Keeping Our Promises on Human Rights Protection

Public submission on the Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill

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Introduction

This Bill should be supported on the grounds that it advances a human rights legislative protection that successive Australian governments have promised "to enact and enforce" but have not yet done so, as they had promised.

This Bill is long overdue.

I. Consideration of Terms of Reference No.4:

"Support for campaigns by United Nations agencies to end the discriminatory practice of gender-selection through implementing disincentives for gender-selection abortions."

It should be clearly understood that our obligation to enact the proposed legislation is rooted not just in demonstrating "support for campaigns by United Nations agencies" but more importantly in the solemn promises our Australian governments have made to introduce just such legislation.

As a veteran of the UN Human Rights Conference circuit, and as one who was present and participated in the negotiations at both the UN Conference on Population and Development (ICPD) (1994) in Cairo and the **Fourth World Conference on Women (1995) in Beijing, I can assure the Senate Finance and Public Administration Legislation Committee that Australia did indeed promise**

> ***"to enact and enforce legislation protecting girls from all forms of violence…including prenatal sex selection…".***

As Australia did not put in any formal reservations in either the Cairo or Beijing Conference Reports signalling any objection to implementing our promises to legislate against discriminatory prenatal sex selection, our promises to implement this legislation still stand and should be honoured without further delay.

Australia, in solidarity with all the other members of the United Nations, made the commitment at the 1994 Cairo Population Conference and to "*take the necessary measures to prevent infanticide, prenatal sex selection, trafficking in girl children*." And this commitment was reaffirmed and spelled out in more detail at the Beijing Conference the following year.

1. What did the Australian Government promise to do at the 1995 Fourth World Conference on Women in the Beijing Platform for Action,?

Under "Strategic Objective L 7: Eradicate Violence Against the Girl Child", the Australian Government promised:

- **To "prevent and eliminate all forms of violence against women and girls" (Principle 29).**

- **To "enact and enforce legislation protecting girls from all forms of violence, including…pre-natal sex selection…" (Para 283 d).**

- **To "enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as…prenatal sex selection…and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices" (Para 124 (i)).**

- To "**adopt specific preventive measures** to…protect children from any abuse…violence, for example—**including the formulation and enforcement of laws, and provide legal protection** and medical and other assistance". (Para 107 q).

- To "ensure the full enjoyment by…**the girl child** of all rights and fundamental freedoms and **take effective action against violation of these rights** and freedoms" (Principle 23).

- To "**ensure the full implementation of the human rights** of women and **of the girl child** as an **inalienable, integral and indivisible** part of all human rights and fundamental freedoms" (Principle 9). [Note: 1. Under the *International Covenant on Civil and Political Rights*, the child before birth is recognized to have a right, separate from the mother's rights. The child before birth has a right to legislative protection from capital punishment: "sentence of death…shall not be carried out on pregnant women" (Article 6 (5)). The travaux préparatoires to this Covenant make it very clear that the Article 6 (5) was drafted "…to save the life of an unborn child". The ICCPR drafting history records repeatedly and irrevocably that protection of the law is to be "extended to all unborn children" (See 5th Session (1949), 6th Session (1950), 8th Session (1952) and 12th Session (1957) of the UN Commission on Human Rights). 2. Furthermore, "every human being, [including the child before as well as after birth], has the inherent right to life. **This right shall be protected by law**. No one [including the child before as well as after birth] shall be arbitrarily deprived of his life" (Article 6 (1)].

- To "take strategic action" in the critical area of concern "persistent discrimination against and violation of the rights of the girl child" (Para 46).

- **To "formulate and implement,** at all appropriate levels, **plans of action to eliminate violence against women" (Para 124 j). [Note: definition of violence: "acts of violence against women also include…prenatal sex selection…" (Para 115)].**

- **To "eliminate all forms of discrimination against the girl child…which result in harmful and unethical practices such as prenatal sex-selection and female infanticide; this is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses" (Para 277 c). [Note: Prenatal sex selection and female infanticide** are coupled throughout the document as **"harmful and unethical practices" with a clear implication that they are offences of equal gravity].**

- To "provide an environment conducive to the strengthening of the family…with a view to **providing supportive and preventive measures which protect, respect and promote the potential of the girl child" (Para 285 b).**

- "**For the girl child to develop her full potential she needs to be nurtured in an enabling environment, where her spiritual, intellectual and material needs for survival, protection and development are met and her equal rights safeguarded**…" **(Para 42).**

- To **"undertake a review of all national laws, policies, practices and procedures to ensure that they meet international human rights obligations**…" (Para 230 g). [Note: Governments should undertake a review of all national laws, policies, practices and procedures relating to terminations to ensure that they meet international human rights obligations to provide protective legislation for the girl child before as well as after birth.]

