

24 April 2013

To Whom It my Concern

RE: Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill

I refer to the Committee's consideration of the above Bill, and I urge you to support it.

Two important considerations in favour of this bill include whether abortions can legally be performed for non-medical reasons, and issues related to sex discrimination. I will address these issues below.

I will proceed on the assumption that a gender selective abortion is not taken to be an abortion performed for medical reasons. Should there be two or more reasons for an abortion, I will confine myself to situations where the abortion would not be performed but for the unborn child's gender. In other words, there may be a medical reason for the termination, but this reason would not be sufficient in and of itself. The unborn child's gender is determinative of whether an abortion is performed.

1. Abortion for non-medical reasons

Gender selective abortion is not a medical necessity. Funding these types of abortion through Medicare may be inconsistent with any State laws that do not expressly permit abortion on the basis of the unborn child's gender.

2. Gender selective abortion and discrimination

Gender selective abortion is performed on the basis of an attribute of the fetus or unborn child. That attribute is gender. The threshold issue here is whether a fetus is a person entitled to the benefit of the *Sex Discrimination Act 1984* (Cth). There are two possible views. The outcome of both views is that Medicare funding of gender selective abortion is not consistent with the *Act*.

First, if the fetus or unborn child is not a person under the *Sex Discrimination Act*, I submit that they should be entitled to the benefit of the *Act*. This is because gender selective abortion is performed on the basis of an attribute that the fetus would have once it is born and becomes entitled to the benefit of the *Sex Discrimination Act*. This is a future attribute. The concept of a future attribute underpins how the *Sex Discrimination Act* approaches discrimination on the basis of present or anticipated pregnancy.

Second, if the fetus or unborn child is a person under the *Sex Discrimination Act*, gender selective abortion is an act of discrimination. Gender selective abortion treats the unborn child in question less favourably than an unborn child of the opposite sex in the same or similar circumstances.

In either case, gender selective abortion is a discriminatory act. While external circumstances may influence whether the mother continues with the pregnancy, the deciding factor in gender selective abortion is the unborn child's gender. This is an attribute and an internal factor.

As a matter of policy, consideration should be given to the social and cultural factors that are associated with gender selective abortion. Ensuring that the *Sex Discrimination Act* applies to the provision of all Medicare-funded services provides a suitable foundation for addressing this issue.

Thank you for your time and consideration.

Yours faithfully

Joshua Anderson