



Hon Nick Goiran MLC

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Mr Chairman

Standing Committee on Environment and Public Affairs

Parliament House, 4 Harvest Terrace

West Perth WA 6005

Via email: env@parliament.wa.gov.au

Dear Mr Chairman,

SUBMISSION IN RELATION TO PETITION NO. 032 – INDUCED PREMATURE DEATHS

I refer to your letter dated 9 November 2017 and appreciate this opportunity to provide a written submission to the Committee regarding the issues raised in the petition I tabled on 1 November 2017.

Has there been any engagement with the Ombudsman?

In your letter you have asked me to advise whether or not the issues have been taken to the Parliamentary Commissioner for Administrative Investigations (Ombudsman). In reply to this request I make two points:

1. The issue that arguably could be the subject of investigation by the Ombudsman is the individual instances of babies being born alive but left to die. Alternatively, if it was deemed that the Ombudsman should not investigate individual cases, it is arguable that the systemic failures that have led to these child deaths ought to be investigated.
2. In any event, I advise that these matters have previously been brought to the attention of the Ombudsman. A complaint regarding 14 incidences of abortion procedures resulting in the live birth of a child was submitted to the Ombudsmen by the Coalition for the Defence of Human Life ("CDHL") on 10 February 2012. CDHL is the organisation responsible for the petition I tabled on 1 November 2017. The response provided to the complaint on 21 March 2012 was that the Ombudsman could not investigate due to section 14(1) of the *Parliamentary Commissioner Act 1971*, which sets out that the matter of administration complained about must affect 'any person or body of persons in his or its personal capacity.'

How many Western Australian children have been left to die?

The matters raised in the petition have been an issue of ongoing concern since it was first revealed on 14 February 2011, in response to a question on notice that a total of

14 incidences of abortion procedures resulting in the live birth of a child were reported between July 1999 and June 2010.¹ Further to this, an answer to a later question on notice revealed that a total of 27 cases of abortion procedures resulting in a live birth were reported between July 1999 and December 2016.²

How do we know there has been a lack of medical treatment?

I am aware that these Western Australian children were not provided medical care due to answers I received in Parliament when I first asked about their treatment on 13 May 2015. Regarding the 20 cases between July 1999 and December 2014 I received the answer that “*No treatment was reported as being performed...*” and that “*No resuscitation was reported as being performed...*”.³ In the most recent answer regarding the 27 cases between July 1999 and December 2016, I received the answer that “*... there is no record of medical intervention or resuscitation in these cases.*”⁴

Have these deaths been reported to the Coroner?

Answers from the Coroner’s Court of Western Australia to questions on notice following an Agency Review Hearing by the Community Development and Justice Standing Committee in October 2016, indicate the lack of clarity regarding whether these deaths are reportable:

“a) If the baby had a condition that was compatible with life but was allowed to die, could this be considered a reportable death?

Dependent on the circumstances it could be considered a reportable death. If the baby was born alive and the death was unexpected, unnatural or violent, or resulted directly or indirectly from injury it would be a reportable death.

b) Have any such deaths been reported to your office since 1999?

No such deaths have been reported to a coroner. ”⁵

Notably, the current Coroner’s view that these deaths could be considered reportable differs from previous communication between CDHL and the former Coroner regarding the deaths of the 14 infants who survived abortions between July 1999 and

¹ Question on Notice 2946, 38th Parliament, Parliament of Western Australia, Answered on 13 May 2015, <http://www.parliament.wa.gov.au/parliament/pquest.nsf/Parliament/pquest.nsf/SrchQON/3A2283A007D06D4248257E14001841F6?opendocument>

² Question on Notice 5, 40th Parliament, Parliament of Western Australia, Answered on 15 June 2017, <http://www.parliament.wa.gov.au/parliament/pquest.nsf/Parliament/pquest.nsf/SrchQON/6E7CBF396BE4C7984825811D001A570E?opendocument>

³ Question on Notice 2946, 38th Parliament, Parliament of Western Australia, Answered on 13 May 2015, <http://www.parliament.wa.gov.au/parliament/pquest.nsf/Parliament/pquest.nsf/SrchQON/3A2283A007D06D4248257E14001841F6?opendocument>

⁴ Question on Notice 5, 40th Parliament, Parliament of Western Australia, Answered on 15 June 2017, <http://www.parliament.wa.gov.au/parliament/pquest.nsf/Parliament/pquest.nsf/SrchQON/6E7CBF396BE4C7984825811D001A570E?opendocument>

