Public Submission prepared by Rita Joseph

12th October 2005

Inquiry into Health Legislation Amendment Bill 2005

In examining the provisions of the Bill relating to new powers to set conditions, limitations and restrictions on the circumstances in which Medicare benefits will be payable for health services, I believe these proposed powers are necessary.

My particular concern is in regard to Medicare funding for those particular health services which contravene the human rights obligation of the Australian Federal Government, under international human rights law, to provide appropriate legal protection for each child "before as well as after birth". There is a crying need for setting conditions, limitations and restrictions on the extremely high incidence of unregulated abortion in the States and Territories. As one who was at the 1994 Cairo International Conference on Population and Development (and at every UN mega-conference since), I can attest to the fact that all countries, including Australia, agreed and reaffirmed at subsequent conferences that "*in no case should abortion be promoted as a method of family planning".* When the Australian Government continues each year to pay for and thus to endorse one abortion for every three live births, it constitutes nothing less than a deliberate "promotion" of abortion as "a method of family planning". When one baby in every four is given lethal treatment instead of pre-natal care, abortion is being used, in contravention of the agreement reached by the international community, as a method of family planning. What more effective promotion of abortion as a method of family planning than to pay for these abortions, no questions asked and no dissuasion from further abortions proffered?

All 187 countries agreed that *in no case should abortion be promoted as a method of family planning.* All governments promised also to make every effort "*to reduce the recourse to abortion"*. Yet since the Australian Government made this promise in 1994, there has been no significant reduction

At present, Medicare payments are funding each year an unconscionable number of abortions (about 80,000?). The fact that the number is so hedged about with obfuscation that it cannot be calculated with any degree of accuracy and transparency, is itself am indictment, and a powerful piece of evidence that increased scrutiny of such large numbers is both necessary, and indeed long overdue. This legislation is absolutely necessary in view of the appalling dearth of responsible scrutiny of the abortion industry by both the doctors' self-regulatory bodies and by the State and Territory Governments. Self-regulation of the medical profession in regard to abortion is not working—our abortion rate is higher than other comparable countries—and State and Territory laws protecting the child *in utero* from arbitrary deprivation of life appear to be largely ignored.

Neither group offers the appropriate legal protection to the child before birth as required by the Universal Declaration of Human Rights. The *Universal Declaration of Human Rights* (1948) recognized that the child, by reason of his physical and psychological immaturity, needs special safeguards and care, *including legal protection before as well as after birth*. This makes abortion a human rights issue. Legal protection for the defenceless child at risk of abortion is the purview of the federal government, which has, under international law, the authority when it comes to human rights violations to override state and territory laws.

Because the abortion of such large numbers of Australian children is a human rights issue, responsibility for restoring legal human rights protection before birth for these children reverts to the Australian Federal Government. International human rights instruments such as the *International Covenant on Civil and Political Rights* (1966) (ICCPR)specifically require Federal Governments to override individual State and Territory Governments when non-derogable human rights, such as the right to life (article 6), are being violated. The *International Covenant on Civil and Political Rights* Article 50, decrees that all human rights provisions "shall extend to all parts of federal States without any limitations or exceptions."

To its shame, the ACT government has passed an *ACT Bill of Rights* (so called), which explicitly disfranchises the unborn child, by virtue of an exclusionary clause that purports to limit human rights "…*to apply to a person [only] from the point of birth*". Yet such a limitation of a non-derogable right is inadmissible under international law. The ACT Legislative Assembly removed all legislative protection from unborn babies. Those tiniest of human beings whose mothers and doctors choose to value them as worthless, disposable human waste products are now utterly defenceless in law. These children and their human rights are no longer accorded any recognition before the law in the ACT. The Territory Government in an arrogant exercise of its legislative power has conspired to "disappear" the child before birth. Just as happened in the very worst of the South American dictatorships, certain human beings, designated as "unwanted" or "disruptive" are now being stripped of their most basic human rights, their

lives aborted, deleted without a trace, and all with State-conferred legal impunity.

The ACT last year had the lowest birthrate in Australia, and this is surely at least in part due to the ACT's removal of even the last shreds of legal protection for the child before birth. In the 1990's, before the ACT Government stopped monitoring abortion numbers and cases, the ACT had one of the highest abortion rates in the world (one abortion for every 2.2 babies born). There remains now in the ACT not even a semblance of regulation of abortion numbers or cases. This ACT *Bill of Rights* permitting abortion on demand even up until birth must be found sooner or later to have been void at the very time of its enactment because it is incompatible with universal natural-law-based human rights standards. Under this travesty of a *Bill of Human Rights*, the child before birth, in the ACT, is deprived of the most elementary rights, denuded of recognition and respect, denied the right to good medical care, robbed of the right to legal protection, exposed to every form of mutilation and abuse, branded as unwanted, inconvenient or imperfect, and treated by the abortion provider with utter contempt.

Medicare payments for unregulated abortions in the ACT is a grave offence against justice for it amounts to an endorsement of the Territory Government's arbitrary removal of all legal protection for the human rights of the child before birth. The noble aims and purposes of Medicare, which was set up to protect the health of all mothers, and all children, including the health of all children *in utero*, are being profaned when they are put in the service of promoting abortion. The pretence of expanding women's reproductive rights is no excuse for the perversion of the original noble and honorable impulses to recognize that in every pregnancy there are two patients, both the mother and the baby. Medicare must endeavour to encourage all doctors to provide both mothers and their babies with good pre-natal health care—in a good health system such as here in Australia, it should be only in the most exceptional cases, that the life and health of both the mother and her baby cannot be saved.

