



Disabled  
People's  
Organisations  
Australia

Submission

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Australian Human Rights Commission

Consultation Paper: Protecting the Human Rights of People  
Born with Variations in Sex Characteristics in the context of  
Medical Interventions

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## 1. Disabled People's Organisations Australia (DPO Australia)

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Disabled People's Organisations Australia (DPO Australia) is an alliance of four national DPOs in Australia. DPOs are organisations that are governed, led by and constituted of people with disability.

The key purpose of the DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities.

DPO Australia is made up of four national population specific and cross-disability DPOs that have been funded by the Australian Government to represent the views of people with disability and provide advice to Government/s and other stakeholders.

The four DPO Australia members are:

[Women With Disabilities Australia \(WWDA\)](#) is the national cross-disability DPO for women and girls with all types of disabilities in Australia. It operates as a transnational human rights organisation and is run by women with disabilities, for women with disabilities. WWDA's work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

[First Peoples Disability Network Australia \(FPDNA\)](#) is the national cross-disability DPO representing Aboriginal and Torres Strait Islander people with disability and their families. FPDNA utilises a range of strategies in its representative role, including through the provision of high-level advice to governments, and educating the government and non-government sectors about how to meet the unmet needs of Aboriginal and Torres Strait Islander people with disability.

[People with Disability Australia \(PWDA\)](#) is the national cross disability rights and advocacy organisation run by and for people with disability. Working within a human rights framework, PWDA represents the interests of people with all kinds of disability. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. It also has a large associate membership of other individuals and organisations committed to the disability rights movement.

[National Ethnic Disability Alliance \(NEDA\)](#) is the national peak organisation representing the rights and interests of Culturally and Linguistically Diverse (CALD/NESB) people with disability, their families and carers throughout Australia. NEDA advocates at the federal level so that CALD/NESB people with disability can participate fully in all aspects of social, economic, political and cultural life.

## 2. Introduction

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- 2.1 DPO Australia welcomes the opportunity to provide this submission to the Australian Human Rights Commission's Consultation Paper, *Protecting the Human Rights of People Born with Variations in Sex Characteristics in the context of Medical Interventions* (Consultation Paper).
- 2.2 DPO Australia fully endorses the submission and associated recommendations provided to the Australian Human Rights Commission (AHRC) by Intersex Human Rights Australia (IHRA).<sup>1</sup>
- 2.3 Our submission asserts that the international human rights framework, including the growing body of human rights jurisprudence in this area, must underpin human rights protections of intersex people / people born with variations in sex characteristics.<sup>2</sup>
- 2.4 Our submission supports, but does not restate the comprehensive human rights analysis and discussion outlined in the submission by the IHRA in response to the Consultation Paper. In this submission, we only focus on the concept of disability and the universality of legal capacity as articulated by the Convention on the Rights of Persons with Disabilities (CRPD) to elaborate and support the recommendations made by IHRA.

## 3. Human Rights Framework

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- 3.1 We note that in Appendix B of the Consultation Paper, there is an overview of some of the key human rights themes that are articulated in the international human rights framework that have particular relevance to the rights of intersex people / people born with variations of sex characteristics. This includes the themes of bodily autonomy and physical integrity, the rights of children, protection from harmful practices, freedom from torture and cruel, inhuman or degrading treatment, the right to health and informed consent for medical treatment, and non-discrimination.<sup>3</sup> The Consultation Paper discusses these themes in the context of:
  - the rights contained in a number of human rights conventions, including the CRPD, the International Covenant on Civil and Political Rights (ICCPR), the Convention

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<sup>1</sup> Intersex Human Rights Australia, *Submission to the Australian Human Rights Commission on protecting the rights of people born with variations in sex characteristics in the context of medical interventions*, 30 September 2018.

<sup>2</sup> In response to the Consultation Paper, DPO Australia uses the terminology that is favoured by IHRA as outlined in section 5.1.4 of the IHRA submission. IHRA is an intersex-led organisation, and we strongly support terminology that is self-determined by intersex people themselves, and that is embedded in the international human rights framework.

