



**Australian  
Human Rights  
Commission**

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# The Involuntary or Coerced Sterilisation of People with Disabilities in Australia

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE  
SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE**

20 November 2012

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## 1 Introductory and summary comments

1. The Australian Human Rights Commission makes this submission to the Senate Community Affairs References Committee (the Committee) in its inquiry into involuntary or coerced sterilisation of people with disabilities in Australia.
2. The Commission welcomes this inquiry, as the Commission has long had concerns about the sterilisation of children (with or without disability), and the sterilisation of women with disability without their informed consent, in the absence of serious threat to life or health.<sup>1</sup>
3. ‘Sterilisation’ refers to the performance of a medical procedure which permanently removes an individual’s ability to reproduce, and/or the administration of medication to suppress menstruation. For the purposes of the present submission, sterilisations which are performed in an emergency situation where there is a serious threat to life or health are **not** considered to be ‘involuntary or coerced’ sterilisations.
4. With that qualification in mind, the Commission uses the term ‘involuntary or coerced sterilisation’ to refer to the sterilisation of children (regardless of whether they have a disability), and the sterilisation of adults with disability in the absence of their fully informed and free consent.<sup>2</sup>
5. The Commission notes that in Australia the practice of involuntary or coerced sterilisation is predominantly directed against women and girls with disability,<sup>3</sup> which is a result of both gender and disability-based discrimination. Involuntary or coerced sterilisations are performed for a number of reasons, including management of menstruation; to ease the burden on carers, or to prevent sexual abuse (and any resulting pregnancy).<sup>4</sup>
6. The Commission recognises that the practice of involuntary or coerced sterilisation constitutes a form of violence and violates multiple human rights, including the rights of women and girls with disability to:
  - be free from torture and violence<sup>5</sup>
  - enjoy health (including sexual and reproductive health)<sup>6</sup>
  - retain their fertility, found a family and make their own decisions about reproduction.<sup>7</sup>

The Australian Government agreed to take all appropriate measures to promote, protect and respect these rights when it ratified the *Convention on the Rights of Persons with Disabilities* (CRPD).<sup>8</sup>

7. The Commission commends the Committee for the breadth of the issues and perspectives included in the terms of reference. The Commission urges the Committee to adopt a human rights framework for its inquiry, and to consider the promotion and protection of the rights of people with disability, particularly women and girls, first and foremost in the development of each recommendation. Such an approach:

- will promote respect for the inherent dignity of all people with disability
  - will challenge the consideration of involuntary or coerced sterilisation as, for example, a way to reduce the burden on carers, or as a strategy to avoid pregnancy as a result of rape
  - will support the development of a comprehensive suite of recommendations to end all forms of involuntary or coerced sterilisation.
8. The Commission recognises that boys and men with disability who are subject to involuntary or coerced sterilisation are entitled to the same protection against violations of their rights as women and girls with disability. This submission focuses on women and girls with disability, as they experience significantly higher rates of involuntary or coerced sterilisation. However, the recommendations made in this submission are structured so as to ensure that the human rights of boys and men with disability who are subject to involuntary or coerced sterilisation are also addressed.

## **2 Recommendations**

The Australian Human Rights Commission recommends that:

### ***Overarching recommendation***

- 1. In the development and implementation of legislation, policies, programs and educative measures, government departments and agencies closely consult with and actively involve people with disability, through their representative organisations, with special emphasis on the participation of women and girls with disability.**

### ***Legislative measures***

- 2. National legislation be enacted to criminalise, except where there is a serious threat to life or health, (i) the sterilisation of children (regardless of whether they have a disability), and (ii) the sterilisation of adults with disability in the absence of their fully informed and free consent.**
- 3. The removal of a child or adult with disability from Australia with the intention of having a prohibited sterilisation performed also be criminalised.<sup>9</sup>**

### ***Policy measures***

- 4. A national system be developed to monitor the number of applications for, and number of orders made to sterilise women and girls with disability and men and boys with disability.**
- 5. People with disability, particularly women and girls, and their families and carers, be assisted to access appropriate sexual and reproductive health care and personal assistance when necessary.**
- 6. Counselling be provided to people who have been sterilised in the absence of their fully informed and free consent.**

### **Educative measures**

7. **A broad education and support framework regarding the sexual and reproductive rights of people with disability, particularly women and girls, be developed for people with disability, their families and their carers.**
8. **All health services providers, professionals and staff working with people with disability be trained in the rights recognised in the *Convention on the Rights of Persons with Disabilities* and the *Convention on the Elimination of All Forms of Discrimination against Women*.**
9. **Accommodation and disability service providers be required to adopt policies and procedures for identifying, reporting and responding to gender-based violence, abuse and neglect, to ensure safe environments.**

