ac3ce8d2719ffc3c30f15bbe0052c82>>. See also, Professor Euan Wallace, "Late terminations were only carried out when the fetus had a lethal congenital abnormality": Lucy Battersby, 'Doctors Urge Victorian Parliament to Vote Down Abortion Bill' (*The Age*, 24 May 2016) <<https://www.theage.com.au/national/victoria/doctors-urge-victorian-parliament-to-vote-down-abortion-bill-20160524-gp2v1w.html>>. See further, "[v]iable babies are not aborted. When terminations at or after 20 weeks' gestation do occur, they are rare and tragic cases—such as an extreme maternal

abortions are on healthy babies or babies with abnormalities that may be medically or surgically corrected if the baby is born. Victoria and Queensland health department reports state that abortions in this latter category comprise both confirmed and suspected congenital abnormalities. There is a wide range of congenital abnormalities,<sup>5</sup> many of which are not life-threatening.<sup>6</sup>

Late-term abortions for ‘psychosocial reasons’ are carried out on healthy in-utero babies. A psychosocial reason is a reason that is not in relation to the physical health of the mother or baby. ‘Psychosocial’ is a broad category with limited ‘conceptual clarity and specificity’.<sup>7</sup> It relates to any impact on an individual’s ‘quality of life’.<sup>8</sup>

As Queensland does not provide a breakdown of late-term abortions by reason, Table 2 provides a summary of late-term abortions in Victoria between 2010 and 2020 on healthy in-utero babies with physically healthy mothers.

**Table 2: Total number of late-term abortions for psychosocial reasons in Victoria 2010-2020<sup>9</sup>**

Psychosocial late-term abortions	1677
Total number of late-term abortions	3776

Late-term abortions for psychosocial reasons accounted for 44% of the total number of late-term abortions in Victoria. This demonstrates that late-term abortion does not only occur to save the physical life of the mother or because of serious congenital abnormality of the baby.

The oldest in-utero baby to be aborted for a psychosocial reason was a 37 week old baby in 2011.<sup>10</sup> 37 weeks is full term. In that same year, 10 babies between 28–31 weeks gestation were also aborted for a psychosocial reason.<sup>11</sup> Babies born at 28 weeks have an 80–90% chance of survival.<sup>12</sup>

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condition or late diagnosis of a lethal foetal abnormality’: Submission No 753 to Senate Enquiry into Decriminalisation of Abortion in Queensland (2016) submitted by anonymous self-described ‘GP and Specialist Sexual Health Physician’.

<sup>5</sup> These include: chromosomal abnormalities, musculoskeletal deformities, anomalies of limbs or digestive system, anencephaly and anomalies of cardiac, respiratory, urinary or nervous systems.

<sup>6</sup> For example, musculoskeletal deformities. See, also: Amy Corderoy, “‘I Felt I Had Been Abandoned’: Inconsistency and Fear Surrounds Late-Term Abortion”, *Brisbane Times* (online, 12 December 2014) <<https://www.brisbanetimes.com.au/national/nsw/i-felt-i-had-been-abandoned-inconsistency-and-fear-surrounds-late-term-abortion-20141121-11r83k.html>>.

<sup>7</sup> James S Larson, ‘The World Health Organization’s Definition of Health: Social versus Spiritual Health’ (1996) 38(2) *Social Indicators Research* 181; Pekka Martikainen, Mel Bartley and Eero Lahlema, ‘Psychosocial Determinants of Health in Social Epidemiology’ (2002) 31(6) *International Journal of Epidemiology* 1091.

<sup>8</sup> Ibid.

<sup>9</sup> Consultative Council on Obstetric and Paediatric Mortality and Morbidity, Victoria’s Mothers and Babies Victoria’s Maternal, Perinatal, Child and Adolescent Mortality Annual Reports, 2010-2020.

<sup>10</sup> Consultative Council on Obstetric and Paediatric Mortality and Morbidity, ‘2010 and 2011: Victoria’s Mothers and Babies Victoria’s Maternal, Perinatal, Child and Adolescent Mortality’ (Report, State of Victoria, July 2014) 141 (Table 6.20b) <<https://www.safercare.vic.gov.au/sites/default/files/2019-09/Victoria%27s%20Mothers%2C%20Babies%20and%20Children%202010%20and%202011%20Annual%20Report.pdf>>.