<sup>3</sup> Australian Human Rights Commission, *Protecting the Human Rights of People Born with Variations in Sex Characteristics in the context of Medical Interventions*, Consultation Paper, July 2018, p.33.

Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC);

- treaty body concluding observations to States Parties, including Australia following periodic reviews processes;
- treaty body general comments;
- the list of issues provided to States Parties, including Australia by treaty bodies, and that seeks information on specific issues to be included in periodic reports;
- recommendations made by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- statements and reports issued by UN agencies and international human rights experts;
- the application of international human rights law to intersex people / people born with variations in sex characteristics set out in the Yogyakarta Principles, particularly the updated Yogyakarta Principles plus 10.<sup>4</sup>

3.2 We acknowledge the comprehensive discussion of the human rights framework and its application to intersex people / people born with variations of sex characteristics outlined in section 4 of the IHRA submission.<sup>5</sup> In this section IHRA provide specific details of:

- the most recent concluding observations that address concerns of human rights violations against intersex infants and children following periodic reviews of Australia by the UN Human Rights Committee (2017), the Committee on Economic, Social, and Cultural Rights (2017) and the Committee on the Elimination of Discrimination against Women (2018);
- the list of issues provided to Australia by the UN Committee Against Torture (2016) and the Committee on the Rights of Persons with Disabilities (2017) seeking specific information on progress in prohibiting forced sterilisation and forced unnecessary medical interventions;
- the views of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on forced sterilisation and forced genital-normalising surgeries and medical interventions, and subsequent calls for prohibition of such practices and establishment of specific human rights protections;
- the interpretation of child rights highlighted by the Committee on the Rights of the Child, including in relation to the guiding principles of CRC, the general comment on harmful practices and statements regarding the prevention of manipulation of the 'best interests' principle;

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<sup>4</sup> Ibid, pp. 31-34.

<sup>5</sup> Intersex Human Rights Australia, op. cit., section 4, *Human rights and the principles we apply in this submission*, pp. 5-18.

- the views provided by the Committee on the Rights of Persons with Disabilities in its General Comments regarding the link between denial of legal capacity and violations of other human rights, such as the right to consent to medical interventions; this leads to forms of violence and ill-treatment including forced sterilisation and forced invasive and irreversible medical practices performed on intersex people;
- discussion of the application of rights contained in the Yogyakarta Principles plus 10, with specific discussion of the right to bodily and mental integrity and the right to truth;
- an overview of the key recommendations from the Senate Community Affairs References Committee inquiry into the involuntary and coerced sterilisation of intersex people, none of which have been implemented by Australian governments;
- a discussion of the community consensus statement, *The Darlington Statement* which has been agreed by Australian and Aotearoa / New Zealand intersex organisations and advocates, and which articulates the self-determined human rights concerns of the intersex community.

3.4 For several years, DPO Australia and its' member organisations have been using the international human rights framework to raise human rights concerns about forced sterilisation and forced medical interventions perpetrated against people with disability and intersex people / people born with variations of sex characteristics, and to call for legal prohibition of these practices. We have raised these concerns at both the domestic level<sup>6</sup> and internationally through a broad range of UN human rights mechanisms, including UN treaty body review processes and the Universal Periodic Review of Australia conducted by the Human Rights Council.<sup>7</sup>

3.5 We have also supported and formally endorsed a number of submissions, recommendations and positions prepared by IHRA (and Organisation Intersex Australia as IHRA was previously known),<sup>8</sup> including the 'Shadow Report submission to the Committee on the Rights of Persons with Disabilities on the situation of

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<sup>6</sup> See e.g. People with Disability Australia, 'Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia', Submission (March 2013); Women with Disabilities Australia, 'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia' (2013).

<sup>7</sup> See e.g. People with Disability Australia, *Consideration of the 4<sup>th</sup> and 5<sup>th</sup> Reports of Australia by the Committee to the Convention Against Torture*, Submission (October 2014); Australian Cross Disability Alliance, Australian Centre for Disability Law, Advocacy for Inclusion, "Forced sterilisation of people with disability and people with intersex variations", Factsheet, Australia's Universal Periodic Review 2015, People with Disability Australia; Disabled People's Organisations Australia, 'Submission to the Committee on the Rights of Persons with Disabilities – List of issues [Australia] to be adopted during the 18<sup>th</sup> Session of the Committee on the Rights of Persons with Disabilities', June 2017.