### **3 What is ‘involuntary’ or ‘coerced’ sterilisation?**

9. A sterilisation is ‘involuntary’ when it is performed (or, in the case of menstrual suppression medication, administered) against the person’s will, or without the person being aware that it has happened (that is, without any form of consent from that person). In this situation, the right to make the decision about the sterilisation is removed from the person.
10. The High Court has warned that there is a ‘significant risk’ that persons making decisions about the sterilisation of others will make the wrong decision.<sup>10</sup> The result is that a person can be subjected to an invasive procedure against her or his will and/or best interests, and be deprived of the ability to reproduce.<sup>11</sup>
11. ‘Coerced’ sterilisation refers to situations in which pressure, trickery or inducements are employed to convince the person with disability to ‘consent’ to the procedure or menstrual suppression medication, usually in the absence of information being given to that person about the true nature and implications of the procedure or medication.<sup>12</sup>
12. As mentioned above, in the present submission, the Commission understands the term ‘involuntary or coerced sterilisation’ to exclude sterilisations performed in an emergency situation where there is a serious threat to life or health.
13. The reality of involuntary or coerced sterilisation is revealed by the story of Bella, a 34 year-old woman with a mild intellectual disability. When she was 12 she was told by her parents she was going to hospital to have her appendix removed, and was promised a doll as a reward if she behaved well during the procedure. Nine years later she was told that in fact it was her uterus, not her appendix, which had been removed. As Bella describes it:

...they were stealing something from my body. If they’d told the truth and asked me, I would have shouted ‘No!’...My sterilisation makes me feel I’m less of a woman when I have sex because I’m not normal down there...When I see other

mums holding their babies, I look away and cry because I won't ever know that happiness.<sup>13</sup>

#### **4 Involuntary or coerced sterilisation is a form of violence and torture, and violates multiple human rights**

14. The involuntary or coerced sterilisation of women and girls with disability violates a number of their rights as set out in the CRPD, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),<sup>14</sup> and the *Convention on the Rights of the Child* (CRC),<sup>15</sup> among other international human rights instruments.
15. The Office of the UN High Commissioner for Human Rights,<sup>16</sup> international organisations representing medical professionals,<sup>17</sup> and the Australian Law Reform Commission,<sup>18</sup> have all recognised involuntary or coerced sterilisation (referred to as 'non-therapeutic' and/or 'forced' sterilisation) as a form of violence. The practice therefore breaches the rights of people with disability under the CRPD to be free from violence and to retain their physical integrity.<sup>19</sup>
16. The UN Committee on the Rights of the Child (CRC Committee) views involuntary or coerced sterilisation of children as breaching Australia's obligation under article 19 of the CRC to protect children from all forms of physical and mental violence.<sup>20</sup>
17. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognised involuntary or coerced sterilisation as a form of torture.<sup>21</sup> The Human Rights Committee has also recognised that involuntary or coerced sterilisation of women may breach the prohibition against torture in article 7 of the *International Covenant on Civil and Political Rights* (ICCPR).<sup>22</sup>
18. The Commission notes that the violence involved in involuntary or coerced sterilisation is not applied indiscriminately- it is directed at people with disability, and more particularly at women and girls with disability.<sup>23</sup> Involuntary or coerced sterilisation of women and girls has accordingly been recognised as a form of violence against women by the UN Special Rapporteur on violence against women.<sup>24</sup> The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has identified the practice as a form of discrimination against women, which breaches States' obligations under CEDAW.<sup>25</sup>
19. The practice of involuntary or coerced sterilisation denies women and girls with disability the right to make decisions about their own health care. It therefore removes their rights under the CRPD to enjoy legal capacity on an equal basis with others (including access to the support they may require to exercise their legal capacity), and to access health care based on their free and informed consent.<sup>26</sup> The CEDAW Committee has stressed that sterilisation in the absence of consent violates 'women's rights to informed consent and dignity'.<sup>27</sup>

20. The effect of sterilisation is to deprive women and girls with disability of their right to found and maintain a family, and to retain their fertility on an equal basis with others, contrary to article 23 of the CPRD. The long-term psychological impact and effects of this deprivation are reflected in the comments of those women who have been sterilised without their consent:

‘It has resulted in loss of my identity as a woman, as a sexual being.’  
‘I haven’t had the chance to grieve the loss of a part of me that should have been mine to choose whether I keep it or not’.  
‘I have been denied the same joys and aspirations as other women.’  
‘The psychological effects are huge – it takes away your feelings of womanhood.’  
‘For me it is about living with loss.’<sup>28</sup>

