

# BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

BY CAROLYN FROHMADER

FOR WOMEN WITH DISABILITIES AUSTRALIA (WWDA)  
© DECEMBER 2012

***“I THINK THERE SHOULD BE AN ACT THAT SHOULD GO THROUGH PARLIAMENT, IT MUST BE A STERILISATION ACT THAT STOPS GIRLS AND WOMEN WITH INTELLECTUAL DISABILITIES BEING STERILISED.”***

***PARTICIPANT, STAR CONFERENCE ON STERILISATION, 1990<sup>1</sup>***



Systemic prejudice and discrimination against women and girls with disabilities continues to result in widespread denial of their right to experience their sexuality, to have sexual relationships, to make decisions about their own bodies, and to found and maintain families. The right to bodily integrity and the right of a woman to make her own reproductive choices are enshrined in a number of international human rights treaties and instruments to which Australia is a party. However, in Australia there are women and girls with disabilities who have been and continue to be, denied these rights through the ongoing practice of ‘forced/ involuntary’ and ‘coerced’ sterilisation.<sup>2</sup>

Women and girls with disabilities are particularly vulnerable to forced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.<sup>3</sup> The forced sterilisation of disabled women and girls is recognised under international human rights law as an act of violence,<sup>4</sup> 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.<sup>5</sup> Sterilisation disproportionately affects women and girls and is a gendered issue. Whilst there may be instances where disabled men and boys are subject to sterilisation procedures, all cases that have come to the attention of relevant authorities in Australia (including Courts and Guardianship Tribunals) have involved the sterilisation of girls with intellectual disabilities.<sup>6</sup> There have been no instances in Australia where authorisations to sterilise have been sought for children without disabilities in the absence of a threat to life or health.<sup>7</sup>

The sterilisation of a child in circumstances other than where there is a serious threat to the health or life of that child effectively denies the child present and future enjoyment of her or his human rights. The main reasons used to justify forced sterilisations in Australia have generally fallen into four broad categories,<sup>8</sup> all couched as being in the

“best interests” of women and girls with disabilities:

- The genetic/eugenic argument
- For the good of the state, community or family (to reduce ‘burden of care’),
- Incapacity for parenthood
- Prevention of sexual abuse

For more than twenty years, women with disabilities and their allies have been asking successive Australian Governments to show national leadership and undertake reforms to address the forced sterilisation of women and girls with disabilities, and to develop policies and programs that enable disabled women and girls to realise their human rights on an equal basis as others.

In 1990, women with intellectual disabilities, their families, support persons, and service providers, came

## BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

together at a conference in Victoria to examine the issue of sterilisation. The conference was called 'My Body, My Mind, My Choice'. It was organised by STAR, an independent community organisation that advocates for the rights of people with an intellectual disability. At the time, STAR stated:

*'All women with intellectual disabilities have the right to control their own bodies. STAR is concerned at the ease with which hysterectomy and tubal ligation are promoted as the solutions to menstrual management and contraception for women with intellectual disabilities. Existing and viable options are often not explored and parents and other caregivers are not made aware of these, or are discouraged from understanding their effectiveness.'*<sup>9</sup>

The STAR Conference resolutions included amongst other things, the need for law reform; the need for information, education, and training of both women with intellectual disabilities and service providers; and the need for women with disabilities to be treated as equals and to be treated with dignity and respect.

In October 1992, the then Federal Minister for Justice (Senator Tate) commissioned the Family Law Council<sup>10</sup> to undertake an inquiry into sterilisation and other medical procedures on children. The Recommendations from the Inquiry, published in 1994, included:

- that there should be a new division in the Family Law Act regulating sterilisation of young people;
- that the legislation would indicate four situations in which sterilisation could never be authorised: a) sterilisation for eugenic reasons; b) sterilisation purely for contraceptive purposes; c) sterilisation as a means of masking or avoiding the consequences of sexual abuse; or, d) sterilisations performed on

young women prior to the onset of menstruation, based on predictions about future problems that might be encountered with menstruation.

