

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. 1

Senator Boyce asked the following question at the hearing on 14 February 2012

Senator BOYCE: I have a few questions to direct to Mr Innes. You have written to all the state attorneys-general and adult guardians about the levels of forced sterilisation of women and girls, particularly with intellectual disabilities in Australia.

...

When did you write the letters?

Mr Innes: I would have to take that on notice, I am sorry; I do not recall the date.

The answer to the honourable senator's question is as follows:

The Commission did not write directly to any of the State or Territory Attorneys-General regarding the issue of sterilisation.

However, the Commission requested data on sterilisation issues through the Australian Guardianship and Administration Council (AGAC) by circulating a questionnaire for state and territory agencies willing to provide information. Agencies to which the questionnaire was circulated by the AGAC included Public Guardians, Adult Guardians, Public Advocates, Boards or Tribunals.

Furthermore, the Disability Discrimination Commissioner, Graeme Innes, and Sex Discrimination Commissioner, Elizabeth Broderick, wrote to the then federal Attorney-General, the Hon Robert McClelland, on 13 July 2011 congratulating him on his announcement to initiate discussions with State and Territory counterparts on the non-therapeutic sterilisation of women and girls with disability in Australia, outlining the situation and our concerns, and urging close consultation with people with disability throughout the consultation process.

The President of the Commission, the Hon Catherine Branson QC, wrote to CEO of the Family Court of Australia, Mr Richard Foster PSM, on 1 June 2011 requesting data in relation to Special medical Procedures (Sterilisation) of girls with disability.

Copies of the questionnaire and relevant letters are attached.



Sterilisation of Girls and Women with Disability

Preliminary mapping of current legislative, policy and education frameworks in States and Territories across Australia

In January this year, the Human Rights Council Working Group on the Universal Periodic Review made a number of recommendations to the Australian Government in relation to women and girls with disabilities, including in the area of sterilisation. Similar recommendations to the Australian Government (in relation to prohibition of non-therapeutic sterilisation and enactment of national legislation to prohibit non-therapeutic sterilisation) have also been made by the Committee on the Rights of the Child in 2005 and the Committee on the Elimination of Discrimination against Women (CEDAW) in 2010.

We are interested in obtaining preliminary information about the situation.

We hope answers to questions below (even by way of dot points or brief summary), in combination with the AGAC (May 2009) *Protocol for Special Medical Procedures (Sterilisation)*, will provide us with a map of the current framework in each State and Territory, some preliminary data and an indication of what is working well or where gaps exist.

This preliminary information will inform the extent to which further analysis is needed.

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1. How do guardianship and child protection laws regulate **non-therapeutic sterilisation** of girls with disability under 18 years of age?

		Any comments?
Not applicable	<input type="checkbox"/>	
Guardianship legislation	<input type="checkbox"/>	
Child protection laws	<input type="checkbox"/>	
Other	<input type="checkbox"/>	Please specify

2. How do guardianship and child protection laws regulate **therapeutic sterilisation** of girls with disability under 18 years of age?

		Any comments?
Not applicable	<input type="checkbox"/>	

Guardianship legislation	<input type="checkbox"/>	
Child protection laws	<input type="checkbox"/>	
Other	<input type="checkbox"/>	Please specify

3. How does guardianship legislation regulate **non-therapeutic sterilisation** of women with disability?

		Any comments?
Guardianship legislation	<input type="checkbox"/>	
Child protection laws	<input type="checkbox"/>	
Other	<input type="checkbox"/>	Please specify

4. How does guardianship legislation regulate **therapeutic sterilisation** of women with disability?

		Any comments?
Guardianship legislation	<input type="checkbox"/>	
Child protection laws	<input type="checkbox"/>	
Other	<input type="checkbox"/>	Please specify

5. Are you aware of other State/Territory/Commonwealth laws that deal with these issues?

		Any comments?
Family Law Act	<input type="checkbox"/>	
Other	<input type="checkbox"/>	Please specify

6. Are you aware of any medical or similar guidelines or practice notes that deal with these issues in your State or Territory?

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7. Any further comments which might identify issues, gaps or best practice in this area?

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8. Any comments about sterilisation of boys and men with disability?

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9. Can you please give an indication of the number of applications received seeking authorisation of sterilisation procedures? How many of these applications resulted in consent for sterilisation being given? If possible, data from the previous three years would be helpful in identifying any trends.

Period	Total number of applications received <u>seeking authorisation</u> of sterilisation procedures		Total number of applications resulting in <u>consent</u> for sterilisation being given	
	Children (16-18)	Adult	Children (16-18)	Adult
2009-2010				
2008-2009				
2007-2008				

If you have any questions please do not hesitate to contact Cristina Ricci, Senior Policy Officer, Disability Rights Unit on 02 9284 9767 or cristina.ricci@humanrights.gov.au

Thank you for your assistance.



**Australian
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everyone, everywhere, everyday

13 July 2011

The Hon Robert McClelland
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

Non-therapeutic sterilisation of women and girls with disability

We are writing to congratulate you on your announcement to initiate discussions with State and Territory counterparts on the non-therapeutic sterilisation of women and girls with disability in Australia, which was made in the Government's response to Australia's first Universal Periodic Review (UPR).