21. The denial of the rights of women and girls with disability to make their own (often future) decisions in relation to starting a family and bearing children also violates specific rights in CEDAW,<sup>29</sup> the ICCPR,<sup>30</sup> and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).<sup>31</sup> As the Committee on Economic, Social and Cultural Rights (ESCR Committee) has stated:

Women with disabilities...have the right to protection and support in relation to motherhood and pregnancy...persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood.<sup>32</sup>

22. Involuntary or coerced sterilisation also violates the right of women and girls with disability to health, including sexual and reproductive health.<sup>33</sup> The right to health includes the ‘right to *control* one’s health and body, including sexual and reproductive freedom, and [accordingly] the right to be free from interferences, such as...non-consensual medical treatment’.<sup>34</sup> Accordingly, involuntary or coerced sterilisation violates this right not only because the procedure adversely affects the girl or woman’s physical and mental health,<sup>35</sup> but also because it removes her control over her own body, and her own sexual and reproductive health.

## **5 The obligation to prohibit involuntary or coerced sterilisation**

23. As discussed above, involuntary or coerced sterilisations violate a range of human rights of women and girls with disability, including the right to be free from violence. Consequently, there is a strict obligation on the Australian Government to take positive steps to protect women and girls with disability from this practice.
24. Women and girls with disability can be subject to multiple and intersecting forms of discrimination (on the basis of disability, gender, and in the case of girls, age), and therefore are particularly at risk of having their rights violated, as numerous UN human rights treaty bodies have emphasised.<sup>36</sup> Article 6 of the CRPD recognises the specific vulnerability of women and girls with disability in this respect, and imposes an obligation on States to take all appropriate measures to guarantee them enjoyment of all their rights.

25. On six different occasions, most recently in August 2012, UN human rights bodies including the Committee on the Rights of the Child, the CEDAW Committee, and the Office of the UN High Commissioner for Human Rights, have emphasised States Parties' (and specifically Australia's) obligations under the relevant conventions to prohibit the practice of involuntary or coerced sterilisation.<sup>37</sup> When read together, these comments and recommendations amount to an obligation on Australia to prohibit by law, except where there is a serious threat to life or health:
- sterilisation of children, particularly girls, regardless of whether they have a disability; and
  - sterilisation of women with disability without their consent.
26. In response to these recommendations, the Australian Government has included 'improvement' of the laws and practices governing the sterilisation of women and girls with disability in its draft National Human Rights Action Plan (NHRAP).<sup>38</sup> However, civil society organisations have raised concerns that the action proposed in the draft NHRAP will not address 'the substance of the UN recommendations and the comprehensive law reform required to protect against this human rights violation'.<sup>39</sup>

## **6 Why is involuntary or coerced sterilisation occurring in Australia?**

27. The Commission notes that the exact number of involuntary or coerced sterilisations performed in Australia on women and girls with disability is unknown. However, the Commission is concerned by reports that they continue to occur,<sup>40</sup> and their rate may be increasing.<sup>41</sup> Women With Disabilities Australia (WWDA) has raised concerns about the incidence and long-term health implications of menstrual suppression practices.<sup>42</sup>
28. The reasons which parents, carers, practitioners, courts and tribunals have given for making the decision to sterilise a girl or woman with a disability in the absence of her consent are discussed in detail in the recent report produced by WWDA,<sup>43</sup> and include concerns that women and girls with disability:
- cannot manage their personal hygiene when they are menstruating (and consequently place a burden on parents and carers to assist them to do so)
  - cannot have healthy sexual relationships or be effective parents
  - need to be protected from sexual abuse, and pregnancy that may result from such abuse
  - will re/produce children with genetic 'defects'.
29. The Commission is very concerned that the above arguments are being accepted as justification for involuntary or coerced sterilisation. For example, the view that involuntary or coerced sterilisation is a means to protect women and girls with disability from sexual abuse and to prevent pregnancies that



may result from such abuse is highly problematic.<sup>44</sup> Involuntary or coerced sterilisation is not a solution to sexual abuse – rather, measures should be taken to ensure the physical safety of women and girls with disability, and to address the trauma and health implications which result from sexual abuse.

30. As the Committee's terms of reference recognise and the concerns listed in paragraph 28 reveal, there are practical factors which are contributing to involuntary or coerced sterilisations being performed on women and girls with disability, which include:
- a lack of available services and programs designed to support people with disability in managing their menstruation, reproductive and sexual health needs
  - a lack of knowledge on the part of people with disability, medical practitioners, guardians, and carers concerning the rights of people with disability, the consequences of sterilisation, and the existence of support services
  - a lack of effective educational resources available and provided to the abovementioned persons to address this lack of knowledge, and to address general prejudices, stereotypical attitudes and fears.

