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NGO in Special Consultative Status with the Economic and Social Council of the United Nations

People with Disability Australia

Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia

Submission

March 2013

"As a disability advocate, I disagree with this simplified view which argues advocacy is all about rights and conventions as a matter of principle, without consideration of the struggles and dilemmas of real people. There are clear reasons why we feel so passionately about human rights and believe them to be the strongest vehicle for achieving a quality of life for people with disability equal to that enjoyed by other members of Australian society.

After acquiring my disability, I was put under extreme pressure to undergo complete sterilisation. My parents and I fought against the 'experts' and won; however, I know many other people who did not have the support I had, who gave into the heavy societal pressure and agreed to undergo the procedure. Sadly in some cases the procedure created more problems, such as depression, challenging behaviour and even death."

JAN DAISLEY
PWDA President, 2010–2012

About Us

People with Disability Australia (PWDA) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.

PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

Contact

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Co-Chief Executive Officer

Contents

About Us……1

Introductory Comments……...3

Terms of Reference:

1. (a) Types of sterilisation practices……..5

   (b) Prevalence of sterilisation practices……..6

   (c) Different legal, regulatory and policy frameworks & harmonisation……..7

   (d) Adequacy of frameworks:

   Authorisation, 'best interest test' and legal violence……..13

   Human rights and the 'but for' test……16

   Legal capacity and supported decision-making……..17

   (e) Impacts of sterilisation on people with disability……..18

   (f) Compliance with human rights obligations……21

   Convention on the Rights of Persons with Disabilities (CRPD)……21

   Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)……23

   Convention on the Rights of the Child (CRC)……26

   Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)……28

   (g) Factors leading to sterilisation procedures being sought……30

2. Current practices and policies & intersex people……32

   (a) sexual health and reproductive issues; and
   (b) the impacts on intersex people

Recommendations……34

Introductory comments

1. People with Disability Australia (PWDA) welcomes the opportunity to respond to the *Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia* being conducted by the Senate Standing Committee on Community Affairs (the Committee).

2. For over twenty years, PWDA has been advocating domestically and internationally against involuntary or coerced sterilisation of people with disability, and seeking legislative, policy and practice reforms that would prohibit this egregious form of human rights abuse.[1]

3. PWDA's work is very much grounded in reality - the real views, concerns and issues of our members and the people with disability we work with in our advocacy and training programs. These views, concerns and issues are reflected in this submission.

4. A human rights framework underpins the work of PWDA. The United Nations *Convention on the Rights of Persons with Disabilities*[2] (CRPD) is particularly significant for our work, and for the views expressed in this submission.

5. A human rights framework recognises the practice of involuntary or coerced sterilisation as a form of violence and a form of torture.

6. We note that the Committee does not define the term 'involuntary or coerced sterilisation'. PWDA asserts that this term should be understood in the context of CRPD article 23(1)(c), which requires Australia[3] to take measures to ensure that "(p)ersons with disabilities, including children, retain their fertility on an equal basis with others".[4]

7. In the context of article 23, PWDA uses the term 'sterilisation' to refer to the performance of medical procedures that temporarily[5] or permanently remove an individual's ability to reproduce, and/or the administration of medication that affects fertility, such as medication to suppress menstruation or sexual functioning.

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[1] People with Disability Australia, *Sterilisation of People with Disability*<http://www.pwd.org.au/sterilisation.html>.

[2] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

[3] Australia made a formal commitment to the CRPD when it ratified it on 18 July 2008.

[4] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 23(1)(c).

[5] PWDA has included the word 'temporarily' in our definition of sterilisation to ensure that there is no ambiguity that procedures that are considered reversible, such as vasectomy are explicitly included in the Terms of Reference for this Inquiry.

8. PWDA uses the term 'involuntary or coerced sterilisation' to refer to the sterilisation of children in the absence of serious threat to life or health; and the sterilisation of adults in the absence of serious threat to life or health and without their full and informed consent.

9. PWDA does not consider sterilisation that is performed as an emergency procedure to save life or prevent serious damage to a person's health to be involuntary or coerced sterilisation.

10. Involuntary or coerced sterilisation is practiced on girls and boys with disability and women and men with disability. However, PWDA considers involuntary or coerced sterilisation to be a gendered human rights violation. Girls and women with disability are disproportionately subjected to involuntary or coerced sterilisation.[6]

11. Involuntary or coerced sterilisation is one component of the broader denial of reproductive and other human rights of people with disability.

12. PWDA urges the Committee to consider the issues raised and the recommendations made through this Inquiry within a human rights framework, and in particular within the context of the rights contained in the CRPD as a whole.

13. In this regard, we stress the need to recognise article 6, *Women with disabilities* and article 7, *Children with disabilities* as part of the general obligations within the CRPD. These articles "contain overarching or crosscutting principles and measures to be applied in all aspects of the implementation of the convention".[7] For the purposes of this Inquiry, this means ensuring that a gender and age analysis is applied to the issues raised through this Inquiry, and that the recommendations arising from this Inquiry contain gender and age specific measures. In relation to the specific situation of women and girls with disability, PWDA endorses the submission made by Women With Disabilities Australia (WWDA)

14. PWDA congratulates the Committee for adding an additional Term of Reference to identify the specific circumstances relating to the involuntary or coerced sterilisation of intersex people. This is a significant but largely ignored human rights issue, which has similarities to the human rights experience of people with disability. PWDA makes some comments regarding this similarity in points 133-141 below. However, with regard to this Term of Reference we endorse the submission made by Organisation Intersex International Australia (OII Australia).

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[6] Women with Disabilities Australia, 'Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia' (Paper presented at the International Women with Disabilities Conference, Madrid, June 2012) 6.

[7] Phillip French, *Human Rights Indicators for People with Disability - A resource for disability activists and policy makers* (Queensland Advocacy Incorporated, 2007) 21.

Terms of Reference

1. The involuntary or coerced sterilisation of people with disabilities in Australia, including:

(a) the types of sterilisation practices that are used, including treatments that prevent menstruation or reproduction, and exclusion or limitation of access to sexual health, contraception or family planning services;

15. PWDA is concerned that there is very little, if any public information, reporting or research about the sterilisation practices that are used on children and adults with disability. We are aware that people with disability are subjected to a range of involuntary or coerced sterilisation procedures that include reversible and irreversible surgical procedures as well as chemical and hormonal suppression practices.

16. Information about the sterilisation practices that have been authorised by tribunals or courts is difficult to obtain. Information that is available indicates that a range of surgical procedures are authorised by tribunals and courts, such as hysterectomies, tubal ligations, tubal occlusions and vasectomies. The vast majority of involuntary or coerced surgical procedures that have been authorised by tribunals or courts have been irreversible procedures that have been performed on women and girls with disability.

17. Research conducted in the late 1990s found that it was likely that orchidectomies, or castration by surgical removal of the testes were being performed on boys and young men with disability in the absence of disease or health risks.[8]

18. Through its individual and group advocacy work with children and adults with disability and through anecdotal information provided to us by other disability representative and advocacy organisations, PWDA is aware that:

    18.1 men with disability are being coerced to have vasectomies before they can enter into marriage or continue sexual relationships; or after they have had a child;

    18.2 women with disability are being coerced to have hysterectomies after they have given birth to one or more children, who have usually been taken from their care; or as a condition of having access to their child who has been taken from their care.

19. PWDA is also concerned about a range of involuntary or coerced sterilisation practices that are commonly used to suppress menstruation or sexual expression. There are short and long-term effects on health and sexual functioning associated with these practices that are discussed further in points 68-80 below.

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[8] Glenys Carlson, Miriam Taylor, Jill Wilson, 'Sterilisation, drugs which suppress sexual drive, and young men who have intellectual disability' (2000) 25(2) *Journal of Intellectual & Developmental Disability* 91, 91.

20. We are aware that these practices are undertaken under the guise of 'behaviour management' strategies or treatment for 'unwanted' or 'offending sexual behaviour'. These practices are not subject to independent monitoring or review. Depending on the State or Territory in which they are practiced, they may require authorisation from tribunals, but in a significant number of cases this is not obtained.

21. These practices include:

    21.1 Depo Provera and contraceptive medications are being used to suppress menstruation in women with disability living in group homes or other residential settings. Often this occurs through an 'arrangement' between a group home or residential setting and a general practitioner.

    21.2 Depo Provera and contraceptive medications are used to suppress menstruation in women and girls with disability as a first and only response to inappropriate behaviour, such as removing sanitary pads in public or not disposing of them appropriately in a bin. Sex education, menstrual management strategies and supports for the individuals and families concerned are rarely available or considered.