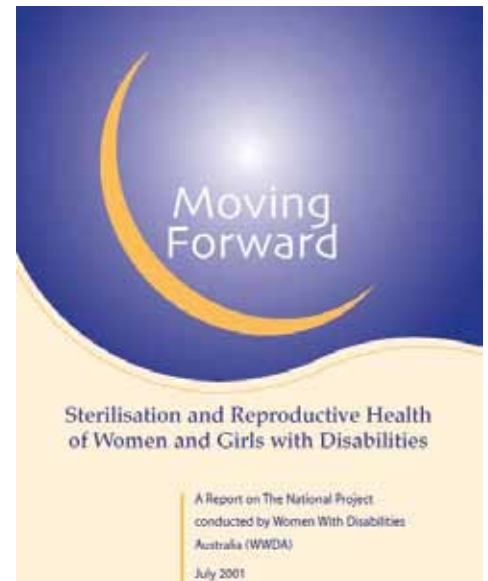
The Family Law Council further recommended that:

- the 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.

The Recommendations of the Inquiry were never implemented.

In 2001, Women With Disabilities Australia (WWDA) completed a national research study into sterilisation and reproductive health of women and girls with disabilities. Initially, the project was titled 'Sterilisation and Reproductive **Rights** of Women and Girls with Disabilities' however government funding was approved only on the proviso that the title of the project be changed to 'Sterilisation and Reproductive **Health** of Women and Girls with Disabilities'. This small, one word difference spoke volumes about the underlying current in the national approach to reproductive issues for women and girls with disabilities in Australia. The resulting report of the project, entitled 'Moving Forward' recommended, amongst other things,<sup>11</sup> the banning of all sterilisations of girls under the age of 18 years and the prohibition of sterilisation of adults in the absence of informed consent, except in circumstances where there is a serious threat to health or life.

Successive Australian Governments failed to substantially address and respond to any of the recommendations stemming from WWDA's national project. Instead, from 2003 to 2007, the Australian Government pushed ahead with a proposal to develop legislation



aimed to **regulate** authorisation of sterilisation of minors with a 'decision-making disability' rather than **prohibit** this form of violence. The Government disbanded this work in 2008, declaring that 'there would be limited benefit in developing model legislation'<sup>13</sup> and advised WWDA that it had no intention of pursuing the issue of reform any further.<sup>14</sup> This was despite the fact that the Australian Government conceded that: a) girls with disabilities continue to be sterilised in Australia,<sup>15</sup> and b) 'unrecorded and unauthorised non-therapeutic sterilisations of young women with intellectual disabilities [are] being undertaken in Australia'.<sup>16</sup>

Instead of developing universal legislation which prohibits the sterilisation of women and children except in those circumstances where there is a serious threat to life or health, the Government has consistently taken the view that there are instances in which sterilisation can and should be authorised, as evidenced in its 2009 Report to the United Nations under the Convention on the Rights of the Child (CRC):

*A blanket prohibition on the sterilisation of children could lead to negative consequences for some individuals.*

## BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA



*Applications for sterilisation are made in a variety of circumstances. Sometimes sterilisation is necessary to prevent serious damage to a child's health, for example, in a case of severe menstrual bleeding where hormonal or other treatments are contraindicated. The child may not be sexually active and 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.*

In its 2009 response to the United Nations *Questionnaire on the Implementation of the Beijing Platform for Action (BPA)*,<sup>17</sup> the Australian Government conceded that "low numbers" of children with disabilities continue to be sterilised in Australia. The Government further claimed that '*alternatives to surgical procedures to manage the menstruation and contraceptive needs of women are increasingly available and seem to be successful in the most part*,' and that although there are 'limitations' in available information, '*existing processes*

*to authorise sterilisation procedures appear to be working adequately due to improvements in treatment options and wider community awareness.'* In response to this, in March 2010, WWDA wrote formally to the [then] Federal Attorney-General requesting quantification and specific data on sterilisation of minors, along with detailed information on what evaluation the Government has conducted to inform its position that alternatives to sterilisation are "successful in the most part". WWDA has never received any of the information requested. WWDA also formally called on the Australian Government to act under its external affairs power as provided in Section 51 of the Australian Constitution,<sup>18</sup> to legislate to prohibit sterilisation of minors unless there is a serious threat to health or life.<sup>19</sup>

