

Submission to:
Standing Committee on Finance
and Public Administration –
Legislation Committee

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**Submission to the Inquiry into:
*Health Insurance Amendment (Medicare Funding for
Certain Types of Abortion) Bill 2013***

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Introduction

The Women's Centre for Health Matters Inc. (WCHM) is a community-based organisation that works in the ACT and surrounding region to improve women's health and wellbeing.

WCHM believes that health is determined not only by biological factors, but by a broad range of social, environmental and economic factors known as the 'social determinants of health'. We acknowledge that the environment and life circumstances that each woman experiences have a direct impact on her health, and in many cases, women's poor health is rooted in social disadvantage. For these reasons, WCHM is committed to taking a whole-of-life and social approach to women's health that is also firmly situated within a human rights framework.

WCHM focuses on groups of women who experience disadvantage, social isolation and marginalisation and uses social research, community development, advocacy and health promotion to:

- Provide women with access to reliable and broad ranging health-related information which allows informed choices to be made about each woman's own health and wellbeing
- Advocate to influence change in health-related services to ensure responsiveness to women's needs

Response to the *Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013*

WCHM welcomes the opportunity to respond to this Inquiry, although we are deeply concerned about the lack of comprehensive evidence upon which it is based. WCHM does not support sex-selective abortion, as it reflects deeply entrenched gender inequality. However, WCHM does not believe that such inequality is addressed through the restriction of health services for women and through the restriction of Australian women's reproductive rights. WCHM is concerned that the Terms of Reference are based on the assumption that sex-selective abortion is happening in Australia and that it is being funded through Medicare, when there is no evidence to support either position. WCHM believes then that were the Bill successful, it would only serve to impact on women's access to affordable abortion services in Australia. All women should be able to access safe, legal and affordable abortion services and therefore, based on the lack of supporting evidence for this Bill, WCHM urges Parliament to reject it entirely.

In this submission we have used the term 'sex-selective abortion' rather than 'gender-selective abortion' as this is a more accurate description of the procedure.

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

There is no comprehensive or reliable evidence to suggest that Medicare is being used to systematically fund sex-selective abortion in Australia, a point which Senator Madigan himself concedes. Currently, no standardised national data on the number of abortions performed or reasons for obtaining them exists in Australia, rendering it impossible to state that there is systematic sex-selective abortion taking place.

Were sex-selective abortions taking place in Australia on a systematic basis, this would be revealed through skewed gender ratios. Australia has a normal ratio of male to female births. Looking at data from the Australian Bureau of Statistics from 2011, just over half (51%) of all births registered were male babies, resulting in a sex ratio at birth of 105.7 male births per 100 female births.¹ This is a biologically normal sex ratio at birth and does not indicate a skewed sex ratio in Australia. Taking a view of the population overall, we see that at June 2011 there were 124,700 more females than males residing in Australia, with 11.2 million females and 11.1 million males.²

There is also no reliable evidence to suggest that Australians find the use of Medicare funding for sex-selective abortions unacceptable, as studies exploring this have not been conducted. However, the attitudes of Australians towards abortion more generally are known. According to the Australian Survey of Social Attitudes in 2003, 81 percent of Australians agree that women should have the right to choose an abortion. This was independent of the respondents' gender or religious affiliation. Only 9 percent of the 5000 adults questioned disagreed with a woman's right to choose, and the remaining 10 percent were undecided.³

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

Just as there is no comprehensive or reliable evidence to suggest that Medicare is being used to systematically fund sex-selective abortion in Australia, and just as no standardised national data on the number of abortions performed or reasons for obtaining them currently exists in Australia, it is impossible to assert that some ethnic groups are accessing Medicare funded abortions for the purposes of male sex-selection.

In addition, there is no way of showing that Medicare is being used for sex-selection, as the Medicare item numbers that are used by health professionals to cover abortions include a range of procedures other than 'induced abortion', such as fetal death. Because there is no way to extricate numbers of voluntary terminations from unintended pregnancy endings, Medicare items are not a reliable means through which to measure, or restrict, sex-selective abortions.

