

Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee,

1.0 Summary position

1.1 I welcome the Senate Committee's attention to so-called 'sex-selective abortion'. There is an extensive body of social science research on sex-skewed ratios and 'son-preference' cultures that demonstrates 'sex-selective abortion' is a practice that discriminates against women (see below S.3). This is a human rights issue and Australia has a role to play in advancing informed debate at the international level and upholding our international obligations with respect to women and girls (see below S.4).

1.2 However, in my opinion, the proposed amendment is an inappropriate means to achieve its stated goal and thus, for the reasons set out below (which are addressed in the balance of the submission), I do not support the Bill.

- In the social-science research regarding measures that may ameliorate the position of women in 'son preference' cultures, legislation to curb sex-selective abortion is shown to be ineffective and strategies that address broader socio-economic, political and cultural factors are promoted;
- Australia's human rights obligations would be undermined by legislation that fetters the relationship between a woman and her doctor in terms of the advice she may seek and the advice a doctor may provide;
- There is no solid demographic evidence that I have been able to access that indicates 'sex-selective abortion' is being practiced in Australia by ethnic communities or the broader community. Sex ratio statistics are remarkably consistent across the Australian population.

1.3 I urge the Senate Committee to reject the Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013.

2.0 Background

2.1 From 1998 to 2004, at The George Washington University, DC, USA, I was Professor of Anthropology and Director of Women's Studies, the oldest graduate and undergraduate program in the USA. I undertook research, supervised graduate students, served as a reader of topical manuscripts and a member relevant Editorial Boards, chaired symposia and participated in debates regarding women's reproductive rights, human rights and international conventions regarding the rights of women and girls. I did so as a feminist anthropologist with a particular interest and expertise in cross-cultural considerations regarding gender, race and class. I returned to Australia in 2005 and have followed with some interest the debates regarding women's reproductive rights here.

2.2 On the basis on the above experience, I would make this observation: The most effective way to address so-called 'sex-selective abortion', where it can be demonstrated as a deliberate practice, is to improve the status of women within the society. If women are respected, valued and rewarded for their contribution to families, communities and society, the cultural bases of so-called 'sex selective abortion' are significantly eroded. Such a cultural shift usually requires a massive investment in women's education, participation of women in all aspects of their society (political, economic, religious, cultural), removal of bars to women's employment, nurturing of women in areas of employment traditionally considered to be male and a concomitant recognition of the worth (in cultural and economic terms) of work traditionally undertaken by women.

3.0 Literature Review: 'Son-preference' cultures and skewed sex ratios

3.1 In societies where 'son preference' is a facet of the social structure, females are systematically discriminated against in diverse ways including sex-selective abortion, infanticide, limited educational investment, differential nutrition and health care. Skewed sex ratios are strong evidence of such systemic discrimination¹. More subtle demographic analyses of family size and gender birth order can also indicate ways in which 'son preference' is contributing to skewed sex ratios².

¹ Following the WHO (2011), I am adopting 102-106 male births to 100 female as 'normal', see Preventing Gender-Biased Sex Selection: An Interagency Statement, OHCHR, UNFPA, UNICEF, UN Women and WHO - http://whqlibdoc.who.int/publications/2011/9789241501460_eng.pdf. The work of Nobel Prize winning Indian philosopher and economist, Amartya Sen (1990), More than 100 million women are missing, *New York Review of Books* 37 (20) sparked a vibrant debate that demonstrated multi-variant analyses were appropriate; that with better health care more girls survived and the ratios began to 'normalise'; Amartya Sen (1990) provides an excellent overview of the state of the debate in the 1990s - <http://www.nybooks.com/articles/archives/1990/dec/20/more-than-100-million-women-are-missing/?pagination=false>; more recent studies track the impact of changes in key variants e.g. Stephan Klasen and Claudia Wink (2002). A Turning Point in Gender Bias in Mortality? an update on the number of missing women. *Population and Development Review* 28 (2): 285-312; Das Gupta, Monica Chung *et al* (February 2009). ask 'Is There an Incipient Turnaround in Asia's 'Missing Girls' Phenomenon?' *World Bank Policy Research Working Paper* 4846. SSRN 1354952.

