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**Liberty Victoria Submission to the
Standing Committee on Finance and Public Administration
Inquiry into the
*Health Insurance Amendment
(Medicare Funding for Certain Types of Abortion) Bill 2013***

1. Introduction

- 1.1 Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.
- 1.2 Liberty Victoria welcomes the opportunity to contribute to this inquiry. We wish to make a number of preliminary comments about this Bill before addressing the terms of reference. Liberty Victoria does not support this Bill. The Bill has been put forward by a member of parliament who is a well-known anti-choice advocate. In his maiden speech, Senator Madigan condemned the Victorian abortion laws and referred to them as 'the worst in the western world.'¹ He has described himself as 'unashamedly pro-life' and a strong opponent of abortion.² We consider this Bill merely a disingenuous strategy to limit access to abortion.³ In so far as it purports to deal with

¹ Senator Madigan, *First Speech*, 25 August 2011:
http://www.aph.gov.au/Senators_and_Members/Senators/First_Speeches/First_Speeches/John_Madigan_Senator_for_Victoria

² Melissa Fyfe "[Red-leather day for the DLP](#)", *Sydney Morning Herald* 12 September 2010.

³ It has been pointed out by one commentator that 'proposals to ban sex-selective abortion by those who would ban all abortions are little more than a cynical ploy' that ignores the real problem of son preference, economic and social conditions that entrench that preference and women's inequality – see Sneha Barot, 'A Problem-and-Solution Mismatch: Son Preference and Sex-Selective Abortion Bans', (2012) 15 *Policy Review* 18:
<http://www.guttmacher.org/pubs/gpr/15/2/gpr150218.html>

the problem of sex-selection by limiting abortion, this is not supported by the United Nations as a solution to that problem (discussed below).

- 1.3 Before turning to the UN recommendations at the outset it must be pointed out that there is no research suggesting or indicating that sex-selection or the performance of abortions for the purpose of sex-selection are a problem in Australia. Even amongst migrant groups where the country of origin has a son-preference and sex-selection problem, the same social pressures do not exist in Australia. Indeed, all academic research as well as UN and NGO research indicates that it is confined to only a few regions of the world, namely East and South Asia, Korea, China and parts of India.⁴

2. Preventing gender-based sex selection: An interagency statement by OHCHR, UNFPA, UNICEF, UN Women and WHO

- 2.1 This section of our submission corresponds to number 4 of the terms of reference concerning giving support to UN agencies to end the discriminatory practice of gender sex-selection through implementing disincentives for gender-selection abortions. The phrasing of this 'Term' misleadingly implies that UN agencies are advocating limiting abortion as a means of solving the problem of sex-selection. This is untrue. Indeed, although states have an obligation to address the issue of gender-biased sex selection, the UN interagency statement makes clear, that it must be addressed:

without exposing women to the risk of death or serious injury by denying them access to needed services such as safe abortion ... 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.⁵

- 2.2 In recognising that gender-biased sex selection occurs in specific countries, the Interagency Statement suggests that governments must address broader issues such as underlying social and gender inequalities, laws for more equitable patterns of inheritance, direct subsidies at the time of a girl's birth, scholarship programmes, financial incentives or pension programmes for families with girls only.⁶ These types of recommendations make it very clear that the UN is not addressing developed countries. They implicitly acknowledge that the problem is limited to developing countries and not developed countries such as Australia.
- 2.3 In relation to abortion, none of the academic experts, nor the UN, has recommended limiting the availability of abortion as a solution to son-preference in any culture. The UN Interagency Report states clearly:

Restricting access to certain reproductive technologies in order to prevent an imbalanced male-to-female ratio in a given society should not result in the curtailing of the human rights of women. In addition to the difficulty of enforcing the legal prohibition of sex detection and resulting sex-selection-abortions, evidence shows that if women do not

⁴ See *Preventing gender-based sex selection: An interagency statement by OHCHR, UNFPA, UNICEF, UN Women and WHO* (2011): http://www.who.int/reproductivehealth/publications/gender_rights/9789241501460/en/; Norbert Gleicher and David H Barad, 'The choice of gender: is elective gender selection, indeed, sexist?' (2007) 22 *Human Reproduction* 3038; Sneha Barot, above n 3; Bela Ganatra, 'Maintaining Access to Safe Abortion and Reducing Sex Ratio Imbalances in Asia', (2008) 16 *Reproductive Health Matters* 90; and Gita Sen, *Gender Biases Sex Selection: Key Issues for Action*, Briefing Paper for WHO, http://www.dawnnnet.org/uploads/documents/Sex%20Selection%20GS%20draft%2008062009_2011-Mar-8.pdf

⁵ Interagency Statement, *ibid* V.

