

Additional Comments by Senator John Madigan

1.1 In response to the Report from the Committee on Finance and Public Administration Legislation Committee on the Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013, I wish to comment on a number of issues.

These include:

- The lack of consultation through the common practice of public hearings;
- The absence of any recommendations based on common ground evident in submissions both for and against the Bill in the areas of data collection and opposition to gender-selection procedures; and
- Selective interpretation of UN Convention commitments.

Absence of broad consultation through Public Hearings

1.2 Public hearings are a normal feature of Senate Committee inquiries yet, despite the broad community interest as evidenced in the receipt of 919 submissions and 239 form letters, the Finance and Public Administration Legislation Committee did not allow for public hearings. The absence of such hearings are a departure from regular process and the selective application could be interpreted as a bias against particular issues and a departure from democratic procedure especially when significant amounts of time are given to public hearings for issues which attract far less community comment.

Public hearings would have allowed for clarification of a number of issues raised by the submissions received.

1.3 **Public hearings would have obtained more information and clarification from key organisations.** Submissions were received by two peak medical specialist bodies: The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), and the National Association Specialist Obstetricians and Gynaecologists.¹ The RANZCOG, in a brief one-page submission, stated: 'The College does not support termination of pregnancy for the reason of family balancing or gender preference'. They indicated: 'The college would be pleased to participate further in this inquiry as deemed appropriate by the Committee.'² Clearly, they would have contributed further insights had the possibility of a public hearing been available. Similarly, would have been possible to ask the National Association of Obstetricians and Gynaecologists as to the reasons for their recommendation for withholding information relating to the gender of the fetus until 20 weeks.³ As this was the first submission received, it appears the Association was clear on their policy but the

1 National Association of Specialist Obstetricians and Gynaecologists, *Submission 1*; see also, The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, *Submission 137*.

2 The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, *Submission 137*.

3 National Association of Specialist Obstetricians and Gynaecologists, *Submission 1*.

submission was brief and the Committee may have gained some understanding of that policy if an opportunity for public hearings had been made available.

1.4 **Public hearings would have provided the opportunity for *in camera* evidence** for participants who felt vulnerable in giving their identity as in the following example: Media reports of evidence of sonographer's experience in revealing the gender of the fetus emerged during the period of enquiry.⁴ 'I gave her a death sentence,' she told the journalist. The sonographer in question was not prepared to reveal her identity for fear of jeopardizing her employment, but claimed that revealing the gender of the fetus was becoming a source of unease amongst her colleagues.

1.5 Public hearings would have demonstrated fairness in the Committee's dealings with this contentious issue.

Common Ground: opposition to Gender-selection abortion

1.6 According to the Committee's Report, many submissions both for and against the Bill (2.3-10; 3.13) were clearly opposed to gender selection abortions and in a number of submissions studies and surveys were quoted which demonstrated the unacceptability of gender-selection abortion to Australians.⁵ One submission which argued against the Bill used the term 'abhorrent' to describe gender-selection abortion.⁶ Other submissions opposed to the Bill also opposed gender-selection abortion in principle.⁷ If gender-selection abortions are 'abhorrent' and objectionable, then surely it warrants some sanctions.

Common Ground: data collection

1.7 The Committee's Report notes in both Chapter 2 and Chapter 3 that there is insufficient data collection in the Medicare process to accurately determine the number of abortions executed for gender selection. (2.2; 3.3) It is not disputed that this is the case. Abortion is legal in some Australian jurisdictions regardless of the reasons for abortion. There is a practice in the provision of abortion of: 'Don't ask; don't tell'. If women are not asked for the reasons they seek abortion then there is no reason to tell.

1.8 Family Planning NSW outlines the 'glaring inadequacies' in the data available on pregnancy terminations and details some of these gaps as follows:

- There is no mandatory reporting of pregnancy terminations in some states and territories;

4 <http://www.heraldsun.com.au/news/opinion/gender-bias-cannot-start-in-the-womb/story-e6frfhqf-1226635210990>

5 Australian Federation for the Family, *Submission 151*, p. 1; see also, Reformed Resources, *Submission 173*, p. 2; Australian Christian Lobby, *Submission 186*, p. 1; Catholic Women's League Australia Inc. *Submission 853*, p. 2.

6 National Foundation for Australian Women, *Supplementary Submission 74*, p. 2.

7 Women's Health Victoria, *Submission 2*, p. 1; see also, Public Health Association of Australia, *Submission 72*, p. 4.

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- Only South Australia, Northern Territory and Western Australia have routine notifications and published reports;
 - Australian Institute of Health and Welfare (AIHW) pregnancy termination estimates date back to 2003 and 2004;
 - Changes have been made to abortion legislation in some states, yet there is no way of measuring the impact of those changes. The recent TGA listing of Mifepristone is an example;
 - There is no single Medicare item number for abortion related services;
 - Medicare items apply to procedures which are not specifically pregnancy terminations, but include procedures such as those undertaken as a result of miscarriage or foetal death. It is therefore impossible to gain a precise figure for the number of abortions performed; and
 - This data does not report on important associated variables describing the geographic, social and economic situation of the women who present for a pregnancy termination.⁸

This submission urges the Committee 'to address the gaps that exist in data and research around pregnancy terminations to support future evidence based legislation and policy.'

The glaring inadequacies of data collection in terms of pregnancy terminations requires redress. The absence of such significant data must have consequences for the quality of health services offered to women.