² Gender birth order can also be evidence of 'son preference'; see Tina Rosenberg. (2009). The Daughter of Deficit, *The New York Times Magazine*, August 23, where Das Gupta demonstrated skewness in later births: i.e. if the first born was a girl, then the sex of the second child was disproportionately male, but if the first born was male, the second born was more likely to be consistent with 'normal' ratios.

3.2 There is a burgeoning literature (demographic, sociological, anthropological, historical, political, religious and legal) that explores various dimensions of skewed sex ratios that are a consequence of 'son preference practices'³. From my reading of this literature, I can find no evidence, other than anecdotal, that 'sex selection abortion' is an Australian practice. I would note the absence of skewed sex ratios is strong evidence of the absence of 'sex-selective abortions' and /or systematic neglect of girl children⁴.

3.3 In the comparative literature, there is no evidence that laws banning practices such as sex-selective abortions in other countries have eradicated the practice⁵. Bio-medical ethicists, Julie Zilberberg⁶ (2007) addresses 'son preference' in her analysis:

Sex selection in India and China is fostered by a limiting social structure that disallows women from performing the roles that men perform, and relegates women to a lower status level. Individual parents and individual families benefit concretely from having a son born into the family, while society, and girls and women as a group, are harmed by the widespread practice of sex selection. Sex selection reinforces oppression of women and girls. **Sex selection is best addressed by ameliorating the situations of women and girls, increasing their autonomy, and elevating their status in society.** One might argue that restricting or prohibiting abortion, prohibiting sex selection, and prohibiting sex determination would eliminate sex selective abortion. But this decreases women's autonomy rather than increases it. Such practices will turn underground. Sex selective infanticide, and slower death by long-term neglect, could increase. If abortion is restricted, the burden is placed on women seeking abortions to show that they have a legally acceptable or legitimate reason for a desired abortion, and this seriously limits women's autonomy. Instead of restricting abortion, banning sex selection, and sex determination, it is better to address the practice of sex selection by elevating the status of women and empowering women so that giving birth to a girl is a real and positive option, instead of a detriment to the parents and family as it is currently. But, if a ban on sex selective abortion or a ban on sex determination is indeed instituted, then wider social change promoting women's status in society should be instituted simultaneously.⁷ [emphasis added]

³http://scholar.google.com/scholar?q=%22sex+selection%22+%22status+of+women%22&hl=en&as_sdt=0%2C38; <http://www.nber.org/papers/w15725>;
[http://scholar.google.com/scholar?hl=en&q=uganda+compulsory+education&as_sdt=1%2C38&as_sctp=](http://scholar.google.com/scholar?hl=en&q=uganda+compulsory+education&as_sdt=1%2C38&as_sctp;);
<http://www.sciencemag.org/content/333/6042/587.short>

⁴ See the five analyses of sex ratios by ancestry, birthplace of mother and father, language and religion based on data from the Australian Bureau of Statistics in the supplementary submission of the NFAW to this inquiry.

⁵ See Bela R. Ganatra. (2008). Maintaining access to safe abortion and reducing sex ratio imbalances in Asia, *Reproductive Health Matters*, 16(31 Suppl.): 90–98, <http://www.ipas.org/~media/Files/Ipas%20Publications/GanatraRHM2008.ashx>; Sneha Barot (2012). *A Problem-and-Solution Mismatch: Son Preference and Sex-Selective Abortion Bans*. Guttmacher Policy Review, Spring 2012, Volume 15, Number 2: <http://www.guttmacher.org/pubs/gpr/15/2/gpr150218.html>; World Health Organization, Preventing Gender-Biased Sex Selection: An Interagency Statement OHCHR, UNFPA, UNICEF, UN Women and WHO, 2011, see http://whqlibdoc.who.int/publications/2011/9789241501460_eng.pdf

