



24 April 2013

Committee Secretary  
Senate Finance and Public Administration Committees  
Canberra ACT

By email: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

Dear Committee Secretary,

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

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Finance and Public Administration Committees for the opportunity to comment on the Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. In summary, WLS NSW opposes the Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013 (the Bill). WLS NSW supports genuine efforts to prevent gender-biased sex selective abortion where it occurs internationally, however we cannot identify any reason for a legislative focus on this issue in the Australian context.

**Prevalence and evidence base**

4. WLS NSW recognizes that sex selective abortions occur in some countries and views this as "a symptom of pervasive social, cultural, political and economic injustices against women, and a manifest violation of women's human rights".<sup>1</sup> It is violence against women and girls.
5. We are not aware of evidence establishing that sex selective abortions occur in Australia or that Medicare funding has been used for this purpose. We also note that the Explanatory Memorandum and Second Reading Speech for the Bill material do not refer to any specific reports or research on these issues.

**Statement of compatibility with human rights**

6. The Bill purports to limit gender selective discrimination and enhance human rights. However, the Bill fails to identify and address the potential for erosion of human rights, for example, the risk of such legislation obstructing access to safe, affordable, legal reproductive health options, including

<sup>1</sup> World Health Organisation, *Preventing gender-biased sex selection: An interagency statement OHCHR, UNFPA, UNICEF, Women and WHO*, 2011 at 4.



## WOMEN'S LEGAL SERVICES NSW

abortion. WLS NSW believes that the Bill is misusing the human rights framework to undermine women's reproductive autonomy.

7. Australia has ratified and supported a range of human rights instruments, which call for access to non-discriminatory, high standard health care and the elimination of harmful practices and stereotypes that discriminate against women.

### *Convention on the Elimination of All Forms of Discrimination Against Women 1979*

8. Australia's human rights obligations to eliminate discrimination and violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) ratified by Australia on 28 July 1983. CEDAW and subsequent instruments, such as, CEDAW Committee *General Recommendation No. 24 Women and health (General Recommendation No. 24)*, place positive obligations on State parties to identify and eliminate barriers to women's access to the highest attainable standard of health care, "particularly in the areas of family planning, pregnancy, confinement and during the post-natal period".<sup>2</sup>
9. Whilst the Statement of Compatibility with Human Rights for the Bill refers to Article 12 of CEDAW it only provides a narrow view of the Bill's compatibility with the intentions of CEDAW. For example, *General Recommendation No. 24* elaborates on Article 12 and relevantly calls on State parties to "demonstrate that health legislation, plans and policies are based on scientific and ethical research and assessment of the health status and needs of women in that country and take into account any ethnic, regional or community variations or practices based on religion, tradition or culture".<sup>3</sup> We submit the Bill fails to do this.
10. We also note that CEDAW Article 16(1)(e) requires State parties to eliminate discrimination against women and ensure that all women have "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights".<sup>4</sup> As noted above, we do not believe that there is evidence that gender biased sex selective abortions occur in Australia, however if the Australian Parliament was called upon to respond to such evidence in the future we submit that a proposal to simply remove financial assistance for certain types of abortion would be an inappropriate and ineffectual response. Rather we refer to the World Health Organisation, *Preventing gender-biased sex selection: An interagency statement* for guidance on supportive and culturally appropriate strategies for women to access information, education and services.<sup>5</sup>

### *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1989*

11. Australia ratified the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* in 1989. The Committee Against Torture has subsequently emphasised that gender is a key factor in the implementation of the Convention, stating that "the contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions...".<sup>6</sup>
12. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently published a report that "focuses on certain forms of abuses in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment".<sup>7</sup> The guidelines for interpretation of the report emphasise that sex and

<sup>2</sup> CEDAW Committee, *General Recommendation No. 24: Women and health*, A/54/38/Rev.1, chap. I (1999) at para 2.

<sup>3</sup> CEDAW Committee, *General Recommendation No. 24: Women and health*, Note 2 at para 9.

<sup>4</sup> *Convention on the Elimination of all Forms of Discrimination Against Women, 1979*, ratified by Australia on 28 July 1983.

<sup>5</sup> WHO, *Preventing gender-biased sex selection: An interagency statement*, at 9-11.