    21.3 Depo Provera and anti-androgenic medications are being prescribed to boys and men with disability to prevent sexual behaviour that is viewed as unwanted or excessive. Although the behaviour may be typical of the sexual behaviour of boys and young men without disability, the response is to 'treat' the behaviour as if it is inappropriate.

    21.4 Depo Provera and anti-androgenic medications are being prescribed to boys and men with disability to prevent inappropriate sexual behaviour, such as masturbation in public. In many situations, these boys and men may not have received sex education or positive behaviour supports. Rather than consider supports, sex education and counselling for the individuals and families concerned, the first and only response is suppression of sexual functioning.

22. There are very few services, supports, counselling, training, education and skills building options for children and adults with disability and their families in relation to sex education, sexuality and relationships, sexual and reproductive health, menstrual management, pregnancy, contraception or family planning. Services that exist for the general community are usually not accessible or targeted to people with disability.[9]

23. PWDA believes that the lack of services and individualised person-centred supports is a major factor in sterilisation procedures being sought by others, particularly parents on behalf of children and adults with disability.

(b) the prevalence of these sterilisation practices and how they are recorded across different state and territory jurisdictions;

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[9] Disability Representative, Advocacy, Legal and Human Rights Organisations, *Disability Rights Now – Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* (August 2012) [412].

(c) the different legal, regulatory and policy frameworks and practices across the Commonwealth, states and territories, and action to date on the harmonisation of regimes;

24. PWDA is extremely concerned that there is no comprehensive information, research or data that provides an accurate or comprehensive picture of the prevalence, effects and rationale for involuntary or coerced sterilisation of people with disability in Australia.

25. There is no public reporting or monitoring of the prevalence of applications for sterilisation procedures to be performed on people with disability, or of the reasons for decisions regarding these applications across State and Territory tribunals and jurisdictions of the Family Court.

26. There is no public reporting, monitoring or investigation into 'behaviour management' or 'treatment' practices that constitute involuntary or coerced sterilisation as outlined in points 19-21 above.

27. The well-known 1992 High Court case, *Secretary, Department of Health and Community Services v JWB and SMB*, commonly known as *Marion's case*,[10] made the practice of sterilisation on children with disability in the absence of malfunction or disease (non-therapeutic sterilisation) unlawful without court authorisation.

28. *Marion's case* was viewed as establishing the protective framework that would end the widespread practice of sterilising people with disability "without their consent and in some cases without their knowledge", and "with the informal consent of family, carers or doctors and without public scrutiny or accountability".[11]

29. Since *Marion's case*, the different legal, regulatory and policy frameworks and practices across the Commonwealth, States and Territories consistently focus protection of people with disability on the formulation of criteria and parameters for the *authorisation* of non-therapeutic sterilisation.[12] In PWDA's view, *prohibition* not authorisation should be the basis of protection of people with disability from involuntary or coerced sterilisation.

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[10] (1992) 175 CLR 218.

[11] Leanne Dowse, 'Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia' (Paper presented at Disabled Peoples International World Summit, Winnipeg, September 8-10, 2004) citing E Cooke, V Topp and S Webster, 'The Impact of the Guardianship and Administration Board on Some Aspects of the Health Care of Disabled Women' (Paper presented at Guardianship, Financial Administration and Advocacy for Adults with Disabilities Third National Conference, 1994).

[12] See, eg, Susan Brady, John Britton and Sonia Grover, *The Sterilisation of Girls and Young Women in Australia: Issues and progress* (Human Rights and Equal Opportunity Commission, 2001) <www.hreoc.gov.au/>; Melinda Jones and Lee Ann Basser Marks, 'Valuing People Through Law – Whatever Happened to Marion?' (2000) 17(2) *Law in Context* 147.

30. In 1994, the Family Law Council released a report from an inquiry commissioned by the Australian Government following Marion's case. The inquiry aimed to provide "a clear, comprehensible and publicly acceptable framework for guiding decisions about whether to sterilise a child".[13] The report explicitly recognised Australia's 1990 ratification of the UN *Convention on the Rights of the Child*[14] (CRC), and one of its key recommendations was that "legislation should provide that no person under the age of 18 shall be sterilised unless the procedure is necessary to save life or to prevent serious damage to the person's physical or psychological health".[15]

31. In 1997 the Human Rights and Equal Opportunity Commission (HREOC), now the Australian Human Rights Commission (the Commission) released a report that found that there were still many girls with disability being sterilised without authorisation by the courts. [16]

32. The 2001 follow-up report by HREOC also found that "there is good reason… to believe that girls continue to be sterilised, and sterilised in numbers which far exceed those that have been lawfully authorised".[17] While the report highlighted that some policy reform had occurred, it again found that much more needs to be done to protect "the rights and integrity of girls and young women with intellectual disabilities" and that this is "dependent upon appropriate law reform…"[18]

33. In 2001, Women With Disabilities Australia (WWDA) also released its report from an Australian Government funded project on sterilisation and reproductive health of girls and women with disability.[19] The report confirmed the findings in the HREOC reports and made a number of comprehensive recommendations, drawing on international human rights law. A key recommendation called for the prohibition of sterilisation "for girls under the age of 18 years, unless sterilisation is being performed as a life saving measure or medical emergency", and the prohibition of sterilisation for women with disability in the absence of informed consent, except in circumstances where there is a serious threat to health or life.[20]

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[13] Family Law Council, "Sterilisation and Other Medical Procedures on Children" (Commonwealth of Australia, 1994) [1.14].

[14] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

[15] Family Law Council, above n 12, [4.53]. PWDA was generally supportive of this recommendation, but did not support the inclusion of 'psychological health' as an exception to prohibition, because of its proven susceptibility to misuse.

[16] Susan M Brady and Dr Sonia Grover, "The Sterilisation of Girls and Young Women in Australia" (Human Rights and Equal Opportunity Commission, 1997) <www.hreoc.gov.au/>.

[17] Susan Brady, John Britton and Sonia Grover, above n 12.

[18] Ibid.

[19] Leanne Dowse and Carolyn Frohmader, "Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities" (Women with Disability Australia, 2001).

[20] Ibid 5.

34. In 2003, the Australian Government finally responded to these reports, and the continued advocacy from disability representative and advocacy organisations when the Standing Committee of Attorneys-General (SCAG) agreed that, "a nationally consistent approach to the authorisation procedures required for lawful sterilisation of minors was appropriate".[21]

35. While PWDA supported the development of a nationally consistent approach to the issue, we expressed our strong opposition, along with WWDA and other disability organisations to the emphasis of the SCAG on the elaboration of the circumstances and principles under which involuntary or coerced sterilisation can be authorised, rather than on prohibition of this human rights abuse.

36. In 2005, PWDA raised our concerns directly to the UN during its review of Australia's compliance with the *Convention on the Rights of the Child* (CRC).[22] Our concerns about the authorisation focus of the SCAG process were outlined in the non-government parallel report provided to the UN Committee on the Rights of the Child (CRC Committee).[23] In its concluding observations to Australia, the CRC Committee stated that the SCAG should "prohibit the sterilisation of children, with or without disabilities…"[24]

37. In 2006, the SCAG released a draft model Bill[25] for consultation, but the Bill maintained its focus on authorisation of involuntary or coerced sterilisation and was strongly opposed by PWDA, WWDA and other disability advocates.

38. In 2007, the SCAG discontinued its work, but not because of the views of the UN or disability advocates regarding children's rights. Noting that the numbers of reported sterilisations had declined significantly, and that doctors and hospitals better understood their legal obligations, the SCAG stated that:

> "(t)here would be limited benefit in developing model legislation" as "existing processes in place in each jurisdiction to authorise sterilisation procedures… appear to be working adequately in light of recent improvements in treatment options and education initiatives".[26]

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[21] Ian Freckelton, 'Sterilisation of Intellectually Disabled Minors' (2007) 14 *Journal of Law and Medicine* 299, 303.

[22] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

[23] National Children's and Youth Law Centre and Defence for Children International (Australia), "The Non-Government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia" (May 2005) 24 < http://www.youthlaw.asn.au/humanrights/AustraliaShadowReport.pdf>.

[24] Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Covention, Concluding observations: Australia*, 40th sess, UN Doc CRC/C/15/Add.268 (20 October 2005) paras 45-46.

[25] *Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*

[26] Standing Committee of Attorneys-General, Communique, 28 March 2008.