Commitment to United Nation Conventions

1.9 Australia is a signatory to the International Conference on Population and Development, Cairo 1994 (ICPD) which means Australia agreed to take all necessary action to achieve its objectives. These include action 4.23:

Governments are urged to take the necessary measures to prevent infanticide, prenatal sex selection, trafficking in girl children and use of girls in prostitution and pornography.⁹

The Committee Report identifies many submissions that referred to Australia's international obligations (2.36–2.41 and 3.30–3.32). Yet many of these submissions failed to take the obligation to prevent sex selection seriously. Mrs. Rita Joseph's submission almost exclusively addressed Australia's obligation as a signatory to UN Conventions.¹⁰ Her submission is quoted twice by the Committee Report but only in relation to the collection of data (2.2) and again in reference to 'prevalence in Australia' (2.20) but never in relation to Australia's international obligation that is her substantive concern.

8 Family Planning NSW, *Submission 171*, p. 5.

9 <http://web.unfpa.org/icpd/icpd-programme.cfm#ch4b> retrieved 22 June 2013

10 Rita Joseph, *Submission 69*.

Australia unequivocally voted in favour of action to eradicate pre-natal sex selection at both Cairo (1994) and Beijing (1996).¹¹

An Interesting Parallel

1.10 Many of the arguments against the Bill suggested that the Bill was ill conceived because:

- it is difficult to determine that gender selection abortion takes place (evidence of one concrete case was provided to the Committee);
- that there was no evidence that certain cultural groupings where such a practice is common were engaging in the gender-selection abortion in Australia (evidence of one case provided); and
- that a restriction on gender selection abortion might restrict women's access to abortion (the Bill is clear that it is only aimed at Medicare funded gender selection abortions).

An interesting parallel may be drawn between gender selection abortion and Female Genital Mutilation (FGM) where similarities and differences may be noted in legislative and educational approaches:

- it is difficult to determine the prevalence of FGM;¹²
- prosecutions are rare;¹³ and
- it is practiced among certain cultural groups.

1.11 In the case of FGM a number of educative and legal initiatives have been put into place through the Government's National Compact on Female Genital Mutilation. There is no ambiguity in the Compact regarding FGM. It states clearly that FGM is unacceptable. The Compact also declares Australia's commitment to stand by its obligations to the UN, which include taking action to end the practice of FGM for women and girls living in Australia, settling in Australia and throughout the world, who are or may be in the future affected by FGM.¹⁴

The commitment is to:

- take action to end the practice of FGM for women and girls;
- living in Australia;
- settling in Australia; and

11 Beijing Platform for Action Chapter VI L. The Girl Child, <http://web.unfpa.org/icpd/icpd-programme.cfm#ch4b> retrieved 22 June 2013

12 <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr13-tp-tp027.htm> retrieved 22 June 2013

13 <http://www.helenkroger.com.au/Parliament/SenateSpeeches/tabid/92/articleType/ArticleView/articleId/18/Female-Genital-Mutilation.aspx> retrieved 22 June 2013

14 <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr13-tp-tp027.htm> retrieved 22 June 2013

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- throughout the world who are or may be in the future affected by FGM.¹⁵

The National Compact on FGM is unswerving in its commitment: 'We will not excuse or ignore the practice of FGM.'¹⁶ It aims to educate migrants and refugees where such practices are culturally acceptable that such a practice is not acceptable in Australia. FGM is illegal in all states and territories, despite the fact that it is difficult to detect.

1.12 In their 11 December 2012 press release entitled 'Gillard Government to act on Female Genital Mutilation in Australia'¹⁷ Prime Minister Gillard and Health Minister Plibersek referred to the practice of FGM as 'barbaric' and 'horrific'. The joint statement continues: 'We do not know how widespread this practice is in Australia but we know there have been instances, and anecdotal evidence suggests these are not isolated.'¹⁸

1.13 The Prime Minister and Health Minister state that although there was only limited apparently anecdotal evidence that this practice has been occurring in Australia, 'One such procedure in this country is one too many'.¹⁹

1.14 The joint statement announced that the government would, on the strength of worldwide condemnation of this practice and 'anecdotal evidence' that it was occurring in Australia, immediately implement the following measures:

- Provide \$500,000 in grants to fund organisations to run education and awareness activities and support change within communities, as we know public education and awareness is key to change.
- New research and data collection on female genital mutilation will be undertaken as a priority. This will help us build the evidence needed to support women and girls affected by female genital mutilation.
- Minister Plibersek will hold a national summit on this subject early next year, bringing together community, health, legal and policing experts to discuss how we can increase awareness and support and reduce incidence in Australia.
- The Attorney-General will review the current legal framework in Australia, and provide advice on whether any changes are required to ensure full protection against female genital mutilation, at home or abroad.²⁰

1.15 It is evident that both FGM and gender selection abortions are abhorrent practices; that both are condemned by the UN and other international bodies; that Australia has made a commitment to oppose both practices.

15 *ibid.*

16 *ibid.*

17 <http://www.pm.gov.au/press-office/gillard-government-act-female-genital-mutilation-australia> retrieved 24 June 2013

18 *ibid.*

19 *ibid.*

20 *ibid.*

1.16 Furthermore, it is evident that both FGM and gender selection abortions are practiced among certain cultural groups and that there is anecdotal and other evidence of both being practiced in Australia.

1.17 Yet, despite the direct similarities between the two practices one is utterly condemned and the other conveniently ignored.

1.18 I note that the committee has chosen not to make a recommendation on this Bill. Despite this I feel there are a couple of recommendations I would like to make.

Recommendation 1

1.19 That this Bill be passed without amendment or delay.

Recommendation 2

1.20 That in passing this Bill the Senate would call for the Prime Minister and Health Minister to throw their support behind a program of measures to oppose Gender Selection Abortion that would mirror the program they have implemented to oppose Female Genital Mutilation.

Senator John Madigan

Senator for Victoria