In June 2011, WWDA lodged a formal complaint with four of the United Nations Special Rapporteurs, requesting urgent intervention from each of their offices simultaneously.<sup>20</sup> The Special Rapporteurs<sup>21</sup> wrote to the Australian Government on 18 July 2011 seeking a formal response in relation to the alleged ongoing practice of non-therapeutic, forced sterilisation of girls and women with disabilities in Australia. The Government's response, provided to the UN on 16 December 2011, outlined the different laws governing sterilisation in Australia; and stated that '*sterilisations are authorised only where they are the last resort, as less invasive options have failed or are inappropriate, and where they are in a person's best interests*'. The 28 page response suggests the Australian Government remains of the view that there are instances in which non-therapeutic sterilisation of children and of adults with disabilities in the absence of their free and informed consent, can and should be authorised.

Since 2005, United Nations treaty monitoring bodies have consistently and formally recommended that the Australian Government 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.

Most recently in June 2012, the Committee on the Rights of the Child (CRC), in its Concluding Observations<sup>22</sup> to the Fourth periodic report of Australia,<sup>23</sup> expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disabilities "*is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities.....*". The Committee urges the State party to: '*Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities.*' Furthermore, the Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government '*develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent.*'

In January 2011, in follow-up to Australia's Universal Periodic Review, the UN Human Rights Council endorsed a recommendation specifically addressing the issue of sterilisation of girls and women with disabilities. It specifies that the Australian Government should



## BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities without their informed and free consent.<sup>24</sup>

In July 2010, at its 46th session, the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern in its Concluding Observations on Australia at the ongoing practice of non-therapeutic sterilisations of women and girls with disabilities and recommended that the Australian Government ‘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.’<sup>25</sup>

In 2005, the Committee on the Rights of the Child in considering Australia’s combined second and third periodic reports<sup>26</sup> under Article 44 of the *Convention on the Rights of the Child (CRC)*, recommended that ‘the State party.....prohibit the sterilization of children, with or without disabilities....’<sup>27</sup> and in 2007 clearly articulated its position on sterilisation of girls with disabilities, clarifying that States parties to the CRC are expected to **prohibit by law** the forced sterilisation of children with disabilities.<sup>28</sup>

**To date, the Australian Government has failed to comply with any of these recommendations.**

In February 2011, the Committee on the Rights of the Child issued General Comment 13, ‘*The right of the child to freedom from all forms of violence*’, through which the Committee identifies forced sterilisation of girls with disabilities as a form of violence and clearly articulates that **all** forms of violence against children are unacceptable

without exception.<sup>29</sup> The Committee on Economic, Social and Cultural Rights (CESCR) has made it clear that forced sterilisation of girls and women with disabilities is a breach of Article 10 of the *Convention on Economic, Social, and Cultural Rights*.<sup>30</sup> Similarly, the Human Rights Committee has clarified to State parties that forced sterilisation is in contravention of Articles 7, 17 and 24 of the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>31</sup>

In 2009, the Committee Against Torture recommended that States parties to the *Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* take **urgent** measures to investigate promptly, impartially, thoroughly, and effectively, allegations of involuntary sterilisation of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.<sup>32</sup> The United Nations Special Rapporteur on Torture has emphasised that forced sterilisation of women with disabilities may constitute torture or cruel or inhuman treatment, and that forced sterilization constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.<sup>33</sup> As highlighted earlier, all cases that have come to the attention of relevant authorities in Australia (including Courts and Guardianship Tribunals) have involved the sterilisation of girls with intellectual disabilities.<sup>34</sup> Similarly, there have been no instances in Australia where authorisations to sterilise have been sought for children without disabilities in the absence of a threat to life or health.<sup>35</sup>

The *Beijing Declaration and Platform for Action (BPA)* identifies forced sterilisation as an act of violence and reaffirms the rights of women, including women with disabilities, to found and maintain a family, to attain the highest standard of sexual and reproductive health, and to make decisions concerning reproduction



*abolition of surgery and treatment without the full and informed consent of the patient”.*<sup>39</sup>

As highlighted earlier, instead of complying with these international legal obligations and specific recommendations to prohibit the non-therapeutic and forced sterilisation of women and girls with disabilities, the Australian Government has to date, argued that: “*the Australian Government considers that the ‘best interests’ test as articulated and applied in Australia is consistent with Australia’s international obligations.*”<sup>40</sup> However, the Committee on the Rights of the Child (CRC) has made it clear that the principle of the ‘best interests of the child’ cannot be used to justify practices which conflict with the child’s human dignity and right to physical integrity:

*“The Committee emphasizes 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, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human*

## BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

*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.*<sup>41</sup>

In addition to the important analysis and condemnation of forced and coerced sterilisation of disabled women and girls by UN mechanisms, international medical bodies have now developed new protocols and calls for action to put an end to the practice of involuntary sterilisation. In June 2011, the International Federation of Gynecology and Obstetrics (FIGO) released new *Guidelines on Female Contraceptive Sterilization*<sup>42</sup> shoring up informed consent protocols and clearly delineating the ethical obligations of health practitioners to ensure that women, and they alone, are giving their voluntary and informed consent to undergo a surgical sterilisation. Additionally, in September 2011, the World Medical Association (WMA) released a statement condemning the practice of forced and coerced sterilisation as a serious breach of medical ethics. WMA President, Dr. Wonchat Subhachaturas, called involuntary sterilisation "a misuse of medical expertise, a breach of medical ethics, and a clear violation of human rights." On behalf of the WMA, he issued a call to "all physicians and health workers to urge their governments to prohibit this unacceptable practice."<sup>43</sup>

In October 2012, the International NGO Council on Violence against Children,<sup>44</sup> classified 'sterilisation of children with disabilities' as a harmful practice based on tradition, culture, religion or superstition.<sup>45</sup> It has urged states to prohibit the practice by law as a matter of urgency.

In 2012, the World Health Organisation (WHO) commenced work on the development of a WHO Statement on Involuntary Sterilization,<sup>46</sup> which addresses involuntary sterilisation of people with disabilities. The Statement will highlight the problem of involuntary sterilisation and will reaffirm the commitment of WHO to uphold human rights in the area of sexual and reproductive health. It will enable WHO to support Member States to ensure that law, policy and practice are in line with human rights standards and ethical principles and contribute to implementing best practices among policy-makers, professionals, and civil society. The Statement will be launched in the second quarter of 2013.

The Global Stop Torture in Health Care Campaign<sup>47</sup> has identified forced sterilisation as one of its three priority issues for international action.<sup>48</sup> In doing so, it states:

*'Although sterilization may be carried out by individual health providers, it is ultimately the responsibility of governments to prevent such abuses from taking place. Governments must protect individuals from forced sterilization and guarantee all people's right to the information and services they need to exercise full reproductive choice and autonomy.'*

In September 2012 the Australian Government announced a Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia.<sup>49</sup> The Inquiry is due to report in April 2013. The Senate Community Affairs Committee is seeking written submissions from interested individuals and organisations. The closing date for submissions is 22 February 2013.

On 10 December 2012, International Human Rights Day, the Australian Government released its National Human Rights Action Plan.<sup>50</sup> In releasing the Plan, the Federal Attorney General stated that *'This action plan explains in detail how Australia will implement the recommendations accepted during its Universal Periodic Review at the United Nations in 2011.'*<sup>51</sup> As highlighted earlier in this paper, one of the UPR recommendations specifically called on the Australian Government to enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities without their informed and free consent. Yet the National Human Rights Action Plan addresses this recommendation in the following way: *'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.'*<sup>52</sup>

WWDA urges the Australian Government to uphold its international and domestic human rights obligations and 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. Additionally, WWDA urges the Australian Government to act on WWDA's long-standing recommendations in relation to this issue and implement a range of specific strategies to enable women with disabilities to realise their rights to freedom from violence, to reproductive freedom and to found a family, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to privacy, and to health.<sup>53</sup>