<sup>11</sup> Ibid.

<sup>12</sup> University of Utah Health, ‘When is it Safe to Deliver your Baby?’ (Web page, 2022) <<https://healthcare.utah.edu/womenshealth/pregnancy-birth/preterm-birth/when-is-it-safe-to-deliver.php>>.

### Is late-term abortion rare?

Another claim that is made is that late-term abortion is rare.<sup>13</sup> This designation of ‘rare’ is given because late-term abortions are only a small percentage of the total number of abortions in Australia.

Although there is no national collection of abortion data, the following studies provide some indication of the number of abortions in Australia each year. First, a study from the University of Melbourne estimated that in 2017–18, the total number of abortions in Australia was over 80,000.<sup>14</sup> The study added that the number of women undergoing chemical abortions had increased more than six-fold in the prior five years.<sup>15</sup> Second, ‘abortion with operating room procedure’ (65,451 procedures) was reported to be the third most frequent surgical procedure in Victorian hospitals between January 2014 and December 2016.<sup>16</sup> Third, an earlier study, which used Medicare and hospital morbidity statistics, found that there were 84,460 abortions in Australia in 2003.<sup>17</sup>

These studies demonstrate that the total number of abortions in Australia is large. This means that late-term abortion accounts for a small percentage. However, the fact that late-term abortion accounts for a small percentage does not make it rare. When one considers that late-term abortion ends the life of a viable human being in-utero, even one late-term abortion is significant. This fact sheet demonstrates that in only two Australian jurisdictions late-term abortion ended the life of nearly 5000 in-utero babies between 2010 and 2020.

### How are late-term abortions done?

Unlike elective abortions before 14 weeks of gestation, where the foetal bones are soft enough to suck into a suction catheter, in-utero babies older than 14 weeks are too large to fit through a catheter, and their bones have calcified, making them too firm to remove by suction alone.<sup>18</sup> Thus, the baby’s arms and legs are broken from the torso with forceps, and once the limbs have been removed, the skull is crushed and the torso and remaining pieces are removed. This procedure is known as ‘dilation and evacuation’ and in Australia is executed without anaesthetic for the baby and whilst the baby is alive. Once the baby becomes too large for a dilation and evacuation, late-term abortion occurs via ‘feticide’, which is where specific interventions occur to ensure the death of the in-utero baby prior to being delivered fully intact vaginally through labour. In this procedure, ‘feticide is performed by ultrasound specialists who have skills in accessing the fetal circulation to instil intracardiac potassium chloride, resulting in cessation of fetal cardiac activity prior to the commencement of the termination procedure’.<sup>19</sup> In Australia no pain relief is given to an in-utero baby prior to an abortion procedure.<sup>20</sup>

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<sup>13</sup> For example, see the statement by SA Greens MP Tammy Franks that ‘there were only rare situations where late-term abortion were necessary’: Eugene Boisvert, ‘Australian Christian Lobby Campaigns for SA Election Candidates who Oppose Late-Term Abortions’, *ABC News* (online, 7 March 2022) <<https://www.abc.net.au/news/2022-03-07/campaign-for-sa-election-candidates-against-late-term-abortions/100887798>>.

<sup>14</sup> Louise A Keogh, Lyle C Gurrin and Patricia Moore, ‘Estimating the Abortion Rate in Australia from National Hospital Morbidity and Pharmaceutical Benefits Scheme Data’ (2021) 215(8) *Medical Journal of Australia* 275.

<sup>15</sup> Ibid.

<sup>16</sup> Trafford Fehlberg et al, ‘The Surgical Burden of Disease and Perioperative Mortality in Patients Admitted to Hospitals in Victoria, Australia: A Population-Level Observational Study’ (2019) 22(9) *BMJ Open* e028671.

<sup>17</sup> Annabelle Chan and Leonie C Sage, ‘Estimating Australia’s Abortion Rate: 1985–2003’ (2005) 182(9) *Medical Journal of Australia* 447.

<sup>18</sup> Further information and animated videos narrated by medical professionals experienced in abortion can be found here: <<https://www.abortionprocedures.com/>>.

