**ISSUE: Forced sterilisation of people with disability and people with intersex variations**

(See Article 17 on page 13; Article 6 on page 7; Article 23 on page 16 of DPO Australia Submission to the CRPD)

**Background**

Forced sterilisation of people with disability, particularly women and girls with disability, and people with intersex variations, is an ongoing practice that remains legal and sanctioned by Governments in Australia.[[1]](#endnote-1)

Since 2005, UN human rights treaty bodies, UN special procedures and international medical bodies have made recommendations to Australia to enact national legislation to prohibit forced sterilisation.[[2]](#endnote-2) The Human Rights Council made similar recommendations as an outcome of the Universal Periodic Review (UPR) of Australia in 2015.[[3]](#endnote-3) Forced sterilisation has been identified as an act of violence, a form of social control and a form of torture by the UN Special Rapporteur on Torture,[[4]](#endnote-4) and as a form of violence by the UN Committee on the Rights of the Child (CRC).[[5]](#endnote-5)

Australian State and Territory guardianship legislation and some other child protection acts[[6]](#endnote-6) regulate and provide a degree of protection from forced sterilisation for all children and young people and adults with disability or intersex variations. However there is no law in Australia that explicitly prohibits forced sterilisation of children except in circumstances where there is a serious threat to health or life; or that prohibits forced sterilisation of adults without their full, prior and informed consent except in circumstances where there is a serious threat to health or life.[[7]](#endnote-7) Treatment decisions about intersex people encapsulate other issues, such as a desire to conduct ‘normalising’ surgery, and the neutrality of decision-making may be undermined.[[8]](#endnote-8)

In September 2012, the Senate Community Affairs References Committee (the Committee) commenced a national Inquiry into the involuntary or coerced sterilisation of people with disability and intersex people in Australia,[[9]](#endnote-9) and released two Inquiry Reports in 2013.[[10]](#endnote-10) In relation to people with disability, the Committee only recommended the prohibition of forced sterilisation if an adult with disability has the ‘capacity’ to provide consent. Despite UN recommendations and CRPD obligations, and based on Australia’s Interpretative Declaration in respect of Article 12 of the CRPD,[[11]](#endnote-11) the report also recommends that where a person with disability does not have ‘capacity’ for consent, substitute decision-making laws and procedures may permit the sterilisation of persons with disability.[[12]](#endnote-12)

In relation to intersex people, the Committee acknowledged that ’sex normalising’ practices impacted upon the prohibition against torture and other cruel, inhuman and degrading treatment (including the prohibition against non-consensual scientific or medical experimentation), and the right to privacy. It made numerous recommendations to defer non-necessary medical treatment, change clinical practices,[[13]](#endnote-13) and provide effective oversight of medical interventions.

Australia’s response to the Inquiry Report[[14]](#endnote-14) passes responsibility for action on forced sterilisation and ‘sex normalising’ practices to State and Territory jurisdictions; and retains the focus on better regulation and non-binding guidelines rather than prohibition of forced sterilisation. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and ‘sex normalising’ medical interventions within Australia.

UN Treaty body Committees are increasingly recognising that intersex people who have had unnecessary surgery or treatment are ‘victims of abuses and mistreatment’.[[15]](#endnote-15) Further, unnecessary surgery or treatment on intersex people has been described by a number of UN Treaty Bodies as a ‘harmful practice’[[16]](#endnote-16) and causing ‘physical and psychological suffering’.[[17]](#endnote-17) Australia has not legislated against enforced medical correction of intersex variations. Evidence, including from a 2016 Family Court case,[[18]](#endnote-18) shows that such medical practices persist in Australia, on the basis of inadequate medical evidence and without independent oversight.

**Proposed Questions**

**Please inform the Committee why the State Party has not legislated against forced sterilisation.**

Please advise as to how the State Party intends to monitor and address violations of sexual and reproductive rights of people with disability and people with intersex characteristics, including denial of rights to sexual and reproductive autonomy, self-determination and sexual expression.

Please elaborate on measures taken to protect the physical and mental integrity of persons with disability on an equal basis with others, in particular regarding medical or other treatment without the prior, free, full and informed consent of the person, including the use of menstrual suppressant drugs.

Please update the Committee on legislative, administrative and other measures employed to eliminate all forms of violence against women and girls with disability, including forced treatment, forced sterilisation, forced contraception, and restrictive practices.