⁶ <http://www.linkedin.com/pub/julie-zilberberg-phd/5/9a8/408>

⁷ Julie Zilberberg. (2007). Sex selection and restricted abortion and sex determination, *Bioethics*, 21: 517–519, <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8519.2007.00598.x/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false>

3.4 In their analysis of 'Female Demographic Disadvantage in India 1981–1991: Sex Selective Abortions and Female Infanticide', Sudha Shreeniwas⁸ and S. Irudaya Rajan⁹ (2002) note:

Legislation curbing prenatal sex determination and policy measures addressing societal female devaluation have had little impact, suggesting that female demographic disadvantage is unlikely to improve in the near future.¹⁰

3.5 South Korea stands as an example of a 'society in transition'¹¹ which offers clues regarding addressing skewed ratios. While there is still room for improvement, especially with respect to the ratio of later order births, from a peak of 116 in the mid 1990s the ratio fell to 107 in 2007. Woojin Chung and Monica Das Gupta (2007) pose the question: Why is son preference declining in South Korea?¹² As Senha Bardot (2012) points out the lowering of the sex ratio is to be attributed to a wide range of inter-related factors:

although the government pursued concerted attempts to enforce its laws against prenatal sex detection, researchers give much of the **credit for the turnaround to the country's industrialization, urbanization and rapid economic development, which together played a major role in fundamentally altering underlying social norms**. Other trends that increased the status of women included more female employment in the labor market, new laws and policies to improve gender equality and awareness-raising campaigns through the media. [emphasis added]

3.6 China: A rural/urban differential. In the 'Declined Significance of Gender Bias in Urban China', Wen Wang (2010)¹³ summarises the results of her fieldwork that demonstrates that 'more than twenty years continued and fast economic growth in China is accompanied by the change in traditional culture on 'son preference' among urban parents.' The declined significance of gender bias is related to urbanisation, parents' education, and the practice of the new government policies. She observes:

Similar to most societies, male dominance in China is prevalent. The difference between Western societies and China is, in Western societies females tend to have higher educational attainment than males, but females' educational

⁸ <http://www.uncg.edu/hdf/facultystaff/Shreeniwas/Vita%20Sudha%20Shreeniwas.pdf>

⁹ <http://www.healthworkermigration.com/team/77-india-team/313-dr-irudaya-rajana.html>

¹⁰ *Development and Change*, Volume 30, Issue 3, pages 585–618, July 1999;

<http://onlinelibrary.wiley.com/doi/10.1111/1467-7660.00130/abstract;jsessionid=ED338EA4C5A2203C84CB921D777E2F0B.d03t03?deniedAccessCustomisedMessage=&userIsAuthenticated=false>; see also S. Sudha and S. Irudaya Rajan. (2003). Persistent daughter

disadvantage in India: what do estimated sex ratios at birth and sex ratios of child mortality risk reveal? *Economic and Political Weekly Special Issue on Sex Ratios in India*, 38, 4361- 4369.

¹¹ We need to allow that economic and social changes will register on sex ratios, a phenomenon addressed by Christophe Guilmo (2009) in 'The sex ratio in transition in Asia', *CEPED Working Paper* 5: 11-19.

¹² Woojin Chung W and Monica Das Gupta (2007). Why is son preference declining in South Korea? The role of development and public policy, and the implications for China and India, World Bank Policy Research Working Paper, Washington, DC: World Bank, 2007, No. 4373; Woojin Chung and Monica Das Gupta. (2007). The Decline of Son Preference in South Korea: the roles of development and public policy, *Population and Development Review* 33 (4): 757–783.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1020841

¹³ Professor of Sociology at California State University, see <http://www.inter-disciplinary.net/wp-content/uploads/2010/02/chengpaper.pdf>

investment return in terms of income are often lower than that of males, whereas in China females have both lower educational attainment and lower income than those of males.

3.7 Case studies of countries that have been cited as 'son-preference cultures' require careful analyses that take account of a wide range of social, economic, geographic, cultural and historical factors with respect to understanding skewed sex ratios. To succeed, strategies for amelioration will need to be based on sound research of the specifics of each case. One size solutions will be unlikely to fit all situations.