39. Since this time, Australian Governments have consistently maintained the view that existing court and tribunal mechanisms are working adequately to protect people with disability from involuntary or coerced sterilisation,[27] and that the incidence of sterilisation procedures performed on people with disability in the absence of malfunction or disease has declined "to very low numbers".[28]

40. This view has been maintained despite evidence about the ongoing practice of involuntary or coerced sterilisation, as described in points 17-21 above, and in other information and research:

    40.1 medical practitioners performing sterilisation procedures without appropriate authorisation;[29]

    40.2 the evasion of a criminal proscription of non-therapeutic sterilisation in law - such as in the *Guardianship Act* 1987 (NSW) and the *Children and Young Persons (Care and Protection) Act* 1998 (NSW) - by seeking the performance of the procedure in other jurisdictions within Australia and in other countries (forum shopping);[30]

    40.3 larger numbers of insurance claims for sterilisation procedures than equate to numbers that have been authorised by tribunals and courts;[31]

    40.4 an increase in the number of calls to tribunals from general practitioners about sterilising women and girls with disability;[32]

    40.5 general practitioners hiding sterilisation procedures by using different Medicare numbers, such as those for dilation and curettage.[33]

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[27] See, eg, Standing Committee of Attorneys-General, 'Communique' (Communique, 28 March 2008); Australian Government, *Fourth Report under the Convention on the Rights of the Child* (Commonwealth of Australia, 2008) [156-161]; Australian Government, 'UNESCAP Questionnaire on the Beijing Declaration and Platform for Action – Australian Government Response April 2009' (Response, United Nations Economic and Social Commission for Asia and the Pacific, 2009) L; Australian Government, *Australia's Initial Report under the Convention on the Rights of Persons with Disabilities* (Commonwealth of Australia, 2010) [101]-[102]; Australian Government, 'Special Rapporteurs' request for information – Allegations of non-therapeutic forced sterilization of girls and women with disabilities in Australia' (Response to UN, 16 December 2011).

[28] Australian Government, 'UNESCAP Questionnaire on the Beijing Declaration and Platform for Action – Austalian Government Response April 2009', above n 10, L.

[29] See, eg, Phillip French, Julie Dardel, Sonya Price-Kelly, *Rights Denied: Towards a National Policy Agenda about Abuse, Neglect & Exploitation of Persons with Cognitive Impairment* (People with Disability Australia, 2010) 71.

[30] Ibid.

[31] Ibid.

[32] Stephanie Osfield, 'This girl has special needs and one day dreams of being a mum. Does anyone have the right to stop her having a baby?', *marie Claire* (June 2012) 46.

[33] Ibid.

41. This view has also been maintained despite UN concluding comments and observations concerning prohibition of involuntary or coerced sterilisation, and despite statements by the Australian Human Rights Commission (AHRC) to make involuntary or coerced sterilisation of children a criminal offence, except where there is a serious threat to life or health.[34]

42. Women with disability who were sterilised or who avoided sterilisation as children have also spoken out about the significant effects this has had on their lives.[35]

43. In 2011, Australia responded to a formal request for information about the practice of involuntary or coerced sterilisation from the UN.[36] This response effectively ignored the numerous concerns raised about the ongoing practice of involuntary or coerced sterilisation on people with disability:

> "The Australian Government would be very concerned if concrete evidence were made available that demonstrated that current mechanisms were not adequately protecting girls and women with disabilities, or that cases of sterilisation that are unlawful without court or tribunal authorisation had occurred in greater numbers than those formally authorised. The Australian Government would also be concerned if children with disabilities were being taken out of Australia for sterilisation procedures elsewhere that would be unlawful without court or tribunal authorisation in Australia. However the Australian Government is unaware of any such evidence at this time."[37]

42. The response also stated that Australia:

> "takes its international human rights obligations seriously and has noted the concerns raised domestically and internationally regarding Australia's approach to sterilisation of children and adults with disabilities".[38]

It goes on to say that "options for reform" are being considered and that this reform "will form part of the Government's National Human Rights Action Plan".[39]

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[34] Michael Inman, 'Disabled sterilised illegally', *The Sydney Morning Herald* (online), 14 October 2012 <http://www.smh.com.au/national/disabled-sterilised-illegally-20121013-27jzv.html>.

[35] See, eg, Jan Daisley, 'PWD's position on the sterilisation of girls and women with disability', *PWD e-Bulletin,* No 60, April 2010 <http://www.pwd.org.au/documents/pubs/EB60.htm#pwdsposition>; Barbara Miller, 'Disability advocates recount sterilisations without consent', *ABC News* (online), 15 February 2012 <http://www.abc.net.au/news/2012-02-14/disability-advocates-relay-sterilisation-tales/3829930>; Stephanie Osfield, 'This Girl has Special Needs, and one Day Dreams of Being a Mum. Does Anyone Have the Right to Stop Her Having a Baby?' (2012) May *marie claire* 43.

[36] This request had been made following a formal complaint from Women with Disabilities Australia (WWDA) to the Office of the High Commissioner for Human Rights, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the UN Special Rapporteur on violence against women, its causes and consequences.

[37] Australian Government, 'Special Rapporteurs' request for information – Allegations of non-therapeutic forced sterilisation of girls and women with disabilities in Australia', above n 27, 3.

[38] Ibid 2.

[39] Ibid.

43. The National Human Rights Action Plan aims to respond to the recommendations made by the UN Human Rights Council (HRC) following its Universal Periodic Review (UPR) of Australia in January 2011.[40] The UPR provides HRC members with the opportunity to review the human rights reports of their fellow members. The non-government report to the review of Australia included information about the ongoing practice of involuntary or coerced sterilisation.[41]

44. After the UPR, the following recommendations concerning sterilisation were made to Australia:

> "Comply with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women concerning the sterilisation of women and girls with disabilities (Denmark); Enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent (United Kingdom); Repeal all legal provisions allowing sterilisation of persons with disabilities without their consent and for non-therapeutic reasons (Belgium); Abolish non-therapeutic sterilisation of women and girls with disabilities (Germany)"[42]

45. The National Human Rights Action Plan was released in 2012, with the following commitment regarding sterilisation: "the Australian Government will work with States and Territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability".[43]

44. PWDA and other disability representative and advocacy organisations are concerned that this action is ambiguous.[44] Given Australia's consistent approach to this issue, our concern is that reform will again focus only on the circumstances and principles under which involuntary or coerced sterilisation can be authorised, and not on its human rights obligations.

45. PWDA argues that uniform national legislation to prohibit involuntary or coerced sterilisation must be the basis for reform by the Australian Government.

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[40] Attorney-General's Department, Commonwealth of Australia, *National Human Rights Action Plan* (7 October 2011) <http://www.ag.gov.au/>

[41] NGO UPR Coalition, 'Joint NGO Report on Australia', Submission to the Human Rights Council Universal Periodic Review of Australia, July 2010 [11].

[42] Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review – Australia*, 10th sess, UN Doc A/HRC/WG.6/10/L. 8 [86.39].

[43] Attorney-General's Department, 'Australia's National Human Rights Action Plan' (Attorney-General's Department, 2012) 65.

[44] See, eg, Australian Centre for Disability Law, Submission to Attorney-General's Department, *Public Submissions on draft National Human Rights Action Plan*, 1 March 2012, 3-4; People with Disability Australia, Submission to Attorney-General's Department, *Public Submissions on draft National Human Rights Action Plan*, February 2012, 8-9.

(d) whether current legal, regulatory and policy frameworks provide adequate:
- ***(i) steps to determine the wishes of a person with a disability,***
- ***(ii) steps to determine an individual's capacity to provide free and informed consent,***
- ***(iii) steps to ensure independent representation in applications for sterilisation procedures where the subject of the application is deemed unable to provide free and informed consent, and***
- ***(iv) application of a 'best interest test' as it relates to sterilisation and reproductive rights;***

Authorisation, 'best interest test' and legal violence

46. The current legal, regulatory and policy frameworks do not provide protection for people with disability from involuntary or coerced sterilisation. These frameworks focus on the circumstances in which involuntary or coerced sterilisation can be lawfully authorised for children and adults with disability. Involuntary or coerced sterilisation is a form of violence and a form of torture, and as such no person, court or tribunal should have powers to authorise violence or torture. These points are explored more fully in points 81-125 below.

47. An adult with disability can give their full and informed consent to be sterilised in the absence of serious risk to life or health in the same way as adults without disability, such as when an adult freely chooses to undergo tubal ligation, tubal occlusion or vasectomy procedures for contraceptive purposes. However, authorisation of sterilisation by a court or tribunal on behalf of an adult with disability in the absence of serious risk to life or health constitutes involuntary or coerced sterilisation.