⁶ *Ibid*.

have access to safe abortion services they often turn to unsafe options – or if they cannot terminate a pregnancy, they are forced into childbearing until a boy child is born.

Various United Nations human rights treaty monitoring bodies have established that the rights of women and girls to life, health and development are violated when they undergo an unsafe abortion because safe services were denied to them, or are forced to carry an unwanted pregnancy to term.

Ensuring access to services for safe abortion to the full extent of the law is crucial, as is working with communities to address the social norms and practices that increase the vulnerability of women and girls to the health risks associated with unsafe abortion.⁷

- 2.4 In supporting the UN's position, Bela Ganatra, in examining sex-selection imbalances in Asia, argues that restricting abortion as a solution is problematic. Not only does it miss the root-cause of the problem of sex-selection, such as poverty and social attitudes, but it leads to high female morbidity from unsafe abortion.⁸ Ganatra provides an example of a proper strategy to address imbalanced sex ratios and son preference in South Korea. South Korea was suffering from grossly imbalanced sex ratios but has gradually turned this around towards a normal balance. Part of this came from large cultural shifts including a shift away from a farm-based economy to a more urbanised culture and nuclear family structure. Greater workforce participation with better opportunities for women, better education for women, and parents having retirement savings for old age security, have all contributed to a decline in cultural gender-imbalances.⁹ In addition, new laws giving women greater rights and responsibilities within the family, recognising women-headed households, and a 'Love your daughters' media campaign were also effective.¹⁰
- 2.4 Indeed, persons advocating limiting abortion are clearly ignoring the evidence about effective solutions. Liberty Victoria would be disappointed to think that 'sex-selection abortion' is being misused as a slogan when other arguments for restricting abortions have failed. Our concern about the motives for this Bill is further elevated when academic experts and the UN clearly see restricting access to abortion as the least effective approach.

3. The prevalence of gender selection – with preference for a male-child – amongst certain ethnic groups present in Australia and the recourse to Medicare funded abortions to terminate female children

- 3.1 There is no medical-academic/empirical evidence that sex-selection abortions are 'prevalent' amongst certain ethnic groups in Australia. Nor has Senator Madigan produced any such evidence. Indeed all the evidence from the United Nations and experts in the area is that it is restricted to specific areas such as regions of China and South Asia. It is duplicitous to suggest that it is a problem merely in order to limit Medicare funding of abortion in Australia. If there were real concern about sex selection amongst certain 'ethnic' groups in Australia, then the focus should be on equality-for-women campaigns amongst those groups and emulating successful approaches in other countries. Before pursuing those approaches, however, it would

⁷ Ibid 4

⁸ Ganatra, above n 4, 94.

⁹ Ibid.

¹⁰ Ibid.

be necessary to find there is actually a problem in Australia, rather than a mere erroneous belief.

4. The unacceptability to Australians of the use of Medicare funding for the purpose of gender selection abortions and for ‘family balancing’

- 4.1 A study undertaken in 2010 by the University of Melbourne, School of Population Health, found that 69% of respondents disapproved of the use of IVF for sex selection, and disapproval of sex-selection abortions reached 80%.¹¹ Yet there is, we must reiterate, no evidence that sex-selection abortions occur in Australia. We believe that changing access to Medicare for abortions in Australia because of cultural biases and practices occurring in other countries is inexcusably bad public policy.
- 4.2 Furthermore, such practices are already outlawed in Australia. For example, S28 of the *Assisted Reproductive Treatment Act 2008 (Vic)* states:

Ban on sex selection

(1) A person carrying out a [treatment procedure](#) must not use [gametes](#) or an [embryo](#), or perform the [procedure](#) in a particular way, with the purpose or a purpose of producing or attempting to produce a [child](#) of a particular sex.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) Subsection (1) does not apply if—

(a) it is necessary for the [child](#) to be of a particular sex so as to avoid the risk of transmission of a genetic abnormality or a genetic disease to the [child](#); or

(b) the Patient Review Panel has otherwise approved the use of the [gametes](#) or [embryo](#) for the purpose or a purpose of producing or attempting to produce a [child](#) of a particular sex.