<sup>19</sup> Lauren Megaw and Jan Dickinson, ‘Feticide and Late Termination of Pregnancy’ (2018) 20(2) *O&G Magazine*.

<sup>20</sup> After examining all the available evidence and considering the ethical issues, researchers Derbyshire and Bockmann recommend that foetal analgesia and anaesthesia should be standard treatment in any abortion from the second trimester and especially after 18 weeks: S Derbyshire and J Bockmann, ‘Reconsidering Fetal Pain’ (2020) 46 *Journal of Medical Ethics* 3-6.

## Why should late-term abortion be illegal?

Human rights are universal and attach to all human beings.<sup>21</sup> Late-term abortion ends the life of a human being who in most cases is gestationally viable. According to a study by researchers from the Murdoch Children’s Research Institute and the University of Melbourne, ‘those born at 23 weeks have a 45% chance of surviving but those odds dramatically improve if they survive the first week of life and by the time they go home their risk drops to below 1%’.<sup>22</sup> The ability of extremely premature babies to survive depends on their access to intensive care after birth.

The fact that extremely premature babies can in fact be separated from their mothers and survive underscores the fact that these in-utero babies are complete, separate human beings. At the moment of separation, the baby is afforded all legal protection like any other human being. There is no sensible argument for the idea that babies of identical gestational ages should be allowed to lose their life simply because of their location in-utero.

A woman who undergoes a late-term abortion still must go through the process of labour and birth but because the baby has been killed in-utero, she gives birth to a dead baby. This is possibly a traumatic experience for the woman.

There is also the possibility that an in-utero baby will be born alive. According to one study, ‘[u]ntended live birth after abortion can be emotionally difficult for many (although not all) women and poses difficulties for health professionals, both in terms of process and emotion’.<sup>23</sup>

Table 3 provides a summary of babies born alive following abortion in Queensland and Victoria. In these two jurisdictions these babies have no legal rights at all, including the right to palliative care or life-saving medical treatment. The Queensland Termination of Pregnancy Guidelines state, ‘if live birth occurs...do not give life-sustaining treatment...document date and time end of life occurs’.<sup>24</sup>

**Table 3 Total number of babies born alive and left to die in late-term abortions 2010-2020<sup>25</sup>**

Vic	396
Qld	328
Total	724

A bill was introduced into the federal Senate on 30 November 2022 to accord full legal protection to babies born alive following abortion.<sup>26</sup> If passed, the Bill will ensure that a child who survives an attempted abortion will be entitled to the same level of medical care and treatment as any newborn child.

<sup>21</sup> United Nations, Universal Declaration of Human Rights. The preamble states, ‘[w]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. Article 3 stipulates, ‘[e]veryone has the right to life, liberty and security of the person’.

<sup>22</sup> See further, <here: <https://www.thewomens.org.au/news/first-days-predict-long-term-health-of-preterm-babies>>. For the full study, see: Jeanie L Y Cheong et al, ‘Changes in long-term prognosis with increasing postnatal survival and the occurrence of postnatal morbidities in extremely preterm infants offered intensive care: a prospective observational study,’ (2018) 2(12) *The Lancet Child and Adolescent Health* 872.

<sup>23</sup> Lauren Megaw and Jan Dickinson, ‘Feticide and Late Termination of Pregnancy’ (2018) 20(2) *O&G Magazine*.

<sup>24</sup> Queensland Health, ‘Queensland Clinical Guidelines: Termination of Pregnancy’ (2022) <[https://www.health.qld.gov.au/\\_\\_data/assets/pdf\\_file/0029/735293/g-top.pdf](https://www.health.qld.gov.au/__data/assets/pdf_file/0029/735293/g-top.pdf)>. Table 23 ‘Fetal considerations’.

<sup>25</sup> Queensland Health, Queensland Government, Perinatal Annual Reports for 2010–2020, Table 10.13 in each report (‘Main condition in fetus/neonate by type of perinatal death’); Consultative Council on Obstetric and Paediatric Mortality and Morbidity, Victoria’s Mothers and Babies Victoria’s Maternal, Perinatal, Child and Adolescent Mortality Annual Reports, 2010-2020.

<sup>26</sup> *Human Rights (Children Born Alive Protection) Bill 2022* (Cth).