### **6.1 *The need to address discriminatory attitudes towards people with disability***

31. The Commission emphasises that the practice of involuntary or coerced sterilisation of people with disability cannot be viewed in isolation, but must be understood in light of the broader social and cultural context which is informing the decision-making processes of those responsible for deciding whether to perform these sterilisations. The Commission agrees with WWDA's assessment that:

The practice of forced sterilisation is itself part of a broader pattern of denial of human and reproductive rights of disabled women and girls which also includes systematic exclusion from appropriate reproductive health care and sexual health screening, limited contraceptive choices, a focus on menstrual suppression, poorly managed pregnancy and birth, selective or coerced abortion and the denial of rights to parenting. These practices are framed within traditional social attitudes that characterise disability as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.<sup>45</sup>

32. There is a lack of recognition and respect for women and girls with disability as people who have rights and are entitled to sexual relationships, to found families, and to make their own choices about these life experiences. Often, women and girls with disability are wrongly perceived and treated as 'non-sexual' or 'genderless' human beings, who do not understand their own bodies.<sup>46</sup>
33. These harmful assumptions and stereotypical attitudes regarding women and girls with disability underpin the practice of involuntary or coerced sterilisation, and result in women and girls with disability being denied the

rights to enjoy (sexual) relationships, to form families, and to parenthood, and being precluded from making their own choices about these matters.

## **7 Active measures must be taken to protect people with disability from involuntary or coerced sterilisation**

### **7.1 Failure of current legal and regulatory framework to protect women and girls with disability**

34. Article 12 of the CRPD requires States Parties to support persons with disability to exercise their own legal capacity, and to ensure that any measures which allow for legal capacity to be exercised on behalf of a person with a disability are checked by adequate safeguards to prevent abuse, and particularly 'are free of conflict of interest'.
35. The High Court in 1992 in *Marion's case* ruled that court authorisation is required before any child can be sterilised, unless the sterilisation occurs as a by-product of surgery appropriately carried out to treat some malfunction or disease.<sup>47</sup>
36. Currently, in all Australian states and territories, the authorisation of either the Family Court of Australia or a state or territory guardianship tribunal is required before a child or adult with disability can be involuntarily sterilised (except in emergency situations in which there is a serious threat to life or health).<sup>48</sup> In May 2009 the Australian Guardianship and Administrative Council published a *Protocol for Special Medical Procedures (Sterilisation)*<sup>49</sup> to assist and promote consistency between the various Australian guardianship tribunals in exercising the power to order sterilisation.
37. However, the Commission has been concerned for some time that the legal and regulatory frameworks and guidelines built around the concept of court (or tribunal) authorisation for sterilisations have failed to protect women and girls with disability from involuntary or coerced sterilisation.<sup>50</sup> The system of court or tribunal authorisation has not prevented women and girls with disability from being involuntarily or coercively sterilised, either with or without such authorisation.<sup>51</sup> This has led WWDA to question whether the 'best interests' of the child is judged according to human rights principles, or whether it is, in reality, the 'best compromise between the competing interests of parents, carers, service providers and policy makers'.<sup>52</sup>

### **7.2 Need for broad educational and support framework**

(a) *Need to raise awareness and combat assumptions and stereotypical attitudes which underpin the practice of involuntary or coerced sterilisation through education*

38. The Commission is of the view that measures must be taken to address the harmful social attitudes towards people with disability, particularly women and girls (referred to above in section 3), which deny their entitlements to sexual, reproductive and family rights. Only once the assumptions and

stereotypical attitudes regarding women and girls with disability are addressed can the practice of involuntary or coerced sterilisation be effectively abolished.