- To fully implement CEDAW "Adoption by States Parties of special measures…aimed at protecting maternity shall not be considered discriminatory" (article 4(2)). [Note: Laws regulating terminations are aimed at protecting maternity. "Protecting maternity" relates to protecting both the mother and her girl child.]

2. What did the Australian Government promise to do at Beijing regarding implementation of the Convention on the Rights of the Child?

- "We reaffirm our commitment to…the Convention on the Rights of the Child…" (Principle 8).

- **To "recognize the human dignity and worth of the girl child and to ensure the full enjoyment of her human rights and fundamental freedoms, including the rights assured by the Convention on the Rights of the Child…Yet there exists worldwide that discrimination and violence against girls begin at the earliest stages of life…They are often subjected to…violence and harmful practices such as…prenatal sex selection…" (Para 42). [Note:** Under the *UN Convention on the Rights of the Child,* Australia with other UN members agreed:

  (i) That governments have an obligation "to provide special safeguards and care, including appropriate legal protection before as well as after birth" (Preamble).

(ii) That "States Parties recognize that every child [i.e. before as well as after birth] has the inherent right to life"; and that "States Parties shall ensure to the maximum extent possible the survival and development of the child (Article 6).

(iii) That the child [i.e. before as well as after birth] is to be "protected through " appropriate legislative…measures" from "all forms" of physical violence, and from "inhuman or degrading treatment or punishment" (Articles 19 and 37). [That is, no girl child is to be punished through sex-selective abortion because she is a girl. The practice of selective termination itself constitutes degrading treatment of the girl child before birth—the girl child up until birth is treated as a chattel of her mother—procured termination proceeds on the false assumption that the mother has absolute ownership and disposal rights over her girl child.]

3. What commitments to the rights of the girl child did the Australian Government make in the Beijing Platform for Action?

Under Strategic Objective L 1: Eliminate All Forms of Discrimination Against the Girl Child:

- **"**Actions to be taken by Governments by States… that have signed and ratified the Convention, **ensure its full implementation through the adoption of all necessary legislative, administrative and other measures** and by fostering an enabling environment that encourages full respect for the rights of children" (Para 274). [Note: Australia has signed and ratified the Convention on the Rights of the Child cited here.]

- "Consistent with article 7 of the Convention on the Rights of the Child, take measures to ensure that a child…has…as far as possible, the right to know and be cared for by his or her parents" (Para 274 b). [Note: Article 24(3) of the Convention on the Rights of the Child states that 'State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children'.]

- **"In a number of countries, the practice of prenatal sex selection…suggest that 'son preference' is curtailing the access of girl children to…health care and even life itself. Discrimination against**

women begins at the earliest stages of life and must therefore be addressed from then onwards" (Para 41). [As Australia is at present a successful multicultural society, often described as "a nation of immigrants", it is clearly prudential for the Australian Government to enact laws that ensure "traditional" practices such as prenatal sex-selection "prejudicial to the health" of the girl child (her life is summarily 'terminated' without due process of law) are abolished.]

- **"The Convention on the Rights of the Child recognizes that 'States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's…disability, birth or status' (article 2, Para 1). However, in many countries available indicators show that the girl child is discriminated against from the earliest stages of life…In some areas of the world, men outnumber women by 5 in every 100. The reasons for the discrepancy include, among other things, harmful attitudes and practices, such as…son preference—which results in female infanticide and prenatal sex selection…" (Para 259).**

What was reaffirmed about human rights at Beijing by Australia and other members of the international community?

- "The World Conference on Human Rights reaffirmed the solemn commitment of all States **to fulfil their obligation to promote universal respect for, and observance and protection of all human rights** and fundamental freedoms for all, in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The **universal nature** of these rights and freedoms is beyond question." (Para 211)

- "The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations, in accordance with its purposes and principles, in particular with the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The international community must treat human rights globally, in a fair and equal manner, on the same footing, and with the same emphasis. **The Platform for**

Action reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues." (Para 212)

- "…The Platform for Action reaffirms that all human rights - civil, cultural, economic, political and social, including the right to development - are universal, indivisible, interdependent and interrelated, as expressed in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights. The Conference reaffirmed that **the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights.**" (Para 213)

- "…**Both the Declaration of the Rights of the Child and the Convention on the Rights of the Child guarantee children's rights and uphold the principle of non-discrimination on the grounds of gender**." (Para 216).

II. Consideration of Terms of Reference No.3:

The use of Medicare funded gender-selection abortions for the purpose of 'family-balancing'

The language of international human rights does not include any right to authorize gender-selection abortions for the purpose of 'family balancing'.