4.0 The Human Rights Context

4.1 Women's rights are human rights¹⁴. In 'Preventing gender-biased sex selection: an interagency statement' the OHCHR, UNFPA, UNICEF, UN Women and WHO¹⁵ emphasises that it is necessary to address the causes rather than symptoms. They state:

The rise in sex-ratio imbalances and normalization of the use of sex selection is caused by deeply embedded discrimination against women within institutions such as marriage systems, family formation and property inheritance laws ...

Although the relatively recent availability of technologies that can be used for sex selection has compounded the problem, **it has not caused it**. In settings where there is no underlying context of son preference, the increased availability of such techniques is not associated with their use in sex selection. This has been demonstrated by an analysis of national data in India in which prenatal diagnostic tests (for reasons other than sex selection) were found to be much more widely used in the south where sex-ratio imbalances do not exist than in the north where they do (Bhat & Zavier, 2007) [emphasis added]

4.2 Their statement reaffirms

the commitment of United Nations agencies to encourage and support efforts by States, international and national organizations, civil society and communities to uphold the rights of girls and women and to address the **multiple manifestations of gender discrimination including the problem of imbalanced sex ratios caused by sex selection**. It thus seeks to highlight the public health and human rights dimensions and implications of the problem and to provide recommendations on how best to take effective action. [emphasis added]

At the same time, States have an obligation to ensure that these injustices are addressed without exposing women to the risk of death or serious injury by denying them access to needed services such as safe abortion to the full extent of the law. **Such an outcome would represent a further violation of their rights to life and health as guaranteed in international human rights treaties, and committed to in international development agreements**. [emphasis added]

¹⁴ Charlotte Bunch. (1990). Women's Rights as Human Rights: Toward a Re-Vision of Human Rights, *Human Rights Quarterly*, Vol. 12, No. 4 (Nov., 1990), pp. 486-498,

<http://www.jstor.org/discover/10.2307/762496?uid=3737536&uid=2&uid=4&sid=21101840078003>

¹⁵ http://whqlibdoc.who.int/publications/2011/9789241501460_eng.pdf

4.3 CEDAW¹⁶ is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process and to develop family codes that guarantee women's rights [emphasis added]:

- Article 16 (e) '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**;
- Article 10 (h) 'Access to specific educational information to help to ensure the health and well being of families, **including information and advice on family planning**.
- Article 12 (1) 'States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, **access to health care services, including those related to family planning**. (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.'

4.4 These articles are contextualised by Article 5: 'States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving **the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes** or on stereotyped roles for men and women.

4.5 Australia needs to be part of the global conversation regarding the amelioration of the social, political, legal and cultural position of women and girls and indeed is a participant by virtue of being a signature to various international instruments from the Universal Declaration of Human Rights to CEDAW.

5.0 The case for legislative action as advanced in the documentation associated with the proposed Bill to limit access to Medicare benefits for 'sex-selective abortions'

5.1 The Second Reading Speech¹⁷ may be summarised thus:

- The practice is abhorrent;
- The practice is documented in other countries;
- Key agencies in the UN have condemned the practice;
- The practice is not confined to Asian or South East Asian countries;
- It occurs in Australia;
- Sex-selection devalues human life;
- The stated aim of the Bill is 'to remove any government sanction to these abhorrent practices of abortion for sex selection.'

¹⁶ <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

¹⁷ Senate Hansard, 19 March 2013, page 2036;
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3A%22s909%22%20Dataset%3Ahansardr,hansards%20Title%3A%22second%20reading%22;rec=1

5.2 The case as explored in the 'Explanatory Memorandum'¹⁸ may be summarised thus:

- International agencies have condemned gender-biased sex selection;
- Countries with a skewed sex ratio include China, India, Afghanistan, Pakistan, Taiwan, South Korea, Bangladesh, Azerbaijan, Armenia;
- Communities that originate in some of these regions may continue the practice in Australia;
- UNPFA has called for legislation to curb the practice and to encourage supportive measures;
- Termination on grounds of gender specific disorder not within the ambit of the Bill;
- The Bill will have no foreseeable financial impact;
- Citing Article 12 of CEDAW and Section 24, Part 3 of the Convention on the Rights of the Child, the Bill is said to be 'compatible with human rights as it limits gender selective discrimination which enhances human rights'.