48. Since *Marion's case*, decisions about the authorisation of sterilisation procedures are based on the 'best interest test'. *Marion's case* overturned "the eugenic approach to disability" and unequivocally found that children with disability have the same right to bodily integrity as other children.[45] The High Court reasoned that parents, carers and doctors are not immune from misconceptions about people with disability or from conflicting interests about "a child's present or future capacity to consent or about what are the best interests of a child who cannot consent".[46] The majority decision found that the protection of a child's right to bodily integrity from medical procedures, such as sterilisation that are invasive and irreversible, and which are not performed to "treat some malfunction or disease" require Court consent or authorisation as an essential "procedural safeguard".[47]

49. It is at this point that human rights arguments in *Marion's case* connect with a "child welfare approach"[48] or a "court's welfare jurisdiction".[49] While *Marion's case* clearly

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[45] Melinda Jones and Lee Ann Basser Marks, above n 12, 150.

[46] *Secretary, Department of Health and Community Services v JWB and SMB (Marion's case)* (1992) 175 CLR 218, 250 (Mason CJ, Dawson, Toohey and Gaudron JJ).

[47] Ibid.

[48] Susan Brady, John Britton and Sonia Grover, above n 12.

articulated that children with disability have the equal right to bodily integrity as other children, it also effectively accepted that this right can be violated under particular court sanctioned circumstances.

50. The majority of the High Court found that the welfare or 'parens patriae' jurisdiction of the Family Court covers the authorisation of sterilisation of children with disability.[50] The High Court "declined to lay down any detailed guidelines for the exercise of the welfare jurisdiction" except for providing that authorisation of non-therapeutic sterilisation be based on "best interests of the child", which is "the guiding criterion for the Family Court's jurisdiction".[51]

51. The High Court acknowledged the impreciseness of the term 'best interests of the child' but "no more so than the ''welfare of the child" and many other concepts with which courts must grapple".[52] It stated that sterilisation must be a "step of last resort" or based on the fact that "alternative and less invasive procedures have all failed or that it is certain that no other procedure or treatment will work".[53] The High Court saw 'step of last resort' as narrowly confining the meaning of 'best interests of the child'.[54]

52. However, the dissenting judge, Brennan J reasoned differently:

> "in the absence of legal rules or a hierarchy of values, the best interests approach depends upon the value system of the decision-maker. Absent any rule or guideline, that approach simply creates an unexaminable discretion in the repository of the power."[55]

Brennan J found that the "power to authorise sterilisation of an intellectually disabled child extends to therapeutic sterilisations but no further".[56]

53. As outlined in point 39 above, the Australian Government has maintained a consistent view that existing court and tribunal mechanisms are working adequately to protect people with disability from involuntary and coerced sterilisation. A key component of this view is that Australian courts and tribunals apply the 'best interest test' in relation to authorisation of sterilisation procedures. There is an implicit assumption that the

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[49] Linda Steele, 'Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability' (2008) 22 *Australian Journal of Family Law* 1, 5.

[50] Helen Rhoades, 'Intellectual Disability and Sterilisation – An Inevitable Connection?' (1995) 9 *Australian Journal of Family Law* 1, 1.

[51] Ibid 2.

[52] *Secretary, Department of Health and Community Services v JWB and SMB (Marion's case)* (1992) 175 CLR 218, 259 (Mason CJ, Dawson, Toohey and Gaudron JJ).

[53] Ibid.

[54] Ibid.

[55] Ibid 271 (Brennan J).

[56] Ibid 277 (Brennan J).

application of the 'best interest test' in Australian law is equivalent to the application of the human rights 'best interests of the child' principle in the CRC.[57]

54. However, under CRC, the 'best interests of the child' must be considered in the context of the human rights contained as a whole in the CRC. Under the CRC, involuntary or coerced sterilisation is a form of violence and it would never be in the 'best interests of the child' to authorise violence. This is outlined further in points 107-119 below.

55. WWDA has undertaken a comprehensive analysis of Family Court and tribunal decision-making in relation to applications for sterilisation procedures since *Marion's case* and found that decision-making falls into a number of categories: the genetic/eugenic argument; the good of the state, family and / or community; incapacity for parenthood; incapacity to develop and evolve; prevention of sexual abuse.[58] WWDA conclude, and PWDA agrees that the 'best interest test' has been "used to perpetuate discriminatory attitudes against women and girls with disabilities, and has only served to facilitate the practice of forced sterilisation."[59]

56. Other examinations of Family Court decision-making also reveal that prejudicial assumptions and values about girls and young women with disability are embedded in reports to the Court and in final judgements.[60] Not surprisingly, Family Court judgements have overwhelmingly found that non-therapeutic sterilisation is appropriate in the circumstances of the case.[61] The 'best interests test' is open to "be interpreted 'objectively' according to the decision-maker's view of general community standards about young women with disabilities".[62]

57. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has made the following comment in his 2013 report:

> "…It is… necessary to reaffirm that the Convention on the Rights of Persons with Disabilities offers the most comprehensive set of standards on the rights of persons with disabilities, inter alia, in the context of health care, where

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[57] See, eg, Australian Government, *Fourth Report under the Convention on the Rights of the Child* (2008) paras 156-161; Australian Government, 'Special Rapporteurs' request for information – Allegations of non-therapeutic forced sterilisation of girls and women with disabilities in Australia', above n 27, 4-5.

[58] Women with Disabilities Australia, 'Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia', above n 6; Women With Disabilities Australia, '*Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia*', Submission to the Senate Community Affairs Committee, *Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013.

[59] ibid 10.

[60] See, eg, Linda Steele, above n 49, 5-14; Susan M Brady, Susan M Brady, 'Sterilisation of Girls and Women with Intellectual Disabilities: Past and Present Justifications' (2001) 7 *Violence Against Women* 432, 435-457; Melinda Jones and Lee Ann Basser Marks, above n 12, 176; Helen Rhoades, above n 50, 18.

[61] Linda Steele, above n 49, 1.

[62] Helen Rhoades, above n 50, 18.

> choices by people with disabilities are often overridden based on their supposed 'best interests', and where serious violations and discrimination against persons with disabilities may be masked as 'good intentions' of health professionals".[63]

58. The focus of legal, regulatory and policy frameworks must be on prohibition of involuntary or coerced sterilisation, and not on refining the steps to regulate, or make lawful a form of violence and torture against people with disability.

59. As pointed out in another submission to this inquiry, until involuntary or coerced sterilisation is explicitly prohibited in law,

> "justice and legal institutions will continue to have a key role in the legal violence of involuntary sterilisation, and more broadly the legal framework for the regulation of involuntary sterilisation of people with disability will remain a poor reflection on the integrity and humanity of the Australian legal system itself."[64]

Human rights and the 'but for' test

60. Prohibition in law of involuntary or coerced sterilisation would mean that courts and tribunals would only have powers to make determinations regarding applications for sterilisation procedures where there was a serious threat to life or health (therapeutic sterilisation). This would require enactment of guiding principles and decision-making criteria based on fundamental human rights.

61. In making decisions about an application for authorisation of purported therapeutic sterilisation, PWDA argues that the "but for" criterion is the most protective of human rights. That is, in determining an application for authorisation of a procedure that will result, either directly or indirectly in sterilisation, the court or tribunal must determine if the procedure would be authorised in the same or similar circumstances in relation to a person without disability. If the procedure would not be authorised in relation to a person without disability, it ought not be authorised in relation to a person with disability.

62. The only exception to court or tribunal authorisation of therapeutic sterilisation would be where an emergency procedure is required, which will have the direct or indirect effect of sterilisation of the person, where this is reasonably necessary to save life or prevent serious damage to the person's health.

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[63] Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/22/53 (1 February 2013) [61].

[64] Linda Steele, Submission No 44 to Senate Community Affairs References Committee, *Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, 24 February 2013, 9.

Legal capacity and supported decision-making

63. An overarching concern with regard to the current legal, regulatory and policy frameworks is that they underpin a substitute decision-making regime for people with disability. CRPD article 12, *Equal recognition before the law* requires Australia to "recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all areas of life".[65] It requires providing support so that persons with disability can exercise their legal capacity, such as making important decisions, providing informed consent and managing their affairs, including in relation to reproduction, relationships, sexual expression, contraception and fertility.

64. Implementation of CRPD Article 12 requires establishing supported decision-making alternatives to substitute decision-making regimes. It will also require effective safeguards to be introduced in relation to supported decision-making arrangements "to prevent abuse in accordance with international human rights law".[66] These safeguards must ensure that the rights, will and preferences of the person are respected, that there is no conflict of interest or undue influence, that supports are proportional and tailored to the person's situation, "apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body".[67]

65. Implementation of article 12 is critical for people with disability to achieve many of the rights contained in the CRPD, and it will require:

> "fundamental reform in the current legal, administrative and service arrangements that regulate legal capacity for people with disability so that supported decision-making can be recognised, developed and promoted".[68]

66. In this context, the legal prohibition of involuntary or coerced sterilisation must be complemented by the fundamental reform required for the development of a comprehensive supported decision-making system that contains appropriate and effective safeguards.