⁵ Cooper, Gary, Principal Registrar Coroner’s Court of Western Australia, 3/11/16, [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(\\$lookupRelatedDocsByID\)/0994830CB2C41E69482580660027E811/\\$file/20161109+Coroners+Court+of+WA+-+QoNs+12+October+2016.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/($lookupRelatedDocsByID)/0994830CB2C41E69482580660027E811/$file/20161109+Coroners+Court+of+WA+-+QoNs+12+October+2016.pdf)

June 2010. In the then-Coroner's letter to CDHL, he quoted from a letter that he received from the then Acting Director General of the Department of Health advising him that "...there were significant foetal abnormalities that were incompatible with life... [and]... All cases referred to were managed appropriately and in accordance with correct procedures and policies". The former Coroner then concluded that "...it appears that the deaths were not reportable and I have no jurisdiction to take the matter further."⁶

In any event, it is clear that the Department of Health has not deemed it appropriate to report these deaths to the Coroner as is apparent by the fact that not a single case has been reported.

What about the role of the State's Child Protection agency?

Meanwhile, I have been informed that the former Department of Child Protection and Family Support ("DCPFS") has not received any notifications of these cases.⁷

In ordinary cases of premature birth or induced labour, the mother is naturally the infant's advocate. However, in these cases where the mother has made the difficult decision to terminate her pregnancy at a late stage, she is most likely not in a position to advocate for the infant's welfare.

In these cases of infant survivors of abortion where the procedure was intended to cause their death, but resulted in their live birth, the infant is entitled to the same protections under Western Australian law as any other citizen. For children in our State this includes protection against neglect.

Since the Department were not notified of these infants, it is clear that the Department of Health has not deemed it appropriate to report them, despite the fact that an agreement between the two Departments exists to ensure that DCPFS is notified of any infant considered to be at risk. The 'Bilateral Schedule: Interagency collaborative processes when an unborn or newborn baby is identified as at risk of abuse and/or neglect'⁸ outlines the set of processes and procedures that should be followed in these cases.

CONCLUSION

The bare facts of these matters that 27 Western Australian infants died in a State medical facility with no reported medical intervention should lead to the obvious conclusion that these matters must be investigated. The fact that their entrance into the world might be viewed by some as a tragedy should not hinder the course of justice, as doing so would be an overt case of discrimination. These cases deserve attention and I fully support the request of the petitioners that an Inquiry be

⁶ Letter from A N Hope, former State Coroner to Richard Egan of CDHL 14/08/12

⁷ Estimates and Financial Operation Committee, 2016-17 Budget Estimate Hearings, Answers to questions taken on notice, Question (4),

[http://www.parliament.wa.gov.au/parliament/commitnsf/\(Evidence+Lookup+by+Com+ID\)/854BEDF5F5FBE65348257FD2002F553D/\\$file/ef.ehw17.160715.aon.001.am.pdf](http://www.parliament.wa.gov.au/parliament/commitnsf/(Evidence+Lookup+by+Com+ID)/854BEDF5F5FBE65348257FD2002F553D/$file/ef.ehw17.160715.aon.001.am.pdf)

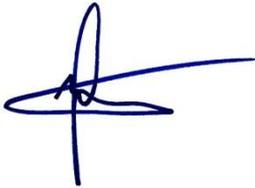
⁸ <http://www.health.wa.gov.au/circularsnew/attachments/883.pdf>

established to investigate the systemic failures that allowed at least 26 (we now know it is at least 27) Western Australians to be left to die and that this took place without any agency either having jurisdictional investigation and oversight or acting upon their jurisdictional powers of investigation and oversight.

I would be prepared to appear before the Committee to elaborate on this submission. If without the need of further oral evidence the Committee is minded to establish an inquiry I would like to participate in any hearings it may hold.

I advise I have no objection to this submission being made public and I would request that the Committee advise me of the status of my submission at its earliest opportunity so that I may inform the more than 7,000 Western Australian petitioners of my submission and the status of this important matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Nick Goiran', with a stylized flourish extending to the right.

Hon Nick Goiran MLC

Member for the South Metropolitan Region

Shadow Minister for Child Protection; Prevention of Family and Domestic Violence

Secretary to the State Parliamentary Liberal Party