5.3 The proposed amendment. The Bill inserts s17A in the *Health Insurance Act* such that no benefit would be payable if the termination is carried out solely because of the gender of the foetus.

6.0 Commentary on the Case as summarised in S.5 above

- There is wide spread rejection of 'sex-selective abortion': on that point there is consensus. There is also wide spread agreement in the social science literature that legislative bans are ineffective and a multi-stranded strategy is required. The underlying causes are identified as that complex of socio-economic, political and cultural values and practices that manifest as 'son preference'. Sex skewed ratios are one consequence of sex-selective abortions. However,
 - the case as advanced (above S.5) presents no demographic evidence of skewed sex ratios in Australia;
 - the case as advanced (above S.5) presents no demographic evidence of skewed sex ratios in specific ethnic communities in Australia;
 - the case relies on anecdotal evidence.
- Women seek abortions for diverse reasons, under a variety of conditions, some more coercive than others. In Australia, there is no way of knowing if a particular abortion, which may be covered by the relevant Medicare benefit, is a 'sex-selective' abortion.
- The restriction sought in the amendment will limit the information that may be sought and provided in the doctor/patient relationship and as such is a restriction of women's rights, not the empowerment envisioned by the interagency statement and CEDAW (see above S.4).
- The explanatory memo fails to acknowledge the broader advocacy of a suite of measures by the interagency statement (see above S.4).
- The amendment fails to address the causes of so-called 'sex-selection abortion'

¹⁸ Bills of the Current Parliament: Health Insurance Amendment Bill 2013 - <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs909%22>

which are located within broader social, cultural, political, religious structures and the subject of the interagency statement.

7.0 Terms of Reference

In the context of the foregoing discussion of sections 3-6, I now turn to the Terms of Reference. In undertaking the inquiry, the Committee should consider:

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

There is no evidence, apart from anecdotal accounts, that sex-selective abortions are being performed in Australia. If such abortions were being performed we would expect to see a skewing of the sex ratio at birth. Analyses of the most recent census figures do not demonstrate such skewing.

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;

Again no evidence is advanced to support the proposition that there is a 'preference' amongst 'some ethnic groups' and the Census figures do not support the proposition that 'son preference' is a practice of 'some ethnic groups' in Australia. Further, it could be argued that to single out specific ethnic groups is contrary to racial discrimination laws and Australia's obligations under CEDAW.

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

This would be extremely difficult to determine and once again only anecdotal evidence is advanced.

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

I would urge the committee to support international conventions that seek to improve status of women and to read the articles of the Conventions within the context of an understanding of women's rights as human rights (see above S.4).

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

This literature is complex and beyond the scope of what I can address in this submission at this time. However, I would point the Committee to a helpful roundtable discussion on Sex selection on 'Sex Selection: The Systematic Elimination of Girls' by Nandini Oomman and Bela R. Ganatra (2002)¹⁹.

8.0 Conclusion

In conclusion, I do not endorse the practice of 'sex-selective abortion'. I do not support the Bill. I would urge the Senate Committee not to intrude on the relationship between a woman and her doctor but rather to foster those practices that empower women and to

¹⁹ Nandini Oomman and Bela R. Ganatra. (2002). Roundtable discussion on 'Sex Selection: The Systematic Elimination of Girls', *Reproductive Health Matters*, 10(19):184–197 www.elsevier.com/locate/rhm

take seriously the various subtle and more overt ways in which girl children and women are discriminated against. I urge the Committee to reject this Bill as an inappropriate instrument by which to achieve its stated objects.

Professor Diane Bell
26 April 2013