67. It must also be complemented by the development of a comprehensive range of lifelong services and supports to address the current lack of information, skills building and education in relation to sex education, sexuality and relationships, sexual and reproductive health, menstrual management, pregnancy, contraception or family planning, as noted in point 22 above. This is essential to underpin supported decision-making in this area for both children and adults with disability.

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[65] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 12(2).

[66] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 12(4).

[67] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 12(2).

[68] Disability Representative, Advocacy, Legal and Human Rights Organisations, above n 9, [187].

(e) the impacts of sterilisation on people with disabilities;

68. PWDA is very concerned that there have been very few studies into the views of people with disability who have experienced involuntary or coerced sterilisation, and the physical, psychological, sexual and social impacts of their experiences. While this is an incredibly sensitive and painful topic for many people with disability, much more intensive work needs to occur in this area with the involvement of representative organisations of people with disability.

69. In this respect, PWDA congratulates the Committee for making efforts to speak directly with those affected by involuntary or coerced sterilisation, and for working through representative organisations such as PWDA and WWDA for this process.

70. In 2001, WWDA released a report from an Australian Government funded national project that examined the issue of sterilisation and reproductive health of girls and women with disability in Australia.[69] It is one of the few Australian reports that give voice to women with disability who have experienced involuntary and coerced sterilisation.

71. The voices of women with disability are also extensively contained in WWDA's submission to this Inquiry.[70] In their submission, WWDA summarise the implications of what women have said:

> "It is widely recognised that whatever the context, forced sterilisation has long lasting physical and psychological effects, permanently robbing women of their reproductive capabilities and causing severe mental pain and suffering, extreme psychological trauma, including depression and grief. The removal of such a basic bodily function as the ability to reproduce seriously disrupts women's physical well-being and violates their physical integrity and bodily autonomy".[71]

72. The views provided to PWDA by our members and the women with disability we work with confirm WWDA's findings. Some of these views and the impacts on women's lives are summarised here:

    72.1 overwhelming grief at not being able to have children; not being able to get over the grief; feeling depressed and overcome with grief; unresolved grief leading to psychosocial impairment, self-harm and addiction; grief leading to compulsive behaviour such as hoarding and lifelong collecting of baby clothing, equipment and dolls;

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[69] L. Dowse, L. & C. Frohmader, above n 19.

[70] Women With Disabilities Australia, *'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'*, above n 58, 48-54.

[71] Ibid 49.

72.2 being reminded that you can't have children when you see mothers and babies, unmanageable jealousy when family members, friends and colleagues give birth and consequently feeling upset a lot when out in the community;

72.3 overwhelming, lifelong grief at having your baby taken from you at birth and being forced to be sterilised as a result of getting pregnant and giving birth; the resulting psychosocial impairment, self-harm, addiction and compulsive behaviour as described in 72.1 above;

72.4 upset and angry at ongoing physical health problems, including not developing as a woman, early menopause, osteoporosis, complications with the initial surgery requiring further invasive surgery;

72.5 the impact on marriages of not being able to have children; relationship breakdown when partner discovers sterilisation has occurred and they wish to become a parent;

72.6 feeling betrayed by not being given a choice or being told about the sterilisation procedure later in life leading to family and relationship breakdown;

72.7 feeling as if there was something wrong with being a woman with disability, as whole groups were sterilised as a matter of course.

73. PWDA is aware that it was common practice for women and girls with disability living in institutions to be subjected to involuntary or coerced sterilisation. Many women with disability report that today, all the women in their friendship networks are sterilised.

74. Other women report that there was extreme pressure in institutions and in the community to have sterilisation procedures, and only those with strong family support or strong advocates were able to prevent it from happening. There is great sadness at the memory of other women who did not have this support, and who were coerced into sterilisation procedures that ultimately led to problems, such as depression, 'challenging' behaviour and, in some cases death.

75. PWDA is not aware of any comprehensive project, equivalent to the WWDA project that examines the issue of sterilisation and its impact on men and boys with disability.

76. The views and impacts that have been described to PWDA by our members, the men and boys we work with and our colleague organisations include:

76.1 anger and grief at having the right to parent and the right to make decisions about when and how many children to have being taken away by parents and doctors;

76.2 anger and frustration that there is an immediate and unsubstantiated assumption made by everyone, including parents that having an intellectual disability means that you can't be a good father;

76.3 anger and distress at being forced to have vasectomies after having children; wanting children with a partner and having to seek medical support to have

vasectomies reversed; lack of support from medical professionals to reverse vasectomies;

76.4 frustration and anger at no longer having sexual function, no longer being able to explore sexuality or being able to experience sexual pleasure because of being forced to take anti-androgenic medications;

76.5 extreme anger because anti-androgenic medication has caused breast development and breast tenderness, which has led to being bullied and teased in the community and school resulting in fights, exclusion from school, injuries, social isolation and breakdown in friendships.

77. In 2004 Queensland Advocacy Incorporated (QAI) released a comprehensive background paper on sterilisation of women and girls with disability and men and boys with disability.[72] The paper brought together the available information in relation to the side-effects of surgical and chemical sterilisation procedures for both females and males. These include[73]:

73.1 surgical interventions for women and girls (hysterectomy, endometrial ablation, bilateral oophorectomy, tubal ligation): hormone deficiency; early onset of menopause; increased risk of atherosclerosis and cardiovascular disease; osteoporosis; irreversible interference with the endocrine system; endometriosis; chronic pain and gynaecological ill health; premature onset of gynaecological cancer.

73.2 surgical interventions for men and boys (orchidectomy, vasectomy): decreased bone density; risk of bone fractures; increased risk of prostate cancer; chronic pain in the testes.

73.4 depo provera for females and males: loss of bone density, rapid weight gain, tiredness, depression, kidney and gall problems, haemorrhage (women and girls).

73.5 anti-androgenic and hormonal medications for men and boys: breast development, breast pain, lactation, liver damage, arrhythmia, weight gain, tiredness, blood clotting, headaches.

78. PWDA is concerned that the long-term consequences of many of these procedures are unknown. These procedures have been and continue to be applied differently to people with disability - they are used on a much younger age group than the general population, and have been applied in the absence of health risks or disease. Yet there are very few research studies, including longitudinal studies that investigate the physical, psychological, sexual and other social impacts of these procedures for people with disability.

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[72] Queensland Advocacy Incorporated, 'Sterilisation of people with disability' (Background Paper, Queensland Advocacy Incorporated, November 2004).

[73] Ibid 33-34, 39-40.

79. We are also concerned that some involuntary or coerced sterilisation procedures are viewed as "special experimental treatment", such as "any treatment that involves the use of androgen reducing medication for the purpose of behavioural control".[74] CRPD article 15 makes clear that persons with disability have a right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular, to scientific or medical experimentation without the free and informed consent of the person concerned.[75]

(f) Australia's compliance with its international obligations as they apply to sterilisation of people with disabilities;

80. The rights of children and adults with disability are protected in all the international human rights treaties that Australia has ratified. In their submission to this Inquiry, WWDA has provided a comprehensive analysis of the concluding observations made to numerous countries by numerous UN bodies.

81. Our submission outlines Australia's lack of compliance with its obligations in relation to the thematic treaties that apply human rights norms to the specific situation of people with disability, women and children.

82. We also highlight some key points made by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) regarding involuntary or coerced sterilisation. Australia also fails to comply with its obligations in this regard.

83. Australia's compliance with the recommendations made by the HRC following its UPR of Australia has already been discussed in relation to the National Human Rights Action Plan in points 43-45 above.

Convention on the Rights of Persons with Disabilities (CRPD)

84. People with disability have only recently had their human rights articulated in an international treaty with the adoption of the CRPD by the UN in 2006. Australia ratified the CRPD in 2008.

85. CRPD article 6, *Women with disabilities* requires States Parties[76] to recognise gender inequality and to take action to ensure that girls and women with disability enjoy all the rights and freedoms articulated in CRPD on an equal basis with boys and men.

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[74] Public Guardian, *Substitute Consent - what the law says: Part 5 NSW Guardianship Act 1987* (NSW Justice and Attorney General, 2011) 10.

[75] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 15(1).

[76] States Parties is the term used by the UN to refer to those countries that have ratified or acceded to a particular convention or treaty.

