



2 April 2013

Committee Secretary  
Senate Standing Committees on Community Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

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

Dear Committee Secretary,

### **Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia**

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Standing Committee on Community Affairs for the opportunity to comment on the Involuntary or Coerced Sterilisation of People with Disabilities in Australia Inquiry ('Inquiry').
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.

### **Summary**

3. Australia must consider the issue of involuntary or coerced sterilisation within a human rights framework. Australia has obligations to guarantee the reproductive rights of its citizens under the Convention on the Rights of Persons with Disabilities ('CRPD'),<sup>1</sup> Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'),<sup>3</sup> Convention of the Rights of the Child ('CROC'),<sup>5</sup> International Covenant on Economic, Social and Cultural Rights ('ICESCR')<sup>7</sup> and the International Covenant on

<sup>1</sup> *Convention on the Rights of Persons with Disabilities ('CRPD')*, ratified by Australia on 17 July 2008.

<sup>3</sup> *Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW')*, ratified by Australia on 28 July 1983.

<sup>5</sup> *Convention of the Rights of the Child ('CROC')*, ratified by Australia on 17 December 1980.

<sup>7</sup> *International Covenant on Economic, Social and Cultural Rights ('ICESCR')*, ratified by Australia on 13 August 1980.



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Civil and Political Rights ('ICCPR')<sup>9</sup>.

4. Forced sterilisation of women and girls is recognised under these Conventions as a form of violence against women. We recommend that the Committee recognise the importance of protecting all women and girls, including those with disabilities, from this form of violence.
5. We believe Australia should enact legislation to strengthen protections against:
  - a. sterilisation of any child, regardless of disability, except where there is a serious threat to the life or health of the child;
  - b. the sterilisation of adult women, regardless of whether they have a disability, in the absence of their fully informed and free consent; and
  - c. the removal of a child or adult with a disability from Australia with the intention of having a prohibited sterilisation performed.
6. When sterilisation of children, which is strictly carried out on therapeutic grounds, does occur, it must be subject to the free and informed consent of the child (including children with disabilities).
7. In any procedure or process where a woman or girl with a disability is to provide her fully informed and free consent, we recommend that:
  - a. she be provided with information about sterilisation options in a format that is accessible given her particular needs, such as Braille, Auslan or easy English, or in a language she can understand, or in any format appropriate for her individual needs;
  - b. there be no coercion, pressure, or undue inducement by healthcare providers or institutions; and
  - c. she be provided with legal advice.
8. We consider that health care providers and other medical staff should be responsible for ensuring women and girls are provided with sufficient and appropriate information to provide fully informed and free consent.
9. We would welcome additional measures to address violence within institutions, including through requiring health and accommodation service providers to implement procedures that address and prevent issues such as neglect, abuse and violence.
10. We recommend that where women do undergo sterilisation procedures, they should be provided with access to counselling services. In circumstances where they have already undergone procedures without their free and fully informed consent, it is especially important that counselling services and support be provided.
11. An educational component must form part of any response to eliminating involuntary or

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<sup>9</sup> *International Covenant on Civil and Political Rights ('ICESCR')*, ratified by Australia on 10 December 1975.

coercive sterilisation. Women and girls should be provided with adequate information, education and services regarding their health care, including their sexual and reproductive health.

12. We recommend that women and girls with disabilities be fully engaged in any legislative changes regarding the provision of sterilisation or abortion procedures, with adequate opportunity for close consultation and to provide ongoing feedback through future inquiries or committees.

### **Human Rights Framework**

13. This Inquiry must be undertaken within a human rights framework. Both the 1994 Cairo Conference on Population and Development and the International Conference on Women in Beijing in 1995 confirmed that men and women have reproductive rights that are enshrined in a number of human rights covenants that Australia has ratified.
14. A number of the central rights relevant to this Inquiry are explained below.

#### *Right to be free from violence*

15. The Convention on the Rights of the Child explicitly prohibits physical violence against children. The Committee on the Rights of the Child ('CROC Committee') has recognised that forced sterilisation falls within the category of physical violence<sup>11</sup> and that states parties to CROC must take appropriate legislative measures to protect children from such violence.<sup>12</sup>
16. The CROC Committee has also expressed its view that sterilisation of women with disabilities is a form of physical violence. In 2012, the Committee noted that it was 'gravely concerned at the high levels of violence against women and children' in Australia and was 'particularly concerned that ... sterilization of women and girls with disabilities continues'.<sup>13</sup>
17. The CROC Committee has also noted its concern about the forced sterilisation of children with disabilities, noting that the practice 'seriously violates the rights of the child to her or his physical integrity and results in life-long physical and mental health effects'. For this reason, the Committee has urged parties to 'prohibit by law the forced sterilisation of children on grounds of disability'.<sup>14</sup>
18. The classification of forced and coercive sterilisation as a form of violence is reinforced by the commentary of the Human Rights Committee on articles 7, 17 and 24 of the ICCPR. Specifically, the Committee has noted that restrictions must be put in place to prevent forced abortion and sterilisation, particularly of children, in order to ensure

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<sup>11</sup> CROC Committee, *General Comment No. 13*, note 7 at 21.