If Australia were experiencing skewed sex ratios, there is no evidence to suggest that restricting sex-selective abortion would correct these. This is because such a restriction would not treat the

¹ Australian Bureau of Statistics, *Births, Australia, 2011*, Commonwealth of Australia; Canberra, 2012, <http://www.abs.gov.au/ausstats/abs@.nsf/Products/3301.0~2011~Main+Features~Births?OpenDocument>

² Australian Bureau of Statistics, *Population by Age and Sex, Regions of Australia, 2011*, Commonwealth of Australia; Canberra, 2012, <http://www.abs.gov.au/ausstats/abs@.nsf/Products/3235.0~2011~Main+Features~Main+Features?OpenDocument#PARALINK6>

³ Australian Consortium for Social and Political Research, *Australian Survey of Social Attitudes*, Australian National University; Canberra, 2003.

deeply entrenched gender inequality that leads to a preference for male children in the first place. We have explored this issue below.

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

Just as there is no comprehensive or reliable evidence to suggest that Medicare is being used to systematically fund sex-selective abortion in Australia overall or among some ethnic groups, and just as no standardised national data on the number of abortions performed or reasons for obtaining them currently exists in Australia, it is impossible to assert that Medicare funded sex-selective abortions are being sought for the purpose of family balancing.

Where Australian studies have explored reasons for undergoing abortion, they have revealed that the reasons given by women most commonly relate to: the woman herself; the potential child; existing children; and the woman's partner and other significant relationships.⁴ The common thread amongst these reveal that the decision to terminate a pregnancy for many women centers on concerns about what it means to be a good mother, in terms of capacity and resources.⁵ Choosing a termination is a complex process; all Australian women should be afforded the right to control their reproduction and to access affordable services to support their choices.

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

WCHM supports the UN effort to end the discriminatory practice of sex-selection. However, there are two points pertinent to this issue in relation to the current Bill:

- a) Going back to our earlier statement: There is no comprehensive or reliable evidence to suggest that Medicare is being used to systematically fund sex-selective abortion in Australia, a point which Senator Madigan himself concedes. Currently, no standardised national data on the number of abortions performed or reasons for obtaining them exists in Australia, rendering it impossible to state that there is systematic sex-selective abortion taking place.

With no evidence to suggest that sex-selective abortion is routinely being sought in Australia—by certain ethnic groups or otherwise—to perpetuate a favour for male children, it would be foolhardy to implement a restriction to Medicare funding for sex-selective abortion in support of the UN's drive to end gender discrimination through sex-selective abortion.

⁴ Rosenthal D, Rowe H, Mallett S, Hardiman A, Kirkman M. *Understanding women's experiences of unplanned pregnancy and abortion*, Melbourne: Key Centre for Women's Health in Society, University of Melbourne, 2009, http://www.kcwhs.unimelb.edu.au/_data/assets/pdf_file/0006/135834/UPAP_Final_Report.pdf

⁵ Marie Stopes International. *Late abortion: a research study of women undergoing abortion between 19 and 24 weeks gestation* London: Marie Stopes International; 2005; Jones RK, Frohwirth L, Moore A. 'I would want to give my child, like, everything in the world': How issues of motherhood influence women who have abortions. *Journal of Family Studies*. 2008;29(1):79-99.

Further, and again as stated above, because there is no way to extricate numbers of voluntary terminations from unintended pregnancy endings, Medicare items are not a reliable means through which to measure, or restrict, sex-elective abortions. It is more likely that such restrictions would simply pave the way to restricting access to essential medical services for those most in need, limit Australian women's reproductive rights, and contribute to shame and stigma already surrounding abortion in Australia.

- b) The Terms of Reference suggest that the fact that sex-selection, with a preference for a male child, is known to take place in some countries is a discussion somehow relevant to the current enquiry, which it is not, as the current enquiry is about Medicare funded practices taking place in Australia. It is relevant however, to consider the success of measures in other countries to restrict access to sex-selective abortion where this has been proved to be an issue.

Sex-selective abortion is known to take place in countries in which gender inequality is deeply entrenched and male children are more highly valued. Restrictions on sex-selective abortion in such countries—where a complex set of cultural and social factors reinforce the value of males over females—has proved ineffective precisely because restrictions alone do not motivate social change.

It is through widespread societal change in attitudes towards women that lasting reductions in the demand for sex-selective abortions will occur.⁶ The UN itself states that legal restrictions in the use of technology for sex-selection purposes and sex-selective abortion have had little effect in isolation from efforts to reduce social and gender inequalities.⁷

WCHM would sooner support a Senate Inquiry into comprehensive, well-resourced and whole-of-government approaches to reduce gender inequality and promote the status of women than support any facet of the current Bill.