39. In recognition of the harmful consequences of negative social attitudes towards persons with disability, article 8(1) of the CRPD places an obligation on Australia to adopt immediate, effective and appropriate measures:
- (a) to raise awareness throughout society including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities
  - (b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life
  - (c) to promote awareness of the capabilities and contributions of persons with disabilities.
- (b) *Need for supports, services and information*
40. The Commission emphasises the need for the development of a broad education and support framework for women and girls with disability, their families and carers, and health service providers. The aim of such a framework should be to ensure women and girls with disability enjoy their sexual and reproductive rights, and have access to personal assistance when necessary to support them to do so. A broad educational and support framework will help eliminate the consideration of involuntary or coerced sterilisation as a way to, for example, deal with menstrual management, control fertility, or avoid pregnancy as a result of rape.
41. The Commission notes that there are supports and services to assist women and girls with disability (and their carers) with menstrual management,<sup>53</sup> and services which provide education to people with disability in relation to sexual and reproductive health,<sup>54</sup> including how to have positive and safe relationships, how to say 'no', and how to recognise violence. However, these services are few in number and limited in scope, and there is a general lack of knowledge concerning their existence and how they may be accessed.<sup>55</sup>
42. In order to be able to control and enjoy their own sexual and reproductive health, and make informed decisions about practices such as sterilisation, it is crucial that women and girls with disability be provided with information and advice in relation to sex, contraception and family planning, and the related services that are available to them.<sup>56</sup> In terms of services, the Australian Government is required under article 25 of the CRPD to provide women and girls with disability 'the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health'. Similar obligations are contained in article 12 of the ICESCR and article 12 of the CEDAW.<sup>57</sup>
43. The CEDAW Committee and the ESCR Committee have recognised that in order to ensure equal access to health services for people with disability, health care staff (and other carers) need to be educated to recognise and

respond to the specific needs of persons with disability, and to be aware of and respect their human rights, dignity and autonomy.<sup>58</sup> This requirement is also reflected in article 25(d) of the CRPD.

(c) *Improving responses to protect women and girls with disability from violence and sexual assault*

44. As mentioned above, one of the many reasons given for involuntary or coerced sterilisation is to protect women and girls with disability from rape and sexual abuse.
45. The Australian Government has introduced the National Plan to Reduce Violence against Women and their Children,<sup>59</sup> and there is significant reform and progress being made. However, the Plan includes few measures aimed at preventing and responding to violence against women and girls with disability in domestic settings, and does not extend to violence in institutional settings (such as institutional residential settings, group homes, boarding houses, psychiatric/mental health facilities).
46. There have been numerous reports which indicate high rates of violence in institutional settings.<sup>60</sup> The reports also indicate limited or no response to people with disability experiencing violence. Australia has an obligation to promote the training of professionals and staff working with women and girls with disability in the rights recognised in the CRPD and CEDAW, so as to better provide the assistance and services guaranteed by those rights. This requires accommodation and disability services providers to have policies and procedures in place for identifying, reporting and responding to gender-based violence, abuse, and neglect, to ensure safe environments.

(d) *Development, implementation and monitoring of solutions*

47. Women and girls with disability have an important role to play in the development of legislation and other measures designed to ensure the enjoyment of all their rights.
48. The CRPD requires governments to closely consult with and actively involve persons with disability (including children) through their representative organisations, in the development and implementation of legislation and policies designed to promote and protect the rights articulated in the Convention.<sup>61</sup> An inclusive consultative process will help ensure the development and implementation of appropriate legislation, policies and programs aimed at ending the practice of involuntary or coerced sterilisation.

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<sup>1</sup> For recent work of the Commission in relation to this issue, see, Australian Human Rights Commission, *Information Concerning Australia and the Convention on the Rights of the Child* (August 2011), paras 84-87 and recommendation 20, at [http://www.hreoc.gov.au/legal/submissions/2011/201108\\_child\\_rights.html](http://www.hreoc.gov.au/legal/submissions/2011/201108_child_rights.html) (viewed 9 November 2012); Australian Human Rights Commission, *Response to the Office of the High Commissioner for Human Rights Questionnaire for the Preparation of the Analytical Study on Violence Against Women and Girls with Disability* (A/HRC/RES/17/11) (December 2011), pp 11-13, at