In view of this glaringly obvious "overuse" of the lethal procedure of abortion as a "health service", this legislation is long overdue. There is, indeed, a most urgent need to initiate a responsible reform, to set conditions, limitations and restrictions on the circumstances in which Medicare benefits will be payable for abortion services. When one baby in every four is given lethal treatment instead of pre-natal care, when State and Territory Governments insist that it is no responsibility of theirs to protect babies at risk of abortion, when abortion providers are permitted to be a law unto themselves, pleading privacy to cover up human rights abuses of both mothers and babies, then the federal government must be given the powers to set more stringent conditions, limitations and restrictions on abortion providers, so that adequate checks and balances are set in place and maintained.

Scandals such as the recent Victorian case of a Melbourne child diagnosed with dwarfism and aborted just one month before birth in February 2000 at the Royal Women's Hospital, must be addressed urgently. Where such abortions are paid out of the federal public purse, it involves all Australians in the injustice of arbitrary deprivation of a human life. Victorian state laws failed to provide adequate human rights protection for that child. Such violations should not be hidden behind doctor-patient confidentiality.

International human rights law rejects the right to privacy as a defence against human rights investigations. Major human rights treaties have laid down the principle that "neither privacy nor State sanction can be a defence for human rights violations", as commonly expressed in those treaties. They condemn all acts of violence resulting in or likely to lead to physical harm "whether occurring in public or in private life" and including "violence perpetrated or condoned by the State, wherever it occurs".

Claims that suicide threats by the child's mother justify the child's abortion are invalid—they contravene a fundamental principle of international human rights law, viz., the indivisibility of human rights. This principle demands that human rights protections for both mother and child be observed—both mother and child are entitled to the best possible health care. Suicide threats by the mother should be treated with compassion and professional competence, and "the need for special safeguards and care" of both the mother and child should be met.

The *International Covenant on Economic, Social and Cultural Rights* (1966) recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and requires the States Parties to provide: "for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child". Abortion services do not make for the healthy development of the child—they are a violation of the right of every child, including the child before birth, to achieve the highest attainable standard of physical and mental health. The immense advances in fetal medicine and fetal surgery that are now available challenge all those involved in genuine pre-natal health-care to abandon altogether the harmful modern practice of abortion. Rapid expansion in fetal medicine and fetal surgery, improved medical knowledge of the developmental needs of the child before birth, new recognition of the ability of the child before birth to feel pain—all of these are building an unstoppable force for returning to the highest international human rights standards for the proper treatment and care of the child before birth.

Each abortion in Australia represents a failure of state and territory law to provide adequate human rights protection for the child selected to undergo this lethal, pseudo-medical procedure. Genuine medicine, as agreed by all civilized human societies since the time of the Hippocratic Oath, does no deliberate harm to an unborn child.In this situation where State and Territory laws protecting the unborn child are either non-existent (as in the ACT) or so liberally interpreted by the courts as to provide ineffective

protection for some 80,000 Australian children who are "lawfully" aborted each year. There is no serious scrutiny of the lawfulness of this inordinately large number of abortions every year. The medical profession itself seems to be either powerless or reluctant to scrutinize the excessive number of doctors appear to be lying in their teeth when they diagnose 80.000 Australian mothers each year as being in such grave danger of death or serious injury to health that the children in their wombs must be aborted.

What we have here, in effect, is the States and Territories of Australia utilizing the empty forms of legal process for extermination on a vast scale. Termination of the lives of 80,000 unborn children each year is being funded by the Federal Government in the naïve belief that the States and Territories are ensuring that all abortion providers are always performing "lawful" abortions.

With a scandal of such immense ethical proportions, it is not possible for this state of legal and medical fraud and corruption to be maintained indefinitely.

The sooner the Health Legislation Amendment Bill 2005 can be introduced, the sooner serious reform in this area can be initiated and sustained.

RECOMMENDATIONS

1. **That the *Health Legislation Amendment Bill 2005* be introduced.**
2. **That just provisions be made to introduce appropriate structures to guarantee that the unborn child threatened by arbitrary abortion be guaranteed government appointed legal representation in the decision making process regarding the setting of conditions, limitations and restrictions in circumstances where Medicare is to be made payable for abortion services.**

Biographical note: Rita Joseph is a Canberra-based writer on international human rights issues. Across three decades, she has been engaged in human rights advocacy at the UN, including at the recent series of UN international mega-conferences in New York, Cairo, Beijing, The Hague, Istanbul, Rome, Geneva et al. She has served as an adviser to the Australian UN delegation in New York. She is an adjunct-lecturer in International Politics and the Language of Human Rights at the John Paul 11 Institute in Melbourne. She is currently engaged in writing a new work: *Reclaiming the Human Rights of the Unborn Child—A new look at the Universal Declaration of Human Rights*. Most recent published work is her contribution to *Lexique des termes ambigus et controverses sur la vie, la famille et les questions ethiques* (Editions Tequi 2005)