86. Article 7, *Children with disabilities* requires States Parties to take action to ensure that children with disability are able to exercise their rights and freedoms on an equal basis with other children. It also reaffirms the CRC principle that "the best interests of the child shall be a primary consideration" in all actions affecting them.[77]

87. Article 23, *Respect for home and the family* requires States Parties to take measures to eliminate discrimination in matters concerning "marriage, family, parenthood and relationships" to ensure that, among other things, "persons with disabilities, including children, retain their fertility on an equal basis with others".[78] This provision effectively calls for the prohibition of involuntary or coerced sterilisation of children and adults with disability.[79]

88. As discussed in point 79 above, article 15, *Freedom from torture or cruel, inhuman or degrading treatment or punishment* requires States Parties to take all legislative, administrative, judicial or other measures to prevent people with disability from being subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular, to scientific or medical experimentation without the free and informed consent of the person concerned.

89. Article 17, *Protecting the integrity of the person* imposes an obligation on States Parties to respect the physical and mental integrity of people with disability on an equal basis with others. In effect, this means that States Parties must "refrain from interference with" the bodies and minds of people with disability.[80] It confirms that involuntary or coerced sterilisation of children and adults with disability should not be permitted.

90. The rights contained in the CRPD are currently being outlined in a case before the European Court of Human Rights,[81] in which five women with intellectual disability are alleging that they were forcibly sterilised.[82] The European group of National Human Rights Institutions and a coalition of human rights groups have each submitted briefs in support of the rights of the women.[83] Both briefs draw substantially on the rights contained in CRPD to find that "forced sterilisation is a violation of the right to be free

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[77] *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 7(2).

[78] Ibid art 23(1c).

[79] Phillip French, above n 7, 145.

[80] Ibid 122.

[81] *Gauer & Others v France*, Eur Court HR (Application No. 61521/08).

[82] European Court of Human Rights News, 'Case Gauer and others v. France (61521/08) forced sterilization of disabled citizens: communicated (22 November 2011) <http://echrnews.wordpress.com/2011/11/22/gauer/>.

[83] European Group of National Human Rights Institutions, Amicus Brief in the European Court of Human Rights, *Gauer & Others v France* (16 August 2011); Center for Reproductive Rights, European Disability Forum, International Centre for the Legal Protection of Human Rights, International Disability Alliance, Mental Disability Advocacy Center, Written Comments in the European Court of Human Rights, *Gauer & Others v France* (16 August 2011).

from torture and ill-treatment, to respect for private and family life, to found a family, and not least to the right to be free from discrimination on the basis of gender and disability".[84]

91. Australia submitted its initial report to the CRPD Committee in December 2010 and provided the same information concerning sterilisation of people with disability as provided in other reports and statements, as discussed above in point 39. The report states that Australia recognises the right of people with disability "to retain their fertility on an equal basis with others", but then goes on to describe court and tribunal authorisation of sterilisation "as a measure of last resort and after the due consideration of the best interests of the children" with the assurance that it is "not done solely on the basis of the child's disability".[85]

92. While Australia may state that it recognises the right of people with disability to retain their fertility, it also violates this right by maintaining a legal, regulatory and policy framework that permits people with disability to be subjected to involuntary or coerced sterilisation, and by ignoring incidences of involuntary or coerced sterilisation that occur outside this framework.

93. In September 2013, the CRPD Committee will review Australia's compliance with the CRPD. At its 9th session in April, the CRPD Committee will be developing the list of issues for Australia to report against at this review. The non-government report to the CRPD Committee provides information on the consistent failure of Australia to comply with its human rights obligations in relation to involuntary or coerced sterilisation,[86] and it is expected that this issue will be included in the CRPD Committee's list of issues.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[87]

94. CEDAW articulates the rights of girls and women and the measures that States Parties must take to eliminate discrimination based on sex. CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[88]

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[84] Mental Disability Advocacy Center, 'Human Rights Groups Unite Against Forced Sterilisation of Five Women with Disabilities in France' (News, 25 August 2011) <http://www.mdac.info/>.

[85] Australian Government, *Australia's Initial Report under the Convention on the Rights of Persons with Disabilities* (Commowealth of Australia, 2010) [101]-[102].

[86] Disability Representative, Advocacy, Legal and Human Rights Organisations, above n 9, [405]-[407].

[87] *Convention on the Elimination of All Forms of Discrimination Against Women,* opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

[88] *Convention on the Elimination of All Forms of Discrimination Against Women,* opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 1.

95. While CEDAW does not specifically articulate rights concerning freedom from gender-based violence, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has made clear that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".[89]

96. The CEDAW Committee's *General Recommendation No. 19, Violence against women* specifically articulates how violence against women is understood within CEDAW. It states that the definition of discrimination in CEDAW "includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately".[90]

97. Involuntary or coerced sterilisation, as a form of gender-based violence is addressed in relation to article 16 of CEDAW. This article requires States Parties to eliminate discrimination in "marriage and family relations", including by ensuring women are able to "decide freely and responsibly on the number and spacing of their children…"[91]

98. *General Recommendation No. 19* states that, "compulsory sterilisation…adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children".[92] This statement reflects the core of women's reproductive rights - a women's right to maintain her fertility. In effect, this means that sterilisation in the absence of a serious risk to health or life could only be performed with a woman's consent.

99. This latter point is restated in *General Recommendation No. 24* concerning women and health, where the CEDAW Committee states that "quality health care services… are those which are delivered in a way that ensures that a woman gives her fully informed consent…"[93] The CEDAW Committee goes on to state that "states parties should not permit forms of coercion, such as non-consensual sterilisation…"[94]

100. In 2006, the CEDAW Committee made its finding concerning an individual communication submitted by a Hungarian Roma women, Ms A S who had "been

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[89] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 – Violence against women*, 11th sess (1992) [1].

[90] Ibid [6].

[91] *Convention on the Elimination of All Forms of Discrimination Against Women,* opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 16(e).

[92] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 – Violence against women*, 11th sess, UN Doc A/47/38 (1992) [22].

[93] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24 – Article 12 of the Convention (Women and Health)*, 20th sess, UN Doc A/54/38/Rev.1, chap. I (1999) [22].

[94] Ibid.

subjected to coerced sterilisation by medical staff at a Hungarian hospital".[95] The CEDAW Committee specifically referred to the above quoted statements from General Recommendations 19 and 24 to find that Hungary had violated article 12 and 16 of CEDAW by performing a sterilisation procedure on Ms A S without "her full and informed consent" and which has "permanently deprived her of her natural reproductive capacity".[96]

101. *General Recommendation No. 19* also outlines comprehensive measures that States Parties need to implement to eliminate gender-based violence, including through legislation; protective, preventative and punitive measures; complaint mechanisms and remedies including compensation; data collection and analysis; research; education and awareness-raising.[97] Measures taken by States Parties should be provided in States Parties' periodic reports to the UN CEDAW Committee.

102. Australia has been a party to CEDAW since 1983, and *General Recommendation No.19* was released in 1992 and *General Recommendation No.24* in 1999. However, Australia's latest report to the CEDAW Committee for the period 2003-2008 did not provide any information on involuntary or coerced sterilisation of girls and women with disability.[98]

103. However, the issue of involuntary or coerced sterilisation was raised in the shadow or parallel report that was provided to the CEDAW Committee by Australian non-government organisations.[99] In 2010, in its concluding observations to Australia, the CEDAW Committee recommended that:

> "the State Party enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation 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".[100]

104. This is a clear affirmation, that involuntary or coerced sterilisation of girls and women with disability is a form of gender-based violence, which Australia has an obligation to eliminate.

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[95] Committee on the Elimination of Discrimination against Women, Views: Communication No 4/2004, 36th sess, UN Doc CEDAW/C/36/D/4/2004 (29 August 2006) [1.1] ('Ms A S v Hungary').

[96] Ibid [11.4].

[97] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 – Violence against women*, 11th sess, UN Doc A/47/38 (1992) [24].

[98] Australian Government Office for Women, "Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women July 2003-July 2008" (Commonwealth of Australia, 2008).

[99] YWCA Australia and Women's Legal Services Australia, *NGO Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Australia*, July 2009, 110.

[100] Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Australia*, 46th sess, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010) [43].

105. Importantly, the CEDAW Committee made a distinction between girls and women by only regarding full and free consent as applicable to adults. The CEDAW Committee is making explicit a view that non-therapeutic sterilisation should not be permitted for girls with disability under any circumstances, a view that is consistent with the CRC.