**Endnotes**

1. People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Organisation Intersex International Australia, Submission No 23 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, 15 February 2013. [↑](#endnote-ref-1)
2. See UN Docs: E/C.12/AUS/CO/5; CAT/C/AUS/CO/4-5; CRPD/C/AUS/CO/1; CRC/C/AUS/CO/4; A/HRC/WG.6/10/L; CEDAW/C/AUS/CO/7; CRC/C/15/Add.268; A/67/227; A/HRC/22/53. See also: FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization* <<http://www.wwda.org.au/FIGOGuidelines2011.pdf>> See also: 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 Sterilization: Press Release, 5 September 2011, available at: <http://wwda.org.au/issues/sterilise/sterilise2011/sterilwma2011/> [↑](#endnote-ref-2)
3. Human Rights Council, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) rec 136.180-184, p.22. [↑](#endnote-ref-3)
4. Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48. The UN Special Rapporteur on Torture also clarified that: *“Forced interventions often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimised under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.”* See: Juan E. Mendez, Opcit., para 64. In addition, the UN Special Rapporteur on Torture also stated that *“hormone therapy and genital-normalizing surgeries under the guise of so called ‘reparative therapies’… are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.”* See: Juan E. Mendez, Op. Cit., para 76. [↑](#endnote-ref-4)
5. Human Rights Committee, *General Comment No 13: The Right of the Child to Freedom from All Forms of Violence*, UN Doc CRC/C/GC/13 (18 April 2011) [16], [21]. [↑](#endnote-ref-5)
6. For example, the *Children and Young Persons (Care and Protection) Act 1998* (NSW) [↑](#endnote-ref-6)
7. People with Disability Australia, ‘Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture’, (Submission, People with Disability Australia, October 2014), p. 32 <[www.pwd.org.au/documents/pubs/SB14-UNCAT.doc](http://www.pwd.org.au/documents/pubs/SB14-UNCAT.doc)>. [↑](#endnote-ref-7)
8. Senate Standing Committees on Community Affairs, *Involuntary or coerced sterilisation of intersex people in Australia* (2013) Commonwealth of Australia <http://www.aph.gov.au/Parliamentary\_Business/Committees/Senate/Community\_Affairs/Involuntary\_Sterilisation/Sec\_Report/index> [↑](#endnote-ref-8)
9. At: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation> [↑](#endnote-ref-9)
10. Senate Standing Committees on Community Affairs, *Involuntary or coerced sterilisation of intersex people in Australia* (2013), op. cit; Senate Standing Committees on Community Affairs, *Involuntary or coerced sterilisation of people with disabilities in Australia* (2013) Commonwealth of Australia; At: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/first_report/index.htm> [↑](#endnote-ref-10)
11. See NGO Coalition Factsheet, Equality before the law and supported decision-making, prepared for Australia’s UPR 2015 and recommending Australia withdraw its Interpretative Declaration to Article 12 of the CRPD. [↑](#endnote-ref-11)
12. Disability Rights Now Factsheets prepared by the Australian Civil Society CRPD Parallel Report Delegation for the 10th Session of the Committee on the Rights of Persons with Disabilities, <http://www.pwd.org.au/issues/2013-delegation-to-geneva-switzerland-2.html> [↑](#endnote-ref-12)
13. People with Disability Australia, ‘Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture’, (Submission, People with Disability Australia, October 2014) p. 34. <[www.pwd.org.au/documents/pubs/SB14-UNCAT.doc](http://www.pwd.org.au/documents/pubs/SB14-UNCAT.doc)>; Organisation Intersex International Australia, ‘Statement on the Senate Report “Involuntary or Coerced Sterilisation of Intersex People in Australia”’ (29 October 2013) <http://oii.org.au/24058/statement-senate-report-involuntary-or-coerced-sterilisation-intersex-people/>. [↑](#endnote-ref-13)
14. Australian Government, Australian Government response to the Senate Community Affairs References Committee reports (May 2015) <<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Additional_Documents>> [↑](#endnote-ref-14)
15. Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]. [↑](#endnote-ref-15)
16. 3 Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/C/DEU/CO/7-8), 3 March 2017, at [23] and [24]; Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/DEU/CO/6), 10 February 2009, at [61] and [62]; Committee on the Elimination of Discrimination against Women, Concluding observations on Ireland (CEDAW/C/IRL/CO/6-7), 3 March 2017, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on France (CEDAW/C/FRA/CO/7-8), 22 July 2016, at [17], [18]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on the Netherlands (CEDAW/C/NLD/CO/6), 18 November 2016, at [21] and [22]; Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]; Committee on the Rights of the Child, Concluding observations on Chile (CRC/C/CHL/CO/4-5), 30 October 2015, at [48]; Committee on the Rights of the Child, Concluding observations on Ireland (CRC/C/IRL/CO/3-4), 1 March 2016, at [39], [40]; Committee on the Rights of the Child, Concluding observations on France (CRC/C/FRA/CO/5), 29 January 2016, at [47] and [48]; Committee on the Rights of the Child, Concluding observations on Great Britain and Northern Ireland (CRC/C/GBR/CO/5), 3 June 2016, at [45], [46]; Committee on the Rights of the Child, Concluding observations on New Zealand (CRC/C/NZL/CO/5), 30 September 2016, at [24], [25]; Committee on the Rights of the Child, Concluding observations on South Africa (CRC/C/ZAF/CO/2), 30 September 2016, at [37], [38]. [↑](#endnote-ref-16)
17. Committee against Torture, Concluding observations on France (CAT/C/FRA /CO/7), 10 June 2016, at [34], [35]; Committee against Torture, Concluding observations on Denmark (CAT/C/DNK/CO/6-7), 4 February 2016, at [42]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]. [↑](#endnote-ref-17)
18. Re Carla (Medical procedure) [2016] FamCA 7. See also: Morgan Carpenter, The Family Court case Re: Carla (Medical procedure) [2016] FamCA 7, OII Australia, 2016, <https://oii.org.au/31036/re-carla-family-court/> [↑](#endnote-ref-18)