- 4.3 The National Health and Medical Research Council, established under the *National Health and Medical Research Council Act 1992*, has also placed a ban on sex selection. Section 11.1 of the NHMRC *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* states that:

Sex selection is an ethically controversial issue. The Australian Health Ethics Committee believes that admission to life should not be conditional upon a child being a particular sex. Therefore, pending further community discussion, sex selection (by whatever means) must not be undertaken except to reduce the risk of transmission of a serious genetic condition.¹²

- 4.4 As to sex-selection abortions for ‘family balancing’, there is no evidence that this is occurring in Australia. Section 11.1 of the Guidelines prohibits the use of sex-selection other than for the reduction of transmission of a serious genetic condition. In addition, where sex-selection is undertaken by a new sperm separation technique called MicroSort Gender Selection¹³, which relies on separating sperm based on identifying differences between spermatozoa bearing X and Y chromosomes and the

¹¹ University of Melbourne, *Boy or Girl? Australians think we shouldn't choose*, Press Release (22 December 2010) <http://newsroom.melbourne.edu/news/n-436>

¹² The National Health and Medical Research Council, *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (2007) http://www.nhmrc.gov.au/files_nhmrc/publications/attachments/e78.pdf

¹³ See MICROSORT, <http://www.microsort.com/>

separated sperm being used for intrauterine insemination, no abortion is involved in the process. We note that the Bill is not concerned with new technological means by which to select one gender over the other. It appears to be concerned only about abortion; it again appears an insincere strategy to limit women's access to abortion rather than evincing a real concern about sex selection.

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

- 5.1 There have been a number of attempts in other first world countries to outlaw abortions based on sex-selection. For example, recently a Republican representative, Trent Franks from Arizona, introduced the Prenatal Non-Discrimination Act (PRENDA) into the US House of Representatives. It was opposed by women's groups and has been described 'as a thinly veiled attempt to make it more difficult for women to seek abortion care and imprison doctors [who] provide that care.'¹⁴ PRENDA was sponsored by an anti-choice Republican representative as part of a radical anti-choice agenda. The Bill was defeated by 246 votes to 168. President Obama opposed the Bill and it was viewed by Democrats as a 'backdoor' attempt to stifle all abortions.¹⁵
- 5.2 A recent attempt to introduce a similar Bill was also undertaken in Canada by Conservative backbench MP Mark Warawa. Thus far he has failed to have the Bill debated in the Canadian Parliament.¹⁶ The Bill was disavowed by other members of the Conservative Party and is viewed by some commentators as an attempt to restart the abortion debate.¹⁷ The issue also arose in the UK recently when some MPs suggested that legislation was needed to monitor abortions by gender to protect girls.¹⁸ But this was rejected by the British Government. In rejecting government monitoring of abortions, the Health Minister, Earle Howe, said that 'introducing testing to determine the sex of the foetus would require new laboratory tests, which would have a cost implication and require consent', and secondly, that he was concerned about the amount of "distress [it would cause women] during what is already a difficult time".¹⁹

6. Conclusion

- 6.1 It is clear from the above discussion that countries comparable to Australia have rejected Bills such as that proposed by Senator Madigan. In addition, limiting abortion is not a solution supported by the UN and other experts. How well are Senator Madigan's assertions supported by empirical evidence? The fact is they are not. Liberty Victoria believes this Bill should be rejected. We consider that 'sex-selective

¹⁴ Jodi Jacobson, *PRENDA Dies in House as GOP Continues to Divert Attention From Real Problems by Instead Attacking Women*, RH Reality Check: <http://rhrealitycheck.org/article/2012/05/31/prenda-dies-in-house-as-gop-continues-to-divert-attention-from-real-problems-by-i/>

¹⁵ Newsmax, *Obama opposes sex-selection abortion ban, House rejects Bill*, 2013 Thomson/Reuters: <http://www.newsmax.com/Newsfront/obama-house-sex-selective/2012/06/01/id/440861>

¹⁶ Laura Payton, *Sex selection abortion motion blocked again*, CBS News, <http://www.cbc.ca/news/canada/story/2013/03/28/pol-backbencher-revolution-warawa-motion.html>

¹⁷ CBC News, *The Nanos Number: Back bench could be trouble for Harper*, <http://www.cbc.ca/news/politics/story/2013/03/27/pol-nanos-number-mar27-abortion.html>

¹⁸ John Bingham, 'Monitor abortions by gender to protect unborn girls, say MPs', *The Telegraph* (2013): <http://www.telegraph.co.uk/news/politics/9995407/Monitor-abortions-by-gender-to-protect-unborn-girls-say-MPs.html>

¹⁹ The Telegraph, *Gender abortion scandal: Ministers rule out monitoring sex*, (2013) <http://www.telegraph.co.uk/health/healthnews/9853134/Gender-abortion-scandal-ministers-rule-out-monitoring-sex.html>

abortion' is a faux argument put forth by a Senator who, like Brian Harradine, has made it a mission to overturn women's access to abortion. This is implicit in Senator Madigan's statements quoted above. Also implicit in Senator Madigan's statements and speeches is his desire to re-start the abortion debate in Australia. This dubious position should be strongly rejected and the federal parliament should affirm women's reproductive rights recognised under international and Australian state law and rebuff this clumsy attempt to put abortion back on the agenda.