Convention on the Rights of the Child (CRC)

106. The CRC sets out the specific ways that human rights apply to all children and young people up to the age of 18 years. It recognises the responsibility of parents and the family to assist their children to realise their rights "in a manner that is consistent with the evolving capacities of the child".[101] The core principles for implementation of the CRC include the right of all children "without discrimination of any kind" to enjoy all the rights set out in the CRC;[102] for all measures concerning children to ensure that "the best interests of the child… be the primary consideration";[103] and the right for all children to express their views freely on all issues that affect them.[104]

107. The CRC explicitly mentions 'disability' as a ground of discrimination that must be eliminated,[105] and contains a specific article on children with disability that sets out measures to provide for children with disability to "enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community".[106]

108. Article 19 of CRC requires States Parties "to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence…"[107]

109. In *General Comment No. 13, The right of the child to freedom from all forms of violence*, the CRC Committee stipulates that it is unacceptable to have "any level of legalised violence against children"; there are no exceptions to 'all forms of physical or mental violence'.[108] The CRC Committee goes on to state that children with disability "may be subject to particular forms of physical violence such as… forced sterilisation, particularly girls…"[109]

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[101] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 5.

[102] Ibid art 2.

[103] Ibid art 3.

[104] Ibid art 12.

[105] Ibid art 2.

[106] Ibid art 23.

[107] Ibid art 19(1).

[108] Committee on the Rights of the Child, *General Comment No. 13 – The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13 (18 April 2011) [17].

[109] Ibid [23].

110. This reinforces the statement made in *General Comment No. 9, Children with disabilities* that the CRC Committee is:

> "deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges State Parties to prohibit by law the forced sterilisation of children on the grounds of disability."[110]

111. This reflects the concluding observation made to Australia by the CRC Committee in 2005 concerning the authorisation focus of the SCAG as discussed in point 36 above.

112. Australia's periodic report to the CRC Committee responded to this concluding observation by stating that "a blanket prohibition on the sterilisation of children could lead to negative consequences for some individuals."[111] It provided an example of the need to perform sterilisation on a young woman with "severe menstrual bleeding where hormonal or other treatments are contraindicated", and where "contraception may not be an issue, but the concern is the impact on the child's quality of life if they are prevented from participating to an ordinary extent in school and social life".[112] The report concludes that "given its invasive and irreversible nature, the Australian Government considers sterilisation may only be authorised as a measure of last resort and after due consideration of the best interests of the child".[113]

113. Australia's response continues to misunderstand or reject the international human rights law concerning involuntary or coerced sterilisation. Firstly, the CRC Committee's concluding observations and comments do not call for a 'blanket prohibition' of sterilisation, but prohibition of involuntary or coerced sterilisation.

114. Secondly, the example provided in the Australian Government's report justifies an incidence of involuntary or coerced sterilisation – sterilisation authorised as a response to 'severe menstrual bleeding' based on 'quality of life' judgements. However, authorisation of sterilisation to address 'severe menstrual bleeding' in girls without disability would never be permitted and would likely create a public outcry.

115. Finally, the response merely restates the position that authorisation can be given by courts as a 'step of last resort' and where it is in the 'best interests of the child'. Australia's response inaccurately equates the 'best interests' principle in Australian

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[110] Committee on the Rights of the Child, *General Comment No. 9 – The rights of children with disabilities,* 43th sess, UN Doc CRC/C/GC/9 (27 February 2007) [60].

[111] Australian Government, *Fourth Report under the Convention on the Rights of the Child* (Commonwealth of Australia, 2008) [159].

[112] Ibid.

[113] Ibid [161].

law with the human rights 'best interests' principle contained in the CRC. Australia's periodic report explains that "a determination of the best interests of the child is the key principle in most legislation concerning children" and that this principle has been considered by the High Court including in *Marion's case*.[114]

116. However, in *General Comment No. 13,* the CRC Committee emphasises:

> "that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices… which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention".[115]

117. Under the CRC, the 'best interests' principle could never be used to authorise sterilisation in the absence of serious risk to health or life as this would be authorising a form of violence. No child, parent, court or tribunal is permitted to consent to allowing a form of violence to be performed on children, with or without disability.

118. In 2012, the CRC Committee issued its concluding observations to Australia. It urged Australia to "[e]nact non-discriminatory legislation that prohibits non-therapeutic sterilisation of all children, regardless of disability…".[116]

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[117]

119. The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment contained in CAT is reaffirmed in CRPD article 15, as discussed in points 79 and 88 above.

120. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) has expressed concern about practices that are perpetrated against persons with disability in public institutions as well as in the private sphere, and which "remain invisible and are not recognised as torture or other cruel, inhuman or degrading treatment or punishment".[118]

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[114] Ibid [70].

[115] Committee on the Rights of the Child, *General Comment No. 13 – The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13 (18 April 2011) [61].

[116] Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Covention, Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (15 June 2012) para 58(f).

[117] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

[118] Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/63/175 (28 July 2008) 2.

121. The Special Rapporteur notes that torture "presupposes a situation of powerlessness, whereby the victim is under the total control of another person".[119] He notes that:

> "persons with disabilities often find themselves in such situations, for instance when they are deprived of their liberty in prisons or other places, or when they are under the control of their caregivers or legal guardians."[120]

122. In this regard the Special Rapporteur on torture notes that:

> "Innumerable adults and children with disabilities have been forcibly sterilised as a result of policies and legislation enacted for that purpose. Persons with disabilities, and particularly women and girls, continue to be subjected to forced abortion and sterilisation without their free and informed consent inside and outside institutions…"[121]
>
> "…the administration of non-consensual medication or involuntary sterilisation is often claimed as being a necessary treatment for the so-called best interest of the person concerned."[122]
>
> "…medical or scientific experimentation on persons with disabilities, including testing of medicines, is permissible only when the person concerned gives his or her free consent…"[123]
>
> "…in the context of medical treatment of persons with disabilities… serious violations and discrimination against persons with disabilities may be masked as 'good intentions' on the part of health professionals."[124]
>
> "Forced sterilisation is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment."[125]

123. In terms of the State's accountability for torture, the Special Rapporteur on torture states that:

> "the prohibition against torture relates not only to public officials, such as law enforcement agents in the strictest sense, but may apply to doctors, health professionals and social workers, including those working in private hospitals, other institutions and detention centres."[126]

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[119] Ibid [50].

[120] Ibid.

[121] ibid [60]

[122] Juan E. Mendez, above n 63, [32].

[123] Manfred Nowak, above n 118, [58].

[124] Ibid [49].

[125] Juan E. Mendez, above n 63, [48].

[126] Manfred Nowak, above n 118, [51].

124. The Special Rapporteur on torture also stresses that States Parties to CAT "have an obligation to criminalise acts of torture, prosecute perpetrators, impose penalties appropriate to the gravity of the offence and provide reparation to victims."[127]

(g) the factors that lead to sterilisation procedures being sought by others for people with disabilities, including:

(i) the availability and effectiveness of services and programs to support people with disabilities in managing their reproductive and sexual health needs, and whether there are measures in place to ensure that these are available on a non-discriminatory basis,

(ii) the availability and effectiveness of educational resources for medical practitioners, guardians, carers and people with a disability around the consequences of sterilisation, and

(iii) medical practitioners, guardians and carers' knowledge of and access to services and programs to support people with disabilities in managing their reproductive and sexual health needs; and

125. The rationale for involuntary or coerced sterilisation being sought by parents, carers and medical practitioners, and authorised by courts and tribunals is embedded with prejudicial and discriminatory views. These have been detailed by WWDA in their submission,[128] as discussed in point 55 above. These include views that people with disability:

125.1 should not reproduce as their children are likely to have genetic 'abnormalities';

125.2 should not contribute to the 'burden' that disability places on the resources and services provided by the State and funded by taxpayers;

125.3 place a significant 'burden' on parents and carers; and menstrual and contraceptive management and 'unwanted' or 'hyper' sexual behaviour only adds to this 'burden';

125.4 cannot be effective and 'fit' parents, or have healthy relationships;

125.5 should not or do not engage in sexual activity;

125.6 do not have the capacity to understand and develop skills as their capacity is 'fixed';

125.7 need to be protected from sexual abuse, and the possible pregnancies that may result from sexual abuse.

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[127] Ibid [45].

[128] Women With Disabilities Australia, *'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'*, Submission to the Senate Community Affairs Committee, *Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013, 30-47.

126. These prejudicial and discriminatory views underpin the broader denial of human and reproductive rights of people with disability, such as those outlined in CRPD article 23. Involuntary or coerced sterilisation must be understood in this context.