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- [http://www.humanrights.gov.au/disability\\_rights/](http://www.humanrights.gov.au/disability_rights/) (viewed 9 November 2012); Australian Human Rights Commission, *Independent Interim Report on CEDAW* (August 2012), paras 69-72, at [http://www.hreoc.gov.au/legal/submissions/2012/20120910\\_CEDAW.html](http://www.hreoc.gov.au/legal/submissions/2012/20120910_CEDAW.html) (viewed 9 November 2012).
- <sup>2</sup> This has been referred to as 'forced' and/or 'non-therapeutic' sterilisation in previous Commission submissions, and by certain UN treaty bodies.
- <sup>3</sup> See Women With Disabilities Australia, *Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia* (July 2012), p 6. At [http://www.wwda.org.au/Moving\\_Forward\\_Gaining\\_Ground.pdf](http://www.wwda.org.au/Moving_Forward_Gaining_Ground.pdf) (viewed 9 November 2012).
- <sup>4</sup> Women With Disabilities Australia, above, p 6.
- <sup>5</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3, arts 15 and 16 (entered into force 3 May 2008).
- <sup>6</sup> *Convention on the Rights of Persons with Disabilities*, art 25(a).
- <sup>7</sup> *Convention on the Rights of Persons with Disabilities*, art 23(1).
- <sup>8</sup> Opened for signature 30 March 2007, 2515 UNTS 3, (entered into force 3 May 2008).
- <sup>9</sup> This offence could be modelled on, for example, s 33 of the *Crimes (Female Genital Mutilation) Act 1996* (Vic).
- <sup>10</sup> *Department of Health and Community Services v JWB and SMR* (1992) 175 CLR 218 (*Marion's Case*), 250-252 (Mason CJ, Dawson, Toohey and Gaudron JJ).
- <sup>11</sup> *Marion's Case*, above, 252 (Mason CJ, Dawson, Toohey and Gaudron JJ).
- <sup>12</sup> For an example of a situation of coerced sterilisation, see Committee on the Elimination of Discrimination against Women, *A S v Hungary*, Communication No. 4/2004, UN Doc CEDAW/C/36/D/4/2004 (2006). At [http://www2.ohchr.org/english/law/docs/Case4\\_2004.pdf](http://www2.ohchr.org/english/law/docs/Case4_2004.pdf) (viewed 13 November 2012).
- <sup>13</sup> S 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, p 43. At [http://www.wwda.org.au/marieclaire\\_article\\_june2012.pdf](http://www.wwda.org.au/marieclaire_article_june2012.pdf) (viewed 9 November 2012).
- <sup>14</sup> Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 August 1981).
- <sup>15</sup> Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- <sup>16</sup> See Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/20/5 (2012), para 22.
- <sup>17</sup> World Medical Association and International Federation of Health and Human Rights Organisations, 'Global Bodies call for end to Forced Sterilisation' (Media Release, 5 September 2011). At [http://www.wma.net/en/40news/20archives/2011/2011\\_17/index.html](http://www.wma.net/en/40news/20archives/2011/2011_17/index.html) (viewed 9 November 2012); International Federation of Gynecology and Obstetrics, *Female Contraceptive Sterilization*, (2001), Recommendation 5. At [http://www.figo.org/publications/miscellaneous\\_publications/ethical\\_guidelines/new\\_ethical\\_guidelines](http://www.figo.org/publications/miscellaneous_publications/ethical_guidelines/new_ethical_guidelines) (viewed 9 November 2012).
- <sup>18</sup> Australian Law Reform Commission, *Family Violence and Commonwealth Laws – People with Disability*, Information Sheet, (2012). At <http://www.alrc.gov.au/CFV-disability> (viewed 9 November 2012).
- <sup>19</sup> See *Convention on the Rights of Persons with Disabilities*, arts 16 and 17.
- <sup>20</sup> Committee on the Rights of the Child, *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, UN Doc CRC/GC/13 (2011), para 23(b); Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention- Concluding Observations: Australia*, UN Doc CRC/C/AUS/CO/4 (2012), paras 46 and 47.
- <sup>21</sup> 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*, UN Doc A/HRC/7/3 (2008), para 38 .
- <sup>22</sup> Human Rights Committee, *General Comment No. 28: Equality of rights between men and women* (article 3), UN Doc CCPR/C/21/Rev.1/Add.10 (2000), para 11.
- <sup>23</sup> Women With Disabilities Australia, *Moving Forward and Gaining Ground*, note 3, p 6.
- <sup>24</sup> UN Special Rapporteur on violence against women, its causes and consequences, *Report (to the General Assembly)*, UN Doc A/67/227 (2012), paras 31 and 37.

