

## Community Affairs References Committee - 31/05/2013 - Involuntary or coerced sterilisation of people with disabilities in Australia

### Answers to Questions on Notice

#### *Answers regarding Standing Committee of Attorneys-General (SCAG) or Standing Council on Law and Justice (SCLJ) consideration of this issue:*

##### **Work following the March 2008 SCAG decision**

The Department contacted States and Territories through the SCLJ officers' network to collect information in response to this question on notice.

Victoria advised they not aware of SCAG or SCLJ undertaking any further work on the recommendations from the March 2008 meeting. Victoria advise that it was up to each jurisdiction to undertake follow up action. The item did not attract any formal reporting or monitoring requirements.

States and Territories had not provided examples of steps taken in their jurisdictions to promote ongoing awareness or to review their tribunals at the time of deadline for the questions on notice.

Should the Department receive further relevant information from a jurisdiction on this matter, we will forward it on to the Committee.

#### *Answers regarding cost of Family Court applications and legal aid:*

##### **Do you hold any data on how many [sterilisation/special medical procedure] cases have been funded [by Legal Aid]?**

The Department does not hold this data. The Department has requested that National Legal Aid seek any information Legal Aid Commissions might hold on (1) how many special medical procedure cases it has funded and (2) how many Independent Children's Lawyers have been appointed in special medical procedure matters. National Legal Aid undertook to source this information, if it was held, as soon as possible. No information had been received by the Attorney-General's Department at the by the time of the deadline for the questions on notice. Should National Legal Aid be able to provide any information the Department will forward it on to the Committee.

##### **Costs of a family court application**

The Department does not hold information about the costs of special medical procedure matters before the Family Court.

The Report on Government Services 2013 in Figure 7.9 - Recurrent expenditure per finalisation, family courts and the Federal Magistrates Court of Australia, 2011-12 indicates that in 2011-12 the gross expenditure per finalisation in the Family Court of Australia was close to \$6000 per finalisation.

Fee amounts for matters filed in the Family Court are listed in Schedule 1 of the *Family Law (Fees) Regulation 2012*:

- filing an application (\$305)
- issuing subpoenas (\$50 per subpoena), and

- final hearing fee (\$765 per day).

(Note: These fees can be waived on the grounds of financial hardship).

*Answers regarding removing a person from Australia and the Criminal Code:*

**Are there any Commonwealth laws against taking a child with intellectual disability overseas for the purpose of sterilisation?**

There are no Commonwealth laws against taking a child with intellectual disability overseas for the purpose of sterilisation.

Under Australia's federal system of Government, crimes against the person are traditionally the responsibility of the States and Territories.

**Provide the Committee with a list of Australian Commonwealth law that applies to people performing acts outside Australia that would be illegal if they were performed inside Australia - i.e. law that makes it illegal to travel overseas to perform an action or cause an action to be performed that would be illegal if it was performed in Australia.**

Please note that the below list applies only to the legislation administered by the Criminal Justice Division of the Attorney-General's Department.

Division 271 – Trafficking in persons and debt bondage

- 271.2(1C) - Offence to organise or facilitate the exit or proposed exit of another person from Australia, reckless as to whether the person will be exploited. Exploitation is defined to mean slavery, or a condition similar to slavery, servitude, forced labour, forced marriage, or debt bondage. Under Division 270 of the Criminal Code (Slavery and slavery-like conditions), these practices would be illegal if they occurred within Australia. The Division 270 offences also have extraterritorial jurisdiction, and as such can apply to conduct performed overseas by an Australian citizen or resident.

Division 272 – Child sex offences outside Australia

- 272.8 – Sexual intercourse with child outside Australia
- 272.9 – Sexual activity (other than sexual intercourse) with child outside Australia
- 272.10 – Aggravated offence – Child with mental impairment or under care, supervision or authority of defendant
- 272.11 – Persistent sexual abuse of child outside Australia
- 272.12 – Sexual intercourse with young person outside Australia – defendant in position of trust or authority
- 272.13 – Sexual activity (other than sexual intercourse) with young person outside Australia – defendant in position of trust or authority
- 272.14 – Procuring child to engage in sexual activity outside Australia
- 272.15 – Grooming child to engage in sexual activity outside Australia
- 272.18 – Benefiting from offence against this Division
- 272.19 – Encouraging offence against this Division
- 272.20 – Preparing for or planning offence against this Division

Division 273 – Offences involving child pornography material or child abuse material outside Australia

- 273.5 – Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia
- 273.6 – Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia
- 273.7 – Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people

Australia also has jurisdiction under domestic law to prosecute certain serious crimes of international concern irrespective of whether the relevant conduct, or a result of the conduct, occurs in Australia.

These include offences for:

- war crimes, crimes against humanity (including enforced sterilisation) and genocide (Division 268 of the Criminal Code Act 1995)
- slavery (Division 270 of the Criminal Code)
- torture (Division 274 of the Criminal Code), and
- piracy (Part IV of the Crimes Act 1914).

In addition, Australia's slavery-like offences (Division 270), such as servitude, forced labour, and forced marriage, apply to conduct performed overseas if the offender is an Australian citizen, resident or corporation.

There is an exchange in the Hansard regarding the legality of arranged marriage (starting p 12). The Department understood this to be a reference to forced marriage. The Department notes that arranged marriage where both spouses consent is not a criminal offence in Australian law. However, Section 270.7B of the Criminal Code contains offences criminalising forced marriage.