127. In particular, PWDA and other disability advocacy organisations are concerned that people with disability:

    127.1 are often denied or discouraged from establishing or maintaining intimate relationships or engaging in consensual sex; this denial can be embedded in supported accommodation policies and practices;[129]

    127.2 have their children removed from their care by child protection agencies on the basis of disability; disability is viewed as a risk factor and removal can often occur immediately after birth; parents with disability are overrepresented in child protection proceedings;[130]

    127.3 do not have access to sexuality and positive relationship education, reproductive health or family planning information and services; consequently they can be more susceptible to exploitation and abuse.[131]

128. PWDA is concerned that these prejudicial and discriminatory views are held by medical practitioners, who are often the first avenue for parents of children and adults with disability to seek assistance with menstrual management, contraception, risks of sexual abuse and sexual expression, such as masturbation. Recent studies indicate that a large proportion of general practitioners "view sterilisation as a desirable practice", particularly for women and girls with disability to address a range of support rather than therapeutic issues, such as to prevent pregnancy and sexual abuse.[132]

129. As highlighted in points 22 and 23 above, the lack of services and individualised person-centred supports to assist people with disability build knowledge and skills in relation to a broad range of reproductive, parenting and sexual health needs is one key factor in sterilisation procedures being sought by others, particularly parents on behalf of children and adults with disability.

130. In this regard, PWDA is aware that many sexual health and family planning organisations across Australia lack the necessary funding to provide comprehensive, targeted, gender and age specific services to people with disability. We are aware of

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[129] Disability Representative, Advocacy, Legal and Human Rights Organisations, above n 9, [489]-[424]; Advocacy for Inclusion, Submission No 35 to Senate Standing Committee on Community Affairs, *Inquiry into Involuntary or Coerced Sterilisation*, February 2013, 8-11.

[130] Disability Representative, Advocacy, Legal and Human Rights Organisations, above n 9, [408]-[411]; Advocacy for Inclusion, above n 129, 11-15.

[131] Disability Representative, Advocacy, Legal and Human Rights Organisations, above n 9, [412]-[414]; Advocacy for Inclusion, above n 129, 7.

[132] Queensland Centre for Intellectual and Developmental Disability, Queenslanders with Disabilities Network, and Queensland Advocacy Incorporated, Submission No 37 to Senate Standing Committee on Community Affairs, *Inquiry into Involuntary or Coerced Sterilisation*, 2013, 7.

only one organisation in Australia targeted specifically to people with disability to support learning in "human relationships, sexuality and sexual health across the lifespan".[133]

131. Without significant measures to address negative and prejudicial attitudes and the lack of services, supports, counselling, training, education and skills building options, children and adults with disability will continue to be denied their human and reproductive rights, including being subjected to involuntary or coerced sterilisation.

2. Current practices and policies relating to the involuntary or coerced sterilisation of intersex people, including:

(a) sexual health and reproductive issues; and
(b) the impacts on intersex people.

132. Like many people with disability, intersex people are viewed within a medical model that seeks medical interventions to 'cure' or 'fix' non-conformity with societal norms. The range of natural biological attributes that lie between 'male' and 'female' for intersex people are medicalised as impairments or disorders of sex development.[134]

133. Both people with disability and intersex people are subjected to surgical and other medical interventions, including involuntary or coerced sterilisation, which violate their human rights.

134. Intersex people are "disproportionately affected by involuntary or coerced medical interventions"[135] that cause infertility, as "medically unnecessary interventions"[136] are routinely performed on intersex babies to "erase intersex differences" and make them either male or female.[137]

135. OII Australia provides a comprehensive analysis of the prejudicial and discriminatory attitudes that are held within the medical and legal frameworks governing these practices and of the significant adverse impact of these medical procedures on intersex people.

136. In his report on abusive practices in health care, the Special Rapporteur on torture has noted:

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[133] Sexuality Education Counselling and Consultancy Agency (secca) <http://www.secca.org.au >.

[134] Organisation Intersex International Australia, Submission No 23 to Senate Standing Committee on Community Affairs, *Inquiry into Involuntary or Coerced Sterilisation*, 15 February 2013, 2.

[135] National LGBTI Health Alliance, Submission No 60 to the Senate Standing Committee on Community Affairs, *Inquiry into Involuntary or Coerced Sterilisation*, 12 March 2013, 1.

[136] Ibid.

[137] Organisation Intersex International Australia, above n 134, 2.

> "Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilisation, involuntary genital normalising surgery…'in an attempt to fix their sex', leaving them with permanent infertility and causing severe mental suffering."[138]

137. In relation to lesbian, gay, bisexual, transgender and intersex people, the Special Rapporteur has called on all States Parties:

> "to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, 'reparative therapies' or 'conversion therapies', when enforced or administered without the free and informed consent of the person concerned… [and] to outlaw forced or coerced sterilisation in all circumstances and provide special protection to individuals belonging to marginalised groups".[139]

138. This position is consistent with the views of the Special Rapporteur on torture in relation to people with disability, and specifically in relation to the involuntary or coerced sterilisation of people with disability. It is also consistent with other recommendations made by UN bodies calling for the prohibition of involuntary or coerced sterilisation, as discussed in this submission.

139. In this respect, PWDA notes that while our recommendations focus on people with disability, a number are broadly applicable to intersex people, and a number are broadly consistent with the recommendations made by OII Australia, and the submissions of other organisations that have specifically addressed the human rights situation of intersex people.[140]

140. Finally, PWDA argues that the legislative, regulatory and policy reform that is necessary for Australia to meet its international human rights obligations with respect to involuntary or coerced sterilisation must include the active and full participation of the intersex community. In this respect, PWDA notes with concern the lack of resources and funding required for OII Australia to provide the necessary representation, expertise and advocacy on this and other human rights issues.

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[138] Juan E. Mendez, above n 63, [77].

[139] Ibid [88].

[140] National LGBTI Health Alliance, above n 135; Androgen Insensitivity Syndrome Support Group Australia Inc, Submission No 54 to the Senate Standing Committee on Community Affairs, *Inquiry into Involuntary or Coerced Sterilisation*, 12 March 2013.

Recommendations

Representation

1. People with disability through their representative organisations, and the intersex community through their representative organisations must be actively involved in the development, implementation and evaluation of the legislative, regulatory and policy reform required to meet Australia's international human rights obligations with respect to involuntary or coerced sterilisation.

2. Provide sustained resourcing and recurrent funding to OII Australia to ensure it can provide effective and sustainable representation, expertise and advocacy.

Legislative reform

3. As the basis of all measures, Australia should take action to comply with its international human rights obligations by enacting uniform, national legislation prohibiting involuntary or coerced sterilisation, that is, the sterilisation of children in the absence of serious threat to life or health; and the sterilisation of adults in the absence of serious threat to life or health and without their full and informed consent.

4. Amend crimes legislation to include a new offence in relation to the performance of involuntary or coerced sterilisation. Such a provision should also make it an offence to procure, or seek to procure such a procedure and to assist or aid and abet in such a procedure. It should also make it an offence to remove a child or adult from Australia for the purpose of performing involuntary or coerced sterilisation.

5. Enact legislation to establish a comprehensive supported decision-making system focused strongly and positively on promoting and supporting people to effectively assert and exercise legal capacity, and on safeguarding against abuse and exploitation in both informal and formal supported decision-making arrangements.

Justice and Redress

6. In line with WWDA's recommendations 2, 3, 4 and 5, establish a framework for transitional justice and redress for those who have been subjected to involuntary or coerced sterilisation, and which includes gender and age specific measures for reparation, rehabilitation and recovery, a formal apology and compensation.

Research and Reporting

7. Commission comprehensive national research to investigate:
   - the views of people with disability and intersex people in relation to involuntary or coerced sterilisation;
   - the prevalence, rationale, short and long-term effects of involuntary or coerced sterilisation, including menstrual and sexual suppression practices on girls and boys with disability, women and men with disability and intersex people; and

- models of best practice in providing gender and age specific services, supports, counselling, training, education and skills building options for people with disability and their families in relation to sex education, sexuality and relationships, sexual and reproductive health, menstrual management, pregnancy, contraception and family planning.

8. Conduct a national inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disability, particularly mothers with disability. Such an inquiry should actively seek the views of parents with disability.

9. Develop a national reporting framework to monitor the number of applications, the number of orders, and the reasons for decisions concerning sterilisation procedures of people with disability. Reports on these matters should be publicly available.

Service and supports

10. Establish and resource services and support options to provide gender and age specific services, supports, counselling, training, education and skills building options for people with disability and their families in relation to sex education, sexuality and relationships, sexual and reproductive health, menstrual management, pregnancy, contraception and family planning.

11. Establish an independent, statutory national protection mechanism that has broad powers to protect, investigate and enforce findings related to gender and age specific incidences of exploitation, violence and abuse experienced by people with disability.

Education and training

12. Develop a national coordinated strategic education and training framework to ensure that the human rights of people with disability, including rights to sexual expression and to fertility are:
    - included in the curriculum and accreditation bodies for health professionals, medical practitioners, legal practitioners and disability support workers;
    - embedded in the policies of disability services, in particular residential services for people with disability;
    - provided in ongoing, consistent education and skills building programs specifically for people with disability and their families.