<sup>12</sup> Article 19, *CROC*.

<sup>13</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention Concluding observations: Australia*, 60th session, 28 August 2012, CRC/C/AUS/CO/4 at 46, available at

[http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_AUS\\_CO\\_4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf).

<sup>14</sup> Committee on the Rights of the Child, *General Comment No. 9*, 43<sup>rd</sup> session, 27 February 2007, CRC/C/GC/9 at 60, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/407/02/PDF/G0740702.pdf?OpenElement>.

compliance with Article 7 of the Convention (freedom from torture).<sup>15</sup>

19. The Committee Against Torture has also made clear that it considers forced sterilisations as prohibited under the *Convention Against Torture*.<sup>16</sup>
20. The Committee on the Elimination of Discrimination against Women ('CEDAW Committee') has confirmed that "States parties should not permit forms of coercion, such as non-consensual sterilization".<sup>17</sup>
21. Taken together, the view of these bodies make it clear that involuntary and coercive sterilisation of people with disabilities falls within the definition of physical violence under international law. Australia should consider a prohibition on such sterilisation as falling within its broader commitment to end all forms of violence against women and girls.

*Right to high standard of physical and mental health*

22. Article 12 of ICESCR makes clear that everyone has the right to a high standard of physical and mental health. The right of every person with a disability to respect for his or her physical and mental integrity on an equal basis with others is confirmed in Article 17 of the CRPD.

23. The CEDAW Committee has noted that 'compulsory sterilization or abortion adversely affects women's physical and mental health' and infringes on women's rights under Article 16 of *CEDAW* to "decide freely and responsibly the number and spacing of their children".<sup>18</sup>

24. These legal instruments clarify that in regulating sterilisation, Australia must take account of how any of its laws, policies and practices may implicate Australia's obligations to provide each of its citizens with a high standard of physical and mental health.

*Right to non-discrimination in health care and family planning*

25. Article 10 of the CEDAW Convention provided that States should ensure access to specific information to ensure the health and wellbeing of families, including advice and information on family planning. Article 12 of the Convention clarifies that such information should be made available on a non-discriminatory basis.

26. CEDAW also provides that women and girls have a right to access counselling and other

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<sup>15</sup> Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, 29 March 2000, CCPR/C/21/Rev.1/Add.10 at 11, 20, available at

<http://www.unhchr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80>

<sup>16</sup> UN Committee Against Torture, *Concluding observations of the Committee against Torture: Slovakia*, 17 December 2009, CAT/C/SVK/CO/2 at paragraph 10, available

at:<http://www.unhcr.org/refworld/docid/4b66c9542.html>; UN Committee Against Torture, *Conclusions and Recommendations of the Committee against Torture: Czech Republic*, 6 March 2004, CAT/C/CR/32/2 at paragraph 6(n), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.32.2.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.32.2.En?Opendocument).

<sup>17</sup> CEDAW Committee, *General Recommendation No. 24*, 20<sup>th</sup> Session, 1999 at 22, available at

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

<sup>18</sup> CEDAW Committee, *General Recommendation No. 21*, 13<sup>th</sup> session, 1994 at article 16, 1, available at

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

family planning services, without discrimination.<sup>30</sup>

27. Article 23 of the CRPD specifically extends these non-discriminatory provisions to people with disabilities, requiring states to take effective and appropriate measures to 'eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that ... persons with disabilities, including children, retain their fertility on an equal basis with others'.
28. State parties to *CRPD* are also obliged to provide persons with disabilities the "same, range, quality and standard" of health care as provided to all other citizens, on the basis of 'free and informed consent'.<sup>31</sup>
29. The Office of the High Commissioner for Human Rights has explicitly noted that women with disabilities have a right to experience sexual relationships and parenthood, and to be supported regarding their motherhood. Office for the High Commissioner has noted that 'the sterilisation of, or performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10(2)' of ICESCR.<sup>35</sup>
30. Each of these international mechanisms make it clear that where women do undergo sterilisation procedures, they must be provided with access to information and counselling services on a non-discriminatory basis. In circumstances where they have already undergone procedures without their free and fully informed consent, it is especially important that counselling services and support be provided.