<sup>8</sup> See e.g. Organisation Intersex International Australia, 'Shadow Report submission to the Human Rights Committee on the situation of intersex people in Australia', August 2017

intersex people in Australia'.<sup>9</sup>

- 3.6 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.<sup>10</sup> The Human Rights Council made similar recommendations as an outcome of the Universal Periodic Review (UPR) of Australia in 2015.<sup>11</sup> As noted above in 3.2, there are increasing UN recommendations for the prohibition of forced medical interventions against intersex people / people born with variations of sex characteristics.<sup>12</sup>
- 3.8 Despite recognition of human rights protections contained in the international human rights framework, the numerous UN treaty body concluding observations, recommendations from the Human Rights Council and UN Special Rapporteurs, statements from UN agencies and independent experts, community consensus statements from intersex people, and advocacy from disability and intersex-led organisations, Australia continues to pass responsibility for action to State and Territory jurisdictions, and retain a focus on better regulation and non-binding guidelines.<sup>13</sup>
- 3.9 The AHRC inquiry on protecting the rights of people born with variations of sex characteristics in the context of medical interventions is critical to influencing Australian governments to take action. In this respect, and in line with international human rights jurisprudence, the AHRC must have as a key recommendation from this inquiry that: *Australia enact legislation to criminally prohibit deferrable medical interventions, including surgical and hormonal interventions that result in sterilisation and / or alter sex characteristics without prior, fully informed and free personal consent.*<sup>14</sup>

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<sup>9</sup> Carpenter M, Organisation Intersex International Australia. Shadow Report submission to the Committee on the Rights of Persons with Disabilities on the situation of intersex people in Australia. 2017 June. Available at: <https://oii.org.au/31467/submission-crpd-2017/>

<sup>10</sup> 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.wvda.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://wvda.org.au/issues/sterilise/sterilise2011/sterilwma2011/>

<sup>11</sup> Human Rights Council, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) rec 136.180-184, p.22.

<sup>12</sup> Intersex Human Rights Australia, op. cit., section 4, *Human rights and the principles we apply in this submission*, pp. 5-18

<sup>13</sup> Disabled People's Organisations Australia, 'Forced sterilisation of people with disability and people with intersex variations', Factsheet for List of Issues for Australia under CRPD, August 2017.

<sup>14</sup> Based on the Darlington Statement, paragraph 7, Human Rights and Legal Reform, available at: <http://darlington.org.au/statement/>



## 4. The CRPD, disability and the rights of intersex people

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- 4.1 Section 3, Terminology in the Consultation Paper seeks to canvass views about appropriate terminology. DPO Australia agrees with IHRA that “it is not the Australian Human Rights Commission’s role to determine terminology”.<sup>15</sup> As IHRA has rightly pointed out, definitions and terminology are already consistently being used in human rights jurisprudence and statements, such as the Yogyakarta Principles plus 10 and the UN joint statement for Intersex Awareness Day. We defer to the discussion and conclusions outlined by IHRA in relation to question 1 of the Consultation Paper.<sup>16</sup>
- 4.2 However, DPO Australia highlights that the CRPD provides a critical human rights conceptualisation of ‘disability’ that is specifically relevant to human rights conceptions of ‘intersex’. The IHRA highlights this conceptualisation with reference to the ‘social model of disability’ and its application to intersex people / people born with variations of sex characteristics, to recognise that stigma and discrimination are the barriers to full and equal participation in society, not variations in sex characteristics.<sup>17</sup>
- 4.3 Traditionally, ‘disability’ has been understood as a ‘deficit’ in individual minds and / or bodies, as individual problems to be solved, fixed and / or cured. This ‘medical model of disability’ focuses on care, treatment, medical interventions and ‘protections’, and conceptualises people with disability as passive recipients of care, medical treatment and welfare.<sup>18</sup> The medical or deficit model of disability has led to legislative and policy responses to disability that focus on segregation and exclusion of people with disability, such as segregated education, housing and employment arrangements; denial of legal capacity through substitute decision-making arrangements; and laws and medical practices that allow for forced sterilisation and other forced medical interventions and forced treatment options.
- 4.4 Over many decades, the disability rights movement has fought against medicalised notions of disability, and strongly asserted a social model of disability.<sup>19</sup> The social model recognises that it is society that disables people with impairments, and prevents full and equal participation in all aspects of society.
- 4.5 The participation of people with disability and our representative organisations in the development of the CRPD has meant that a social model of disability has contributed