The Commission has been concerned for some time that notwithstanding the current requirement for authorisation for sterilisation of children from the Family Court of Australia or guardianship tribunal, and existence of guidelines to assist guardianship tribunals in exercising their powers in relation to children and adults,¹ non-therapeutic sterilisation of women and girls with disability is occurring.

For many reasons, exact figures in relation to non-therapeutic sterilisation are difficult to obtain. The Commission is currently attempting to obtain preliminary data from guardianship tribunals in each State and Territory and from the Family Court of Australia on the number of applications received seeking authorisation and the number of these consented to. If we are successful in obtaining this information, we will be happy to provide you with a copy of the compiled report to inform your discussions.

While it is difficult to determine the exact number of women and girls who are being sterilised (or have procedures performed that result in sterilisation) where there is no serious threat to life or health, given the gravity of the outcome, the Commission notes the need for legislative and other measures to be put in place. Except where there is a serious threat to life or health, non-therapeutic sterilisation of women and girls, regardless of disability, should be prohibited. Legislative and policy measures are necessary to ensure that women and girls with disability enjoy all their rights, including sexual and reproductive rights, on an equal basis with other women and girls in Australia.

We believe 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. We therefore urge you, in accordance with the *Convention on the*

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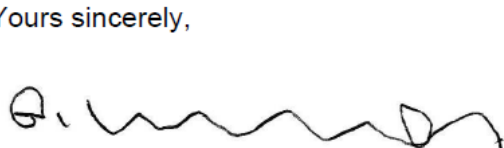
Rights of Persons with Disabilities, to closely consult with and actively involve persons with disabilities, including women and children with disabilities, through their representative organisations, during your consultations with State and Territory counterparts. Such an inclusive process will help ensure the development and implementation of appropriate legislation, policies and programs.

The Commission also notes the need for the development of a broader education and support framework for children with disability, their families and carers, and health service providers, amongst others, to ensure women and girls with disability enjoy all their rights, including sexual and reproductive rights, and have access to personal assistance when necessary. A broad education and support framework may help eliminate the consideration of non-therapeutic sterilisation as a way to deal with menstrual management or to control fertility, amongst other reasons.

The review of legislation and development and implementation of a broader education and support framework to address this situation for women and girls with disability are also in accordance with areas identified for future action under Outcome Area 1 *Rights protection, justice and legislation*, Outcome Area 4 *Personal and community support* and Outcome Area 6 *Health and wellbeing* of the *National Disability Strategy 2010-2020*.

We would be happy to provide further information, including names of women with disability and organisations to consult, if this would be of assistance.

Yours sincerely,



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Disability Discrimination Commissioner

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¹ Australian Guardianship and Administration Council, Protocol for Special medical Procedures (Sterilisation) 2009



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1 June 2011

Mr Richard Foster PSM
Chief Executive Officer
Family Court of Australia
GPO Box 9991 Canberra ACT 2601

Dear Mr Foster

Request for data in relation to Special Medical Procedures (Sterilisation) of girls with disability

I am writing to you hoping that you may be able to assist us in obtaining preliminary information about the sterilisation of girls with disability in Australia.

As background information, in January this year the United Nations Human Rights Council Working Group on the Universal Periodic Review made a number of recommendations to the Australian Government in relation to women and girls with disability, including in the area of sterilisation. Similar recommendations to the Australian Government (in relation to prohibition of non-therapeutic sterilisation and enactment of national legislation to prohibit non-therapeutic sterilisation) have also been made by the Committee on the Rights of the Child in 2005 and the Committee on the Elimination of Discrimination against Women (CEDAW) in 2010.

An initial meeting with peak disability and women's organisations in March about non-therapeutic sterilisation of women and girls with disability highlighted that very little data is publicly available to understand what is occurring in Australia. We thought some preliminary information from the Family Court of Australia and state and territory guardianship tribunals, if available, might assist us in this regard to inform the extent to which further analysis is needed.

The Australian Guardianship and Administration Council has agreed to distribute a questionnaire to all state and territory guardianship tribunals seeking preliminary data and information about the current legislative and policy framework regulating sterilisation in each jurisdiction. Specifically, we have asked for data from 2007 - 2010 (if available) in relation to the number of applications received seeking authorisation for Special Medical Procedures (Sterilisation), and number of applications resulting in consent, of women and girls with disability.

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We are interested in obtaining similar information, if possible, from the Family Court of Australia in relation to the number of applications received seeking authorisation for Special Medical Procedures (Sterilisation), and number of applications resulting in consent, of girls with disability.

We would be very grateful of any information and assistance you may be able to provide to shed some light on this issue.

Please do not hesitate to contact me, or Cristina Ricci, Senior Policy Officer (Cristina.ricci@humanrights.gov.au, 02 9284 9767) if you have any questions.

Yours sincerely

Catherine Branson
President and Human Rights Commissioner

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