<sup>6</sup> Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States Parties*, 24 January 2008, UN Doc. CAT/C/GC/2 at para 22.

<sup>7</sup> United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, Human Rights Council, Twenty-second session, Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

## WOMEN'S LEGAL SERVICES NSW

gender bias plays a prominent role in the analysis of reproductive rights violations as forms of torture or ill treatment.<sup>8</sup>

13. The Special Rapporteur notes that “abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender.”<sup>9</sup> Examples of such violations include, “abusive treatment and humiliation in institutional settings, denial of legally available health services such as abortion and post-abortion care and violations of medical secrecy and confidentiality in health-care settings”.<sup>10</sup> We are concerned that the Bill may result in invasive screening processes that could violate rights under CAT.

### *International Convention on the Elimination of all forms of Racial Discrimination, 1965*

14. Australia ratified the *International Convention on the Elimination of all Forms of Racial Discrimination* on 30 September 1975 (CERD). Interpretation of CERD has increasingly recognised the intersectionality of gender and emphasised that racial discrimination does not impact women and men in the same way.<sup>11</sup> We are concerned that if the Bill were to pass there could be disproportionate scrutiny of women and girls from particular ethnic, race, cultural and religious backgrounds when they access sexual and reproductive health services.

### *International Covenant on Economic, Social and Cultural Rights, 1966*

15. Sexual and reproductive health rights and freedoms are also enshrined in the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, which Australia ratified on 10 December 1975.<sup>12</sup>

### *United Nations Commission on the Status of Women, Fifty-seventh session*

16. The Commission of the Status of Women (CSW) is the main global policy-making body dedicated exclusively to the promotion of women's rights and the advancement of gender equality. It brings together UN member states, UN bodies, NGOs and other organisations.
17. The theme of the recent CSW was the elimination and prevention of all forms of violence against women.<sup>13</sup> Representatives from the Australian Government, Australian Human Rights Commission and Australian NGOs attended. Sexual and reproductive rights formed part of the discussions. Relevantly the Commission in its draft agreed conclusions recognised that “violence against women has both short- and long-term adverse consequences on their health, including their sexual and reproductive health, and the enjoyment of their human rights, and that respecting and promoting sexual and reproductive health, and protecting and fulfilling reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action and the outcome documents of their review conferences, is a necessary condition to achieve gender equality and the empowerment of women to enable them to enjoy all their human rights and fundamental freedoms, and to prevent and mitigate violence against women”.<sup>14</sup>

---

A/HRC/22/53 (1 February 2013) at 1.

<sup>8</sup> UN CAT Report of the Special Rapporteur Note 7 at para 38.

<sup>9</sup> UN CAT Report of the Special Rapporteur Note 7 at para 46.

<sup>10</sup> UN CAT Report of the Special Rapporteur Note 7 at para 46.

<sup>11</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender related dimensions of racial discrimination*, A/55/18, annex V, (2000) at para 1.

<sup>12</sup> See Articles 10 and 12. See also R Cook, ‘International Protection of Women’s Reproductive Rights’ (1992) 24 *New York University Journal of International Law and Politics* at 700 for discussion of how Article 10 and also Article 23 of the *International Covenant on Civil and Political rights* can be interpreted as involving the right of a woman to positively plan, time and space the births of children to maximize their health and her own.

<sup>13</sup> United Nations Economic and Social Council, *Draft agreed conclusions submitted by the Chair of the Commission, Ms. Marjon V. Kamara (Liberia), on the basis of informal consultations: The elimination and prevention of all forms of violence against women and girls*, Commission on the Status of Women, Fifty-seventh session, E/CN.6/2013/L.5 (4-15 March 2013).

<sup>14</sup> CSW, Fifty-seventh session, Note 12 at 22 and (nn).

WOMEN'S LEGAL SERVICES NSW

18. In conclusion, we do not support the Bill. No evidence has been provided to establish that sex selective abortions occur in Australia. If there was such evidence we question the use of financial disincentives to address complex gender based discrimination. We are also concerned by the proposal's incompatibility with Australia's human rights obligations.

Yours sincerely,  
Women's Legal Services NSW

Janet Loughman  
Principal Solicitor