I would suggest that the term 'family balancing' may be accorded some legitimacy as just a subsidiary term included under the recognized term "family planning".

Thus **'family balancing'** as a form of "family planning" **remains subject to the human rights regulations applicable to "family planning"**.

It is critical to a true understanding of the term "family planning" that this Senate Committee is aware of the following very relevant information:

In the ICPD Programme of Action (1994), Australia along with the other members of the United Nations specifically excluded abortion from the term "family planning":

> ***"In no case should abortion be promoted as a method of family planning."*** **Para 8.25**

It was also agreed that "all couples and individuals have the right to decide freely and responsibly the number and spacing of their children, and to have the means to do so." (Para 7.3)

This wording was actually sourced by the drafters of the ICPD Programme of Action from the *Proclamation of Teheran* (1968) where it was never intended to include any endorsement of abortion on grounds of sex selection. The basic right of parents to "determine freely and responsibly the number and spacing of their children" was never meant to include procured abortion as a *means* or *method* for determining the number and spacing of children and certainly not for determining 'family balancing' based on aborting children of the "wrong gender".

The *Proclamation of Teheran*, 13 May 1968, came out of the First International Conference on Human Rights which met explicitly "to review the progress made in the twenty years since the adoption of the *Universal Declaration of Human Rights* and to formulate a programme for the future". It solemnly proclaims:

- It is imperative that the members of the international community fulfill their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all **without distinctions of any kind** such as race, colour, **sex**, language, religion, political or other opinions (Para 1);
- The *Universal Declaration of Human Rights* states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community(Para 2); and
- The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children(Para 16).

It would be wrong to misread into this *Tehran Declaration* a right to abort any child because the gender of the child does not suit one's "family balancing"

aspirations. This is a gross misinterpretation of "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children". Such an interpretation ignores the word "responsibly" and in effect requires arbitrary removal of the context of protection of the family and of the child called for in the preceding sentence. To interpret the second sentence of Paragraph 16 as a right to abort one's child on grounds of gender is in blatant contradiction to the commitment made (in the preceding sentence) to the protection of the child: "The protection of the family and of the child remains the concern of the international community".

Australia is irrevocably committed to providing human rights protection "**without distinctions of any kind".** This Bill go some way towards enacting that commitment.

III. Consideration of Terms of Reference No.1:

"The unacceptability to Australians of the use of Medicare funding for the purpose of gender selection abortions"

It is both unacceptable and a regrettable cause for shame that Medicare continues to fund indiscriminately gender selection abortions in Australia.

Justice is not served here

- **where legislation protecting the unborn child from lethal prejudice is non-existent;**
- **where termination of the lives of the unborn for the discriminatory reason that the child at risk is the 'wrong gender' is without legal scrutiny;**
- **where the abortion industry is without even the semblance of regulation regarding routine facilitation of lethal gender prejudice;**
- **where the shameful statistics of discriminatory 'reasons' for selective termination of children because they are found prenatally to be the "wrong gender" are no longer even recorded or collated and**
- **where this omission is being excused on the invalid grounds of "privacy".**

International human rights law rejects the right to privacy as a defence against human rights investigations. Major human rights treaties have laid down the principle that "neither privacy nor State sanction can be a defence for human rights violations", as commonly expressed in those treaties. They condemn all acts of violence resulting in or likely to lead to physical harm "whether occurring in public or in private life" and including "violence perpetrated or condoned by the State, wherever it occurs".

In the interests of justice and the promised protection of the human rights of vulnerable girl children at risk of abortion because of gender prejudice, there is a crying need for Federal Government scrutiny.

It is precisely in the current disgraceful circumstances where abortion providers are given literally a blank cheque from Medicare along with the Federal Government's naïve and excessive and unjustifiable trust in the medical profession's absolute integrity that corruption, medical fraud and malpractice are most likely to flourish to the detriment of human rights protection.

In this situation also, provision of Medicare payments for unregulated terminations of the lives of unborn children on such spurious grounds as gender selection constitute a grave offence against our international human rights obligations, for such Medicare payments amount to an endorsement, legitimization and even encouragement of a grave human rights violation.

IV. Consideration of Terms of Reference No. 2:

"The prevalence of gender selection - with preference for a male child - amongst some ethnic groups present in Australia and the recourse to Medicare funded abortions to terminate female children"

Regrettably, the prevalence of gender selection in Australia is indeterminable precisely because routine Medicare funding is provided indiscriminately, without any legal restrictions or requirements for medical establishments to ascertain and record those terminations that are being carried out on the grounds of gender 'preference'. ('Gender preference' of course is a euphemism for lethal discrimination against an unborn child on the grounds that it has been prenatally determined that the child is of the "wrong gender'.)