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- <sup>25</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), paras 1, 6 and 7; In the context of an individual communication concerning a coerced sterilisation, the CEDAW Committee concluded that the practice breached arts 10(h), 12 and 16(1)(e) of the Convention: see Committee on the Elimination of Discrimination against Women, *A S v Hungary*, Communication No. 4/2004, UN Doc CEDAW/C/36/D/4/2004 (2006). At [http://www2.ohchr.org/english/law/docs/Case4\\_2004.pdf](http://www2.ohchr.org/english/law/docs/Case4_2004.pdf) (viewed 13 November 2012).
- <sup>26</sup> *Convention on the Rights of Persons with Disabilities*, arts 12 and 25.
- <sup>27</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No.24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1, chap. I (1999), para 22.
- <sup>28</sup> Women With Disabilities Australia, *Moving Forward and Gaining Ground*, note 3, p 13.
- <sup>29</sup> Opened for signature 18 December 1979, 1249 UNTS 13, art 16(1)(e)(entered into force 3 August 1981).
- <sup>30</sup> Opened for signature 16 December 1966, 999 UNTS 171, arts 17 and 23 (entered into force on 23 March 1976 (except article 41, which came into force 28 March 1979)). See Human Rights Committee, *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23)*, UN Doc A/45/40 Vol. I (1990), para 5; Human Rights Committee, *General Comment No.28: Equality of rights between men and women (article 3)*, UN Doc CCPR/C/21/Rev.1/Add.10 (2000), para 20.
- <sup>31</sup> Opened for signature 16 December 1966, 993 UNTS 3, art 10 (entered into force 3 January 1976). This was confirmed at the 1994 International Conference on Population and Development, where in the *Summary of the Program of Action* it was highlighted that reproductive rights and reproductive health imply that 'people have the capacity to reproduce and the freedom to decide it, when and how often to do so', and encompass the 'right of all to make decisions concerning reproduction free of discrimination, coercion and violence': see <http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm#chapter7> (viewed 13 November 2012).
- <sup>32</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with disabilities*, UN Doc E/1995/22 at 19 (1995), para 31 (citations omitted).
- <sup>33</sup> *International Covenant on Economic, Social and Cultural Rights*, art 12; *Convention on the Rights of People with Disability*, arts 25 and 26; *Convention on the Elimination of All Forms of Discrimination against Women*, articles 122 and 14(2)(b); *Convention on the Rights of the Child*, art 24.
- <sup>34</sup> See Committee on Economic, Social and Cultural Rights, *General Comment 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2000/4 (2000), para 8 (emphasis added).
- <sup>35</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 22.
- <sup>36</sup> See, for example, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 18: Disabled Women*, UN Doc A/46/38 (1993), p 3; Committee on the Rights of the Child, *General Comment No.4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/4 (2003), para 12; Committee on the Rights of the Child, *General Comment No.7(2005): Implementing Child Rights in Early Childhood 7*, UN Doc CRC/C/GC/7/Rev.1 (2006), para 11(b)(v); Committee on the Rights of the Child, *General Comment No. 9 (2006): The rights of children with disabilities*, UN Doc CRC/C/GC/9 (2007), paras 8 and 10; Committee against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, UN Doc CAT/C/GC/2 (2008), para 22; Committee on the Rights of Persons with Disabilities, *Concluding observations of the Committee on the Rights of Persons with Disabilities: Tunisia*, UN Doc CRPD/C/TUN/CO/1 (2011), para 1; See Human Rights Council, *Thematic study*, note 16, paras 17, and 22 to 24.
- <sup>37</sup> Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005), paras 45 and 46(e); Committee on the Rights of the Child, *General Comment No. 9 (2006): The rights of children with disabilities*, UN Doc CRC/C/GC/9 (2007), para 60; Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUS/CO/7 (2010), paras 42 and 43; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/17/10 (2011), para 86.39; Human Rights Council, *Thematic study*, note 16, para 28 (citation omitted), and see also the



