



Women
With
Disabilities
Australia
(WWDA)

ISSUE 4 2012

WWDA NEWS

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Prepared by Carolyn Frohmader for Women With Disabilities Australia (WWDA)
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Women With Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA) is the peak organisation for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities. It is the only organisation of its kind in Australia and one of only a very small number internationally. It represents more than 2 million disabled women in Australia and operates as a national disability organisation; a national women's organisation; and a national human rights organisation. WWDA is inclusive and does not discriminate against any disability. The aim of WWDA is to be a national voice for the needs and rights of women with disabilities and a national force to improve the lives and life chances of women with disabilities. WWDA is committed to promoting and advancing the human rights and fundamental freedoms of women with disabilities.

Our work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. This rights based approach recognises that equal treatment, equal opportunity, and non-discrimination provide for inclusive opportunities for women and girls