# APPENDIX 1: ENDNOTES

## BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

1. See: *On The Record - A Report on the 1990 STAR Conference on Sterilisation: 'My Body, My Mind, My Choice'*. Edited by Fiona Strahan, Co-Editor Lois Brudenell. Available at: <http://www.wwda.org.au/record.htm>
2. '**Forced/involuntary sterilisation**' refers to the performance of a procedure which results in sterilisation in the absence of the free and informed consent of the individual who undergoes the procedure. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to health or life. **Coerced sterilisation** occurs when financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure. '**Non-therapeutic sterilisation**' is sterilisation for a purpose other than to 'treat some malfunction or disease': *Secretary, Department of Health and Community Services v JWB and SMB*, 1992, 175 CLR 218; 106 ALR 385. For further discussion, see for example: See: Dowse, L. & Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*, A Report on the National Project conducted by Women with Disabilities Australia (WWDA), Canberra. See also: Brady, S., Briton, J., & Grover, S. (2001) *The Sterilisation of Girls and Young Women in Australia: Issues and Progress*. A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioner; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available at: [www.wwda.org.au/brady2.htm](http://www.wwda.org.au/brady2.htm); See also: WWDA, Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper*. Available at: [http://www.wwda.org.au/Sterilization\\_Disability\\_Briefing\\_Paper\\_October2011.pdf](http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf)
3. WWDA, Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA)(2011) Op Cit.
4. FIGO (International Federation of Gynecology and Obstetrics), *Contraceptive Sterilization Guidelines, Recommendation 5*. Available at: <http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf>.
5. UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, [paras.38, 39]. See also UN Committee Against Torture (CAT Committee), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2 [para.22]; UN General Assembly, *Rome Statute of the International Criminal Court* (last amended January 2002), 17 July 1998, A/CONF. 183/9 [Article 7(1)(g)].
6. Brady, S. (2001) *The sterilisation of girls and young women with intellectual disabilities in Australia: An audit of Family Court and Guardianship Tribunal cases between 1992-1998*. Available online at: [www.wwda.org.au/brady2001.htm](http://www.wwda.org.au/brady2001.htm)
7. See: Commonwealth of Australia (1994) *Sterilisation and Other Medical Procedures on Children*. A report to the Attorney-General prepared by the Family Law Council. Available at: <http://www.ag.gov.au/Documents/sterilisation-and-other-medical-procedures.htm> See also: See also: Brady, S., Briton, J., & Grover, S. (2001) Op Cit.
8. See: Frohmader, C. (2012) *Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia*. Available at: [http://www.wwda.org.au/Moving\\_Forward\\_Gaining\\_Ground.pdf](http://www.wwda.org.au/Moving_Forward_Gaining_Ground.pdf)
9. *On The Record - A Report on the 1990 STAR Conference on Sterilisation*: Op Cit.
10. At the time of the Inquiry, the Family Law Council was a statutory authority established by section 115 of the Family Law Act 1975 to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning - (a) the working of this Act and other legislation relating to family law; (b) the working of legal aid in relation to family law; and (c) any other matters relating to family law.
11. The report also outlined a program of reconciliation; co-ordinated legislative and policy development; information, support and service models; consent considerations; approaches to reproductive health care and education; and data collection.
12. Standing Committee of Attorneys-General (SCAG) Working Group (2006) Draft 17: *Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*. Available at: [www.wwda.org.au/sterbill06.pdf](http://www.wwda.org.au/sterbill06.pdf)
13. Standing Committee of Attorneys-General (SCAG) *Communique* 28 March 2008.