- recommendations at para 57(d) and (e); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/AUS/CO/4 (2012), paras 46 and 47(b).
- 38 Available at <http://www.ag.gov.au/Documents/National+Human+Rights+Action+Plan++Consultation+version.pdf> (viewed 5 November 2012).
- 39 *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* (August 2012), para [407]. At <http://www.disabilityrightsnow.org.au/node/15> (viewed 5 November 2012).
- 40 See, for example, Women With Disabilities Australia, *Submission to the Australian Attorney-General on the Sterilisation of Girls and Women with Disabilities* (July 2012), p 1. At <http://www.wwda.org.au/WWDASubtoAGJuly2012.pdf> (viewed 9 November 2012).
- 41 Australian Human Rights Commission, *Australian study tour report: Visit of the UN Special Rapporteur on Violence against Women* (2012), p 24. At [http://www.humanrights.gov.au/sex\\_discrimination/publication/UNSRVAW%20report%202012/index.html](http://www.humanrights.gov.au/sex_discrimination/publication/UNSRVAW%20report%202012/index.html) (viewed 9 November 2012).
- 42 Women With Disabilities Australia, *Submission to the United Nations Thematic Study on Violence Against Women With Disabilities* (December 2011), p 64-66. At <http://www.wwda.org.au/WWDASubUNStudyViolenceWWDDec2011.doc> (viewed 9 November 2012).
- 43 Women With Disabilities Australia, *Moving Forward and Gaining Ground*, note 3, p 6.
- 44 See further Women With Disabilities Australia, above, pp 10-12.
- 45 Women With Disabilities Australia, above, p 6 (citations omitted).
- 46 Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with disabilities*, UN Doc E/1995/22 at 19 (1995), para 19; Committee on the Rights of the Child, *General Comment No. 9 (2006): The rights of children with disabilities*, UN Doc CRC/C/GC/9, (2007) para 42(e); Human Rights Council, *Thematic study*, note 16, para 19; UN Special Rapporteur on violence against women, its causes and consequences, *Report (to the General Assembly)*, UN Doc A/67/227 (2012), para 69.
- 47 *Marion's Case*, note 10, 250 (Mason CJ, Dawson, Toohey and Gaudron JJ).
- 48 See generally Australian Guardianship and Administration Council, *Protocol for Special Medical Procedures (Sterilisation)* (2009). At [www.agac.org.au/images/stories/agac\\_sterilisation\\_protocol\\_30\\_mar\\_09.pdf](http://www.agac.org.au/images/stories/agac_sterilisation_protocol_30_mar_09.pdf) (viewed 9 November 2012).
- 49 Available at [http://www.agac.org.au/images/stories/agac\\_sterilisation\\_protocol\\_30\\_mar\\_09.pdf](http://www.agac.org.au/images/stories/agac_sterilisation_protocol_30_mar_09.pdf) (viewed 5 November 2012).
- 50 See generally S Brady, J Britton and S Grover, *The Sterilisation of Girls and Young Women in Australia: issues and progress* (Report jointly commissioned by the Sex Discrimination Commissioner and the Disability Discrimination Commissioner at the Australian Human Rights Commission)(2001). At [http://www.humanrights.gov.au/disability\\_rights/sterilisation/index.html](http://www.humanrights.gov.au/disability_rights/sterilisation/index.html) (viewed 5 November 2012).
- 51 See, for example, S Brady, J Britton and S Grover, above, chs 2 and 6. For a recent discussion, see Women With Disabilities Australia, *Submission to the Australian Attorney-General*, note 40, p 1.
- 52 Women With Disabilities Australia, *Moving Forward and Gaining Ground*, note 3, p 6. For examples of cases which suggest the latter, see *Re: Angela (Special medical procedure)* [2010] FamCA 98 (16 February 2010, and the cases referred to in Women With Disabilities Australia, note 3, pp 7-13.
- 53 See, for example, the resources mentioned in J Tracy *et. al*, *Supporting Women: Information and resources for carers supporting women with intellectual disabilities to manage their menstruation* (2010). At <http://www.cddh.monash.org/assets/supporting-women-carer.pdf> (viewed 5 November 2012).
- 54 For example, Family Planning Victoria offer information regarding sexual and reproductive health tailored for people with disabilities (see <http://www.fpv.org.au/disability-services/sexual-health-information/> (viewed 5 November 2012)).
- 55 See Women With Disabilities Australia, *Submission to the United Nations Thematic Study*, note 16, paras 97-101 and 122-123.
- 56 This is recognised in relation to women by article 10(h) of the CEDAW, which provides that women must be guaranteed access to 'specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.' See further Committee

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on the Elimination of Discrimination against Women, *General Comment No 21: Equality in Family and Marriage Relations*, UN Doc. A/49/38 (1994), para 22.

<sup>57</sup> See generally Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2000/4 (2000); Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1, chap. I (1999).

<sup>58</sup> *Convention on the Rights of Persons with Disabilities*, article 25(d); Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1, chap. I (1999), para 25; Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2000/4 (2000) (see particularly paras 37, 43 and 44).

<sup>59</sup> Available at <http://www.fahcsia.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children> (viewed 5 November 2012).

<sup>60</sup> See, for example, Office of the Public Advocate (Vic), *Violence against people with cognitive impairments: Report from the Advocacy/Guardianship program at the Office of the Public Advocate, Victoria* (2010). At [http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence\\_and\\_disability\\_report\\_August2010.pdf](http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence_and_disability_report_August2010.pdf) (viewed 7 November 2012); P Mickelborough, 'Carers prey on vulnerable children and the disabled', *Herald Sun*, 13 February 2012. At <http://www.heraldsun.com.au/news/victoria/carers-prey-on-vulnerable-children-and-the-disabled/story-fn7x8me2-1226269125327> (viewed 7 November 2012); Office of the Public Advocate (Vic), *Promoting the human rights, interests and dignity of Victorians with a disability or mental illness: Community Visitors Annual Report 2011-2012* (2012). At <http://www.publicadvocate.vic.gov.au/file/Community%20Vistors%20Annual%20Report%202012.pdf> (viewed 7 November 2012); P Carlyon, 'Abuse and neglect rife in Victoria's disability', *The World Today*, 12 October 2012, <http://www.abc.net.au/worldtoday/content/2012/s3609362.htm> (viewed 7 November 2012).

<sup>61</sup> *Convention on the Rights of Persons with Disabilities*, art 4(3).