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<sup>15</sup> Intersex Human Rights Australia, op. cit., section 5.1.3, p.24.

<sup>16</sup> Ibid., section 5, Terminology, pp. 18-28.

<sup>17</sup> Ibid., p.21

<sup>18</sup> Rosemary Kayess and Phillip French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8(1) *Human Rights Law Review* 1, p:3

<sup>19</sup> For a fuller discussion on the social model of disability, see, Shakespeare, Tom. “The Social Model of Disability.” *The Disability Studies Reader*. Ed. Lennard J. Davis. New York: Routledge, 2010. 266-73. Print. (Pre-print copy). Available: [http://thedigitalcommons.org/docs/shakespeare\\_social-model-of-disability.pdf](http://thedigitalcommons.org/docs/shakespeare_social-model-of-disability.pdf)

to the human rights conception of 'disability' within the CRPD. The key elements of this human rights conception are:

- 'Disability' is not defined. It is conceptualised as a dynamic and evolving relationship between people with impairments and their interaction with environmental, attitudinal and social and other barriers that "hinders their full and effective participation in society on an equal basis with others".<sup>20</sup>
- Following from this, 'disability' is not the same as individual impairment or medical diagnoses and categories. People with impairments are those who have differences in minds and / or bodies that do not conform to the normative ideals of minds and bodies.
- These differences are conceptualised as one aspect of the human condition, and should be accepted "as part of human diversity and humanity".<sup>21</sup>

4.6 This conception of disability means that the CRPD provides a blueprint for the removal of barriers to realisation of human rights and outlines positive measures to accommodate difference and initiate structural change.<sup>22</sup> Its aim is to respect and include difference within society by removing the disadvantage, the discrimination, the detriment but not the difference itself<sup>23</sup> – it's about embracing difference as integral part of the human condition.<sup>24</sup>

4.7 The CRPD is a critical framework for understanding the human rights of intersex people. Intersex people / people born with variations of sex characteristics should be accepted as one aspect of human diversity and humanity. Using a medical framework to pathologise, define or assert authority over intersex people / people born with variations of sex characteristics is contrary to their human rights.

4.8 *We recommend that a human rights based understanding of intersex people / people born with variations of sex characteristics, as conceptualised in the social model of disability and the CRPD, is understood and applied by the medical profession, including in guidelines, clinical narratives and all medical training and professional development.*

4.9 *Intersex led organisations should be integral to the design, delivery and evaluation of a human rights understanding of intersex people for the medical profession, including associated training and professional development. Any training and professional development should also include incorporation of human rights*

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<sup>20</sup> Convention on the Rights of Persons with Disabilities, Preamble (e) and article 1.

<sup>21</sup> Ibid., article 3(d).

<sup>22</sup> Kayess, R., & Sands, T., 'Human Rights and People with Disability', Conference Paper, 1<sup>st</sup> Annual Disability Legal and Regulatory Conference, 27 and 28 October 2016.