## APPENDIX 1: ENDNOTES

14. Hon Robert McClelland (Attorney-General) *Correspondence to Women With Disabilities Australia* (WWDA), 27 August, 2009.
15. Australian Government (2009) *Response to the UNESCAP Questionnaire on the implementation of the outcome of the Fourth World Conference on Women (Beijing 1995)*. Available online at: [www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds\\_to\\_Questionnaire/Australia.pdf](http://www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds_to_Questionnaire/Australia.pdf) [See page 14].
16. Australian Government (2006) *Sterilisation of Women and Young Girls with an Intellectual Disability - Report to the Senate*. Tabled by the Minister for Family and Community Services and the Minister Assisting the Prime Minister on the Status of Women, December 6, 2000. Available online at: [www.wwda.org.au/senate.htm](http://www.wwda.org.au/senate.htm)
17. See page 14 of the Australian Government response to the United Nations (UNESCAP) *Questionnaire for Governments on Implementation of the Beijing Declaration and Platform for Action (BPFA) and the outcomes of the twenty-third special session of the General Assembly (2000)* [http://www.unescap.org/ESID/GAD/Issues/Beijing+15/index\\_questionnaire.asp](http://www.unescap.org/ESID/GAD/Issues/Beijing+15/index_questionnaire.asp)
18. [http://www.austlii.edu.au/au/legis/cth/consol\\_act/coaca430/s51.html](http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s51.html)
19. See: Women With Disabilities Australia (WWDA) (2010) *Submission to the Australian Attorney-General on the issue of Sterilisation of Minors (March 2010)*. Available at: <http://wwda.org.au/sterilise2006.htm>
20. See: [http://wwda.org.au/WWDA\\_Submission\\_SR2011.pdf](http://wwda.org.au/WWDA_Submission_SR2011.pdf)
21. Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences.
22. UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4.
23. UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Fourth periodic report of States parties due in 2007: Australia*; 25 June 2009; CRC/C/AUS/4.
24. UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10.
25. Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7.
26. UN Convention on the Rights of the Child (CRC)(2004) *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention: Second and third periodic reports of States parties due in 1998 and 2003:Australia*; 29 December 2004; CRC/C/129/Add.4.
27. UN Committee on the Rights of the Child, Fortieth Session, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia*, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e).
28. CRC General Comment No.9 [at para.60] states: *'The 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 States parties to prohibit by law the forced sterilisation of children on grounds of disability.'*
29. UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence*, 17 February 2011, CRC/C/GC/13 [paras.16, 21].
30. CESCR General Comment No.5 [at par 31] states: *Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood"....Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).*
31. See: Human Rights Committee (2000) International Covenant on Civil and Political Rights (CCPR), *General Comment No. 28: Equality of rights between men and women*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, [paras.11 & 20].
32. UN Committee Against Torture (2009), Forty-third session, *Concluding Observations: Slovakia*, para 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); Czech Republic, para 6(n), U.N. Doc. CAT/C/CR/32/2.
33. UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on torture and other cruel, inhuman or*



## APPENDIX 1: ENDNOTES

- degrading treatment or punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, [paras.38, 39].
34. Brady, S. (2001) *The sterilisation of girls and young women with intellectual disabilities in Australia: An audit of Family Court and Guardianship Tribunal cases between 1992-1998*. Available online at: [www.wwda.org.au/brady2001.htm](http://www.wwda.org.au/brady2001.htm)
  35. Women With Disabilities Australia (WWDA) (2007) *Policy & Position Paper: The Development of Legislation to Authorise Procedures for the Sterilisation of Children with Intellectual Disabilities*. Available at: <http://www.wwda.org.au/polpapist07.htm>
  36. United Nations, *The Beijing Declaration and the Platform for Action: Fourth World Conference on Women*, Beijing, China, 4-15 September 1995; A/CONF.177/20/Add.1. [paras. 95-96]
  37. Radhika Coomaraswamy (1999), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].
  38. Article 23 reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others. Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity. Article 25 clearly articulates that free and informed consent should be the basis for providing health care to persons with disabilities.
  39. UN Committee on the Rights of Persons with Disabilities (CRPD Committee), *Concluding Observations: Tunisia*, para. 29, U.N. Doc. CRPD/C/TUN/CO/1 (2011).
  40. United Nations General Assembly, Human Rights Council (2011) *Report of the Working Group on the Universal Periodic Review: Australia; Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*. Seventeenth session, A/HRC/17/10/Add.1.
  41. CRC Committee General Comment No. 13 [at para.61] states: *"The Committee emphasizes 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, including corporal punishment and other forms of cruel or degrading punishment, 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."*
  42. FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>
  43. World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilisation*: Press Release, 5 September 2011. Available at: <http://www.wwda.org.au/sterilWMA2011.htm>
  44. The International NGO Council on Violence Against Children was formed in 2007 to support strong and effective follow-up to the UN Study on Violence against Children. See: <http://www.crin.org/violence/NGOs/>
  45. International NGO Council on Violence against Children (October 2012) *Violating Children's Rights: Harmful practices based on tradition, culture, religion or superstition*. Available online at: [http://www.crin.org/docs/InCo\\_Report\\_15Oct.pdf](http://www.crin.org/docs/InCo_Report_15Oct.pdf)
  46. In recent months, WHO led a broad and inclusive consultation process which included: 12 September 2012: a meeting with governments and civil society during the Conference of States Parties in New York. After the consultation, participants were requested to comment on the Statement and twenty responses were received; 27 October 2012: a consultation with people with intellectual disabilities at the Global Forum of Inclusion International in Washington DC; Further consultation with people with intellectual disabilities on a plain language version of the Statement; 15-16 October 2012: an expert consultation held in Geneva to discuss the Statement in detail. As a result of these inputs, the proposed Statement has been strengthened. Other UN agencies are now reviewing the Statement and assessing how they may be able to support its implementation. See: [http://www.who.int/disabilities/media/news/2012/14\\_11/en/index.html](http://www.who.int/disabilities/media/news/2012/14_11/en/index.html)
  47. The Global Stop Torture in Health Care Campaign is an alliance of international health and human rights organisations working together to put an end to the abuse of individuals in health settings. It is co-ordinated by the Open Society Foundations. See: <http://www.stoptortureinhealthcare.org>
  48. See: <http://www.stoptortureinhealthcare.org/about-forced-sterilization>
  49. For more information on the Senate Inquiry, including updates and also to view other Submissions, go to: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=clac\\_ctte/involuntary\\_sterilisation/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/index.htm)



