LIST OF RECOMMENDATIONS

Recommendation 1

2.117 The committee recommends that, in education programs relating to disability and in sex education and family planning information targeted to the disability sector, education about relationships and sexuality for people with disability should be prioritised, with an emphasis on the reasonable and normal aspirations of people with a disability regarding their sexuality and relationships.

Recommendation 2

2.118 The committee recommends that medical workforce training with respect to sexual and reproductive health includes content on supporting sexual relationships and sexual and reproductive health needs for people with a disability.

Recommendation 3

2.119 The committee recommends that medical workforce training include training with respect to the ethical and legal aspects of informed consent, substitute and supported decision making and fertility control.

Recommendation 4

2.121 The committee recommends that, in the development of participant plans (particularly for participants approaching puberty and in their teens), the participant work with any person assisting them with plan development, and with Disability Care Australia, to cover the need for understanding of sexuality and sexual relationships, support for relationships and sex education that meets the participants' needs, and covers appropriate support for menstrual management for girls and women with disabilities.

Recommendation 5

2.127 The committee abhors the suggestion that sterilisation ever be used as a means of managing the pregnancy risks associated with sexual abuse and strongly recommends that this must never be a factor in approval of sterilisation.

Recommendation 6

4.43 The committee recommends that, for a person with a disability who has the capacity to consent, or to consent where provided with appropriate decision-making support, sterilisation should be banned unless undertaken with that consent.

Recommendation 7

4.44 The committee recommends that, for a person with a disability for whom it may reasonably be held that they may develop the future capacity to consent, irreversible sterilisation should be banned until either the capacity to consent exists, or it becomes reasonably held that the capacity to consent will never develop.

Recommendation 8

5.114 The committee recommends that state and territory legislation regulating the sterilisation of adults with disabilities be amended to explicitly state that it is presumed that persons with disabilities have the capacity to make their own decisions unless objectively assessed otherwise. The legislation should be amended to specify that it cannot be presumed that persons are without legal capacity in relation to the proposed special medical procedure, including a sterilisation procedure, even where there is an existing guardianship order in place.

Recommendation 9

5.115 The committee recommends that Commonwealth, state and territory legislation regulating the sterilisation of adults with disabilities be amended to explicitly state that a court or tribunal does not have authority to hear an application for an order approving a proposed special medical procedure, including a sterilisation procedure, where the person with a disability has legal capacity.

Recommendation 10

5.117 The committee recommends that each Australian jurisdiction use the same definition of capacity, to ensure that a person's rights to autonomy and bodily integrity do not vary according to, and are not dependent on, the jurisdiction in which they live.

Recommendation 11

5.126 The committee recommends that all jurisdictions adopt in law a uniform 'best protection of rights' test, replacing current 'best interests' tests, that makes explicit reference to the protection of the individual's rights; and the maintenance of future options and choices.

Recommendation 12

5.127 The committee recommends that, in those cases where the need for supports has a bearing on the assessment of interests, regard should be had to best support services available, rather than the deficit in services provided in the past.

Recommendation 13

5.132 The committee recommends that the states and territories ensure that independent representation is provided for people with disabilities. Representation should be independent; while family or guardians should have a right to be involved, an independent representative should not be a member of the person's family or a caregiver.

Recommendation 14

5.133 The committee recommends that the costs of legal representation for adults should be covered by the relevant legal aid commission. state and territory governments should review legal aid funding arrangements to ensure that there are adequate funds to meet the costs of providing a legal representative for persons with disabilities in special medical procedure cases, including sterilisation cases.

Recommendation 15

5.136 The committee recommends that a legal representative be appointed in each child sterilisation case regardless of the jurisdiction in which the matter is heard. Commonwealth, state and territory legislation should be amended as necessary to ensure that the appointment of a legal representative of the child is mandatory in each sterilisation case.

Recommendation 16

5.137 The committee recommends that legal aid be provided to cover the costs incurred by the child's legal representative. The committee recognises that governments may need to revise current legal aid funding arrangements to ensure that there are sufficient funds to meet the costs of children's representatives in sterilisation cases.

Recommendation 17

5.140 The committee recommends that Commonwealth, state and territory governments work with legal aid commissions and relevant law societies to develop training courses for legal practitioners about children's legal capacity, techniques to communicate, and the varying effects and nature of disability. Successful completion of such courses should be mandatory before being appointed to represent a child.

Recommendation 18

5.144 The committee recommends that Commonwealth, state and territory legislation be amended to provide the right to public advocates, such as the Office of the Public Advocate, to be a party to child or adult sterilisation cases.

Recommendation 19

5.149 The committee recommends courts and tribunals develop information packs and questionnaires to provide guidance for medical experts in sterilisation cases. The information packs should specify the factors that courts and tribunals consider under the relevant legislation, and should also note issues that the courts and tribunals are not authorised to consider such as outdated and paternalistic attitudes to disability, eugenic arguments or assessments of the person's current or hypothetical capacity to care for children. Questionnaires should seek the medical expert's advice about the procedures that could usefully be adopted in the particular case to facilitate both a robust medical assessment and the person's participation in proceedings.

Recommendation 20

6.36 The committee recommends that the Family Court of Australia gives strong consideration to the evidence gathered by this inquiry about the absolute necessity of ensuring that judicial officers participating in special medical procedure cases have appropriate skills and expertise in disability matters. The committee urges the Family Court of Australia to develop training courses about disability matters and to ensure that such courses are completed by any judicial officer who may hear cases concerning special medical procedures.

Recommendation 21

6.45 The committee recommends that the Commonwealth government establish a special medical procedures advisory committee, to provide expert opinion to the Family Court upon request in relation to specific cases, and to other statutory decision-makers and government as appropriate on best practice in relation to sterilisation and related procedures for people with disability; and that the committee must include non-medical disability expertise as well as medical expertise.

Recommendation 22

6.47 The committee recommends that legal aid should be provided to cover the costs incurred by the parents or guardians in child sterilisation cases. The legal aid grant should not be subject to capping or to a means or merits test.

Recommendation 23

6.52 The committee recommends that the matter of the scope and operation of the relevant courts and tribunals be placed on the agenda of the Standing Council on Law and Justice for ongoing review.

Recommendation 24

6.55 The committee recommends that the Standing Council on Law and Justice obtain information about the frequency and nature of 'therapeutic' sterilisation cases being conducted, and compare the circumstances of those cases with 'non-therapeutic' cases that have been authorised by courts or tribunals.

Recommendation 25

7.25 The committee recommends that data about adult and child sterilisation cases be recorded, and reported, in the same way in each jurisdiction. Data records should include the number of applications made for a special medical procedure, the kind of special medical procedures specified in the application, the categories of parties to the proceedings (for example, parents, medical experts, public advocates), and the outcome of the case.

Recommendation 26

7.26 The committee recommends that the Department of Human Services investigate the pattern of vasectomy in young males, including the apparently high number occurring in Queensland, and provide information to the Standing Council on Law and Justice if it has reason to believe the figures include sterilisations of men with disability.

Recommendation 27

7.44 The committee recommends that the Council of Australian Governments oversee the development of uniform model legislation to regulate the sterilisation of persons with disabilities. Based on this model, a new division of the *Family Law Act 1975* (Cth) should be created.

Recommendation 28

7.67 The committee recommends that each jurisdiction enact legislation prohibiting the performance or procurement of unauthorised sterilisation procedures. State and Territory legislation should also make it an offence to take, attempt to take, or to knowingly assist a person to take, a child or an adult with a disability oversees for the purpose of obtaining a sterilisation procedure.