5. Concern from medical associations in first world countries about the practice of gender-selection abortion, viz. Canada, USA, UK.

In countries where social, religious or economic conditions do not support a preference for male or female children, such as the USA, UK and Australia, there is no evidence that such a preference exists.⁸

Rather, medical associations in those countries, such as the Royal Australian College of Obstetricians and Gynaecologists (RANZCOG), the Royal College of Obstetricians and

⁶ World Health Organization, *Preventing Gender-Biased Sex Selection: An Interagency Statement OHCHR, UNFPA, UNICEF, UN Women and WHO*, 2011, http://whqlibdoc.who.int/publications/2011/9789241501460_eng.pdf

⁷ *Ibid.*

⁸ Edgar, D., "From sorting sperm to sorting society", in, eds. Skene, L, & Thompson, J., *The sorting society: the ethics of genetic screening and therapy*. Cambridge University Press, 2008

Gynaecologists (RCOG), the American College of Obstetrics and Gynaecologists (ACOG) regard abortion as an important health service for women.

WCHM believes that any effort to reduce demand for sex-selective abortion should be channeled through broad interventions to promote gender inequality and the status of women. The restrictions proposed in the current Bill would not advance the status of women or reduce gender inequality in Australia. It is more likely that the proposed restrictions would curtail women's right to control their reproduction and limit women's access to vital family planning services.

General comments

A note on Human Rights by Women's Health Victoria⁹

Restrictions on sex selective abortion threaten the human rights of the women it seeks to protect because it can restrict access to abortion. The Beijing Declaration, which stemmed from the Fourth UN Conference on Women in 1995, unequivocally affirms that 'the right of all women to control all aspects of their health, including their own fertility, is basic to their empowerment'.

This is not referred to in the Statement of Compatibility with Human Rights that applies to the *Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013*.

A number of other UN human rights instruments are also omitted. For example, The UN Factsheet on the Right to Health asserts that: "States should enable women to have control over and decide freely and responsibly on matters related to their sexuality, including their sexual and reproductive health, free from coercion, lack of information, discrimination and violence".

Australia also has an obligation to implement the principles of the Convention on the Elimination of All Forms of Discrimination Against Women. Article 12 requires that measures be taken to ensure "on a basis of equality of men and women, access to health care services, including those related to family planning". Restrictions on abortions restrict this access. In addition, a woman's right to be treated equally and with dignity and respect must not be infringed by placing restrictions on abortion services.

The Statement of Compatibility with Human Rights refers to the child's right to life.

There is much jurisprudence demonstrating that life begins at the moment of birth. The *Law of Abortion: Final Report* published by the Victorian Law Reform Commission in 2008 provides an exploration of the key issues.

In international law there is no precedent for interpreting the word 'human being' as including the

⁹ Butera, R., *Inquiry into Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013*, Women's Health Victoria; Melbourne, 2013, http://whv.org.au/static/files/assets/afb81687/Submission_HealthInsuranceAmendmentBill.pdf

foetus.

The Universal Declaration of Human Rights states that 'everyone' has a right to life and, following debate during the drafting process, chose not to include specific reference to the foetus.

In the International Covenant on Civil and Political Rights, the right to life has been consistently interpreted as beginning at birth. The Committee on the Convention on the Rights of the Child has referred to the need for States to take measures against unsafe abortion practices.

The UN Human Rights Committee has also made consistent calls for states to decriminalise abortion laws.

The right to life is not specifically conferred by Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), however the CEDAW Committee has framed the issue of maternal mortality as a result of unsafe abortions as a violation of a woman's right to life.

In addition to these conventions, the Victorian Law Reform Commission also cited examples of case law in Australia, as well as the UK, Canada, South Africa and France, in which the foetus does not have legally enforceable rights until they are born.

This extensive body of law should be acknowledged in any discussion of the right to life in the Statement of Compatibility with Human Rights

Comprehensive and reliable evidence is critical to mounting a case worthy of consideration by Australia's elected representatives. The *Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013* has no such supporting evidence. Given this absence, WCHM believes that changes in law and policy in this area are not just unnecessary, but their consideration is wasteful of time and taxpayer resources.

The problem which this Bill seeks to address is not supported by any evidence in reality. Were this Bill successful, WCHM fears that it would more likely succeed in diminishing Australian women's reproductive rights and access to essential medical services.

Recommendation

The *Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013* should not be passed into law.