### Special Procedures and Committee Recommendations

31. In the view of WLS NSW, it is important that the Inquiry recognise that Australia has come under considerable scrutiny from both the UN Special Procedures and Committees in relation to its current position on sterilisation of women and girls with disabilities.
32. In its 2010 review of Australia, the CEDAW Committee noted its 'concern that non-therapeutic sterilizations of women and girls with disabilities continue to be practiced' and recommended that Australia 'enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent'.<sup>36</sup>
33. In 2012, the CROC Committee referred to forced sterilisation of women with disabilities in Australia and reiterated that 'states have clear obligations under international human rights law to enact legislation prohibiting all acts of violence against women and girls with disabilities, including those to which they are more vulnerable, such as forced

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<sup>30</sup> Article 14(2)(b), *CEDAW*.

<sup>31</sup> Article 25, *CRPD*.

<sup>35</sup> Office of the High Commissioner for Human Rights, *General Comment No 5: Persons with Disabilities*, 11<sup>th</sup> session, 1994 at 31, available at

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument)

<sup>36</sup> CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, 30 July 2010, CEDAW/C/AUL/CO/7 at 42-45, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>.

sterilization, forced institutionalisation and forced abortion.<sup>37</sup>

34. The CROC Committee has recommended that Australia develop and enforce 'strict guidelines to prevent the sterilization of women and girls who are affected by disabilities and are unable to consent',<sup>38</sup> in order to 'prioritize the elimination of all forms of violence against children'.<sup>39</sup> The Committee urged Australia to adopt an approach consistent with CRPD by enacting 'non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and to ensure that when sterilization of children which is strictly carried out on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities'.<sup>41</sup>
35. At its inaugural appearance before the Human Rights Council for the Universal Periodic Review in 2011, several member states recommended that Australia comply with the CEDAW Committee and CROC Committee recommendations to enact legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability. This recommendation was also extended to prohibiting sterilisation of adults with disabilities without their informed and free consent.<sup>42</sup>
36. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences, have both called on Australia to explain the practice of non-therapeutic forced sterilisation of women and girls with disabilities.<sup>43</sup>
37. This Inquiry represents an opportunity for Australia to comply with its obligations under these international human rights instruments, and address the specific recommendations made by the CEDAW Committee, CROC Committee and Human Rights Council, referred to above.

## Education

38. We believe an educational component must form a part of any response to eliminating sterilisation.
39. Women and girls should be provided with adequate information, education and services

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<sup>37</sup> Office of the United Nations High Commissioner for Human Rights, Human Rights Council, *Thematic study on the issue of violence against women and girls and disability*, 20<sup>th</sup> session, 2012, UNGA Doc A/HRC/20/5 at 27-28, available at

[http://www.crin.org/docs/A-HRC-20-5\\_en.pdf](http://www.crin.org/docs/A-HRC-20-5_en.pdf)

<sup>38</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention Concluding observations: Australia*, note 16 at 47(b).

<sup>39</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention Concluding observations: Australia*, note 16 at 48.

<sup>41</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention Concluding observations: Australia*, note 16 at 58(f).

<sup>42</sup> Denmark, United Kingdom, Belgium and Germany, Human Rights Council, Working Group on the Universal Periodic Review, *Draft Report of the Working Group on the Universal Periodic Review: Australia*, 10<sup>th</sup> session, 2011, A/HRC/WG.6/10/L. 8, Recommendation 86.39 at page 15, available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AUSession10.aspx>.

<sup>43</sup> Letter to the Australian Government from the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences, 18 July 2011, available at [https://spdb.ohchr.org/hrdb/19th/AL\\_Australia\\_18.07.2011\\_\(2.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/AL_Australia_18.07.2011_(2.2011).pdf).

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regarding health care, including sexual and reproductive health, in accordance with Australia's obligations under Article 25(a) of *CRPD*, Articles 12 and 14 of *CEDAW*, and Article 12 of *ICESCR*.

40. A broader educational framework is required to encourage respect for and combat stereotypical attitudes about women and girls with disabilities, including raising awareness of their capabilities and of the rights recognised in *CRPD*, *CROC* and *CEDAW*.
41. If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or myself on 02 8745 6900.

Yours faithfully,  
**Women's Legal Services NSW**

Janet Loughman  
Principal Solicitor