<sup>23</sup> Fredman, S. (2011) *Discrimination law* 2<sup>nd</sup> edition Oxford University Press, Oxford p:30

<sup>24</sup> Kayess, R., & Sands, T., *ibid.*

*affirming national guidelines, which should be developed according to the core principles and content recommended for national guidelines by IHRA.*<sup>25</sup>

## 5. Legal Capacity

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- 5.1 DPO Australia is concerned about references in the Consultation Paper to persons that do “not have the legal capacity to provide consent” and to “adults who lack legal capacity” and similar phrases.<sup>26</sup> While much of the discussion in the Consultation Paper is in the context of infants and children who are unable to provide consent to medical treatment, issues of consent and legal capacity must comply with human rights, and specifically article 12 of the CRPD.
- 5.2 The term ‘lack of legal capacity’, particularly in the context of adults, is directed at people with disability, disproportionately those with cognitive and psychosocial disability who are deemed not to have decision-making ability and require substitute decision-making mechanisms, such as guardianship to make decisions on their behalf. Under guardianship, a substitute decision-maker can legally make decisions on behalf of the person, including decisions in relation to ‘special medical procedures’.
- 5.3 Article 12 of the CRPD, *Equal recognition before the law* affirms that all persons with disability have full legal capacity. The CRPD recognises that legal capacity is “a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others”.<sup>27</sup>
- 5.4 The General Comment on article 12 of the CRPD issued by the Committee on the Rights of Persons with Disabilities provides clear interpretation and guidance for States Parties with regards to their obligations in the recognition of legal capacity and the need to provide decision-making supports to assist people with disability to exercise their legal capacity.<sup>28</sup>
- 5.5 Recognition of legal capacity underpins the realisation of many other rights contained in the CRPD. The General Comment emphasises that “the concepts of mental and legal capacity” are often conflated, so that where a person, usually a person with cognitive or psychosocial disability, is considered to have impaired decision-making skills, their legal capacity is removed.<sup>29</sup> This denial of legal capacity leads to a range of human rights violations, including forced medical interventions and treatments, forced sterilisation and other practices, and breaches of human

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<sup>25</sup> Intersex Human Rights Australia, op. cit., section 11.3, pp. 80-81.

<sup>26</sup> Australian Human Rights Commission, op. cit., p. 17

<sup>27</sup> Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) – Article 12: Equal Recognition before the law*, 11<sup>th</sup> sess, 31 March-11 April 2014, UN Doc CRPD/C/GC/1, para 8.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, para 15.

rights including the right to respect for physical and mental integrity (CRPD article 17) and the right to consent to medical treatment (CRPD article 25).

- 5.6 The CRPD requires States Parties to abolish the legal and policy framework that allows substitute decision making, and to restore full legal capacity to people with disability. This requires a shift to supported decision-making systems that focus on the formal and informal supports required by individuals with disability to exercise their legal capacity. Safeguards must be embedded in the support system to protect against abuse and undue influence, but these safeguards “must respect the rights, will and preferences of the person, including the right to take risks and make mistakes”.<sup>30</sup>
- 5.7 While the support required will be dependent on the needs of the individual, the support “must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making”.<sup>31</sup> This means that formal and informal supports are directed at assisting the individual to express their will and preference.
- 5.8 For adults with disability, the ‘will and preferences’ paradigm replaces the ‘best interests’ paradigm, which “is not a safeguard which complies with article 12 in relation to adults”.<sup>32</sup>
- 5.9 For children, article 7 of the CRPD is consistent with the CRC, requiring that the best interests of the child be the primary consideration in all actions concerning children with disability.<sup>33</sup> The CRPD recognises the evolving capacities of children with disability<sup>34</sup> and that they have the right to express their views freely, and for these views to be “given due weight in accordance with their age and maturity on an equal basis with other children”.<sup>35</sup> To comply with article 12 of the CRPD, States Parties must ensure that laws respect the views (will and preferences) of children with disability on an equal basis with others.<sup>36</sup>
- 5.9 When Australia ratified the CRPD, it made three interpretative declarations, one of which was in relation to article 12 of the CRPD. This interpretative declaration states that Australia understands this article to allow for “fully supported or substituted decision making arrangements”.<sup>37</sup> The interpretative declaration effectively allows for the ongoing practice of substitute decision-making, and limits reform for the establishment of supported decision-making arrangements. This is

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<sup>30</sup> Ibid, para 22.

<sup>31</sup> Ibid, para 17.

<sup>32</sup> Ibid, para 21.

<sup>33</sup> Convention on the Rights of Persons with Disabilities, article 7(2).

<sup>34</sup> Ibid, article 3(h).

<sup>35</sup> Ibid, article 7(3).