## APPENDIX 1: ENDNOTES

50. The National Human Rights Action Plan is available at: <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx>
51. The Hon Nicola Roxon MP, Attorney-General & Minister for Emergency Management, Media Release '*National Human Rights Action Plan Released*', 10 December 2012.
52. Commonwealth of Australia (2012) Australia's National Human Rights Action Plan 2012. Accessed online 10 December 2012 at: <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx>
53. In addition to the development and enactment of national legislation prohibiting the practice of forced/involuntary sterilisation, WWDA has repeatedly and consistently requested the Australian government to undertake the following steps to enable women with disabilities to realise their human rights, including their sexual and reproductive rights and their right to freedom from violence, and from torture or cruel, inhuman or degrading treatment or punishment:
  1. Provide redress to women and girls with disabilities who have been sterilised without their consent. Work in this area would need to include:
    - a) the provision of financial compensation and an official apology for discrimination;
    - b) the provision of specialised funding for qualified counsellors through a recognised body (such as Relationships Australia) to provide ongoing counselling and support to women with disabilities who are survivors of forced sterilisation;
    - c) the provision of specialised funding to the Disability Discrimination Legal Centres to support survivors of forced sterilisation with their claims to financial compensation.
  2. Address the cultural, social, and economic factors that drive the sterilisation agenda. Work in this area would need to include:
    - a) Commission and fund a national project on women with disabilities' right to reproductive freedom which:
      - addresses the incidence and long term effects of forced sterilisation for all women with disabilities, including those with psychiatric, cognitive, sensory and physical disabilities;
      - investigates the practice of menstrual suppression of girls and women with disabilities, including those in group homes and other forms of institutional care. Research into menstrual suppression practices must include:
        - o investigation into the non-consensual administration of Depo-Provera and other injectable contraceptives, the contraceptive pill, and other forms of contraception to women and girls with disabilities;
        - o investigation into the use of contraception as a form of social control of girls and women with disabilities;
        - o investigation into the long term physical and mental health and social effects of menstrual suppression practices.
    - b) Develop national protocols for health education curriculum (commencing at primary school level) which incorporate models of diversity that portray positive images of women with disabilities as parents and as sexual beings;
    - c) Fund a full time Project Officer position for Women With Disabilities Australia (WWDA) for a period of three years to conduct a national project which educates and informs women with disabilities of their right to reproductive freedom, including their right to sexuality and their right to parent;
    - d) Develop specific measures to ensure a gender perspective is incorporated into any national, state/territory initiatives undertaken as part of the domestic implementation of Article 8 [Awareness Raising] of the CRPD.
  3. Assist women and girls with disabilities and their families and carers to access appropriate reproductive health care. Work in this area would need to include:
    - a) Research and implement the specific supports required by carers to better assist them in managing the menstruation and reproductive health needs of women and girls with intellectual disabilities;
    - b) Investigate the feasibility of establishing a national scheme (similar to schemes such as the Continence Aids Payment Scheme), which provides funding for women and girls with disabilities and their families and carers to access appropriate reproductive health care;
    - c) Develop national sexual health protocols for women with disabilities that incorporate options for menstrual management and contraception.