Objections to this Bill that rely on the facile claim that that gender prenatal selective terminations do not occur here in Australia have no substance in fact. For many years now those in the abortion industry who are involved in gender selection have successfully stymied the introduction of even the most minimal requirements to enable the gathering of statistics on this appalling practice. Such resistance to transparency on this human rights issue should no longer be acceptable, especially in the light of the promises made by our Australian Government to introduce protective legislation against this inhumane practice.

It is scandalous that there is in Australia not even a semblance of legal regulation of sex-selective terminations and certainly no credible system of checks and balances.

Australian domestic law provides no human rights protection for children at risk of termination for such discriminatory reasons as the unborn child's gender and this results in the terrible and fundamental injustice of arbitrary deprivation of human life. Such violations should no longer be permitted to remain hidden behind doctor-patient confidentiality.

Enactment of this Bill will signal Australia's solidarity with the members of the United Nations to provide appropriate legal protection for the human rights of unborn children at risk of the lethal gender selective terminations.

This Bill accords with our binding commitments in the foundation instruments of modern international human rights law:

The key facts relevant to our obligations being addressed in some part in the proposed Bill are:

- **the Universal Declaration recognized *the need for…special safeguards and care, including legal protection before as well as after birth*[1]**
- **these rights belong to "all members of the human family"[2] and especially to all children "without any exception whatsoever"[3] and "without discrimination of any kind"[4]; and**

[1] UN Declaration on the Rights of the Child, Preambular paragraphs III & IV

[2] Inherency and inalienability are core values at the heart of the International Bill of Rights:
"…recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

- **the International Covenant on Civil and Political Rights confirms that every human being, including the unborn child[5], has the inherent right to life, to be protected by law from arbitrary deprivation[6], and that this right is non-derogable.[7]**

V. Conclusion: as a sovereign nation, we keep our word

I would remind this Senate Committee that Federal Medicare funding should not cover terminations of selected human beings where that selection process abrogates a fundamental philosophical principle that underpins the whole architecture of modern international human rights law.

The whole architecture of modern international human rights law is built on a deontological basis— on a small number of fundamental principles common to all societies, philosophies and faith systems that were recognized to be universals—'permanent principles' not subject to change with each new ideology or opinion poll or democratic vote. And the application of these human rights remains based on another set of human rights principles—inclusion, inherency, equality, inalienability and indivisibility.

The whole international human rights law project was conceived and agreed as a seamless fire blanket to protect the whole of humanity. Woven tightly throughout a strong fabric are fundamental principles that ensure its effectiveness. Human rights are holistic—if you remove any of the principles, the protection becomes useless. If we put a hole in a fire blanket and it becomes useless.

This appears in the Preamble of all three instruments and was characterized by the Commission of Human Rights as "a statement of general principle which was independent of the existence of the United Nations and had an intrinsic value of its own." GAOR, A/2929 Chapter III Para. 4.

[3] UN Declaration on the Rights of the Child, Principle 1: "Every child without any exception whatsoever is entitled to these rights …"

[4] UN Convention on the Rights of the Child, Article 2.

[5] International Covenant on Civil and Political Rights (ICCPR), Article 6(5).

[6] International Covenant on Civil and Political Rights (ICCPR), Article 6(1).

[7] ICCPR Article 4(2).

Contrary to a popular misconception, our protective fire blanket of international human rights obligations is not an affront to our national sovereignty. Our human rights obligations were not imposed upon us, We recognized them as universal truths and imposed them on ourselves. Australia's representatives were full-on participants right from the beginning, from the San Francisco conference 1945. Doc Evatt, Colonel Hodgson, Paul Hasluck, John Burton and Peter Heyward. There is a clear trail of secret cablegrams between Australia's UN delegates that confirms that nothing was agreed in the foundation human rights instruments that was not signed off by the Australian Government back home.

As explained by Nobel laureate René Cassin, one of the principal authors of the Bill of Rights, we "consent" to exercise our sovereignty under the authority of international human rights law.

We solemnly agreed to honour these human rights obligations –we agreed, freely with full knowledge and full participation—these are our commitments.

We honour what we agreed to not because some UN committee which was established as advisory aid will haul us over the coals.

We honour what we agreed to because of our sovereign integrity. As a sovereign nation, we keep our word.

We agreed that our Federal Government would be the first line of defence for the human rights of all. On behalf of the states and territories here in Australia, we accepted that they too must comply with our international human rights obligations.

Article 50 of the International Covenant on Civil and Political Rights states that "the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".

When State or Territory governments introduce 'any limitation or exceptions' to universal human rights protection then it is the Federal Government that has both the authority and the duty to override that legislation and restore universal human rights.

This Bill will go some small way towards doing that and is to be commended for enactment as soon as possible.