<sup>36</sup> Committee on the Rights of Persons with Disabilities, *op. cit.*, para 36.

<sup>37</sup> Convention on the Rights of Persons with Disabilities: Declarations and Reservations (Australia), opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008).

despite the 2013 concluding observations from the Committee on the Rights of Persons with Disabilities urging Australia to withdraw its interpretative declaration and to replace substitute decision-making with supported decision-making.<sup>38</sup>

5.10 In 2017, the Committee on the Rights of Persons with Disabilities asked Australia for information on its progress in withdrawal of its interpretative declarations.<sup>39</sup> The response by Australia in its combined second and third periodic report to the Committee stated that “the Australian Government does not propose to withdraw this declaration” and restated its understanding that the CRPD “allows for fully supported or substituted decision-making where necessary, as a last resort and subject to safeguards.”<sup>40</sup>

5.10 Although the Australian Law Reform Commission (ALRC) conducted an inquiry into barriers to equal recognition before the law and legal capacity for people with disability, the Australian Government has not implemented the recommendations from the 2014 inquiry report.<sup>41</sup> A key recommendation was for the establishment of National Decision-Making Principles and Guidelines to guide reform of Commonwealth, State and Territory laws and legal frameworks. The Australian Government has stated in its most recent report to the Committee on the Rights of Persons with Disabilities that it is still “considering the recommendations made by the ALRC... including the recommendation a Commonwealth decision-making model be introduced into relevant Commonwealth laws and legal frameworks that encourages supported decision making.”<sup>42</sup>

5.11 Within the context of the Consultation Paper, and specifically in relation to questions 10 and 11 regarding legal oversight mechanisms, DPO Australia argues that current oversight mechanisms, such as the Family Court and the substitute decision making context of State and Territory Guardianship Tribunals do not provide the necessary human rights underpinnings to protect the human rights of intersex people / people born with variations of sex characteristics. The failure of the Family Court to ensure that the best interest principle is applied in the human rights context set out in the CRC is clearly outlined in the submission by IHRA,<sup>43</sup> and supported by analysis of authorisations of sterilisation procedures of children with

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<sup>38</sup> Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10th Session (4 October 2013) [8]–[9] & [24]–[25].

<sup>39</sup> Committee on the Rights of Persons with Disabilities, *List of issues prior to the submission of the combined second and third periodic reports of Australia*, 18<sup>th</sup> session, 14–31 August 2017, UN Doc CRPD/C/AUS/QPR/2-3, A(1).

<sup>40</sup> *Australia’s Combined Second and Third Periodic Report under the Convention on the Rights of Persons with Disabilities*, 1 September 2017, para 16, available:

<https://www.ag.gov.au/Consultations/Documents/Convention-on-the-rights-of-persons-with-disabilities/Australias-draft-combined-second-and-third-periodic-report.pdf>

<sup>41</sup> Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (2014), <https://www.alrc.gov.au/news-media/equality-capacity-and-disability-alrc-report>

<sup>42</sup> *Ibid*, para 148.

<sup>43</sup> Intersex Human Rights Australia, section 8.2.2, pp. 52–54.

disability.<sup>44</sup>

- 5.12 *DPO Australia recommends oversight of medical interventions for children born with variations of sex characteristics by an independent, human rights body consisting of human rights experts, intersex-led community organisations, disability representative organisations and clinicians, as outlined in the IHRA submission in section 8.2.3 and 8.3.*
- 5.13 *However, DPO Australia recommends that a supported decision-making framework must be established to provide support to adults with disability, including those born with variations in sex characteristics, to express their will and preferences with regards to consent to medical interventions on an equal basis with other adults. This is also recommended by IHRA in section 8.2.3 and 8.3.*
- 5.14 *DPO Australia also recommends that the AHRC use its influence to seek the Australian Government's withdrawal of its interpretative declarations, including in regard to article 12 of the CRPD; and to urgently progress the establishment of National Decision-Making Principles and Guidelines as recommended by the ALRC.*



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<sup>44</sup> People with Disability Australia, 'Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia', Submission (March 2013); Women with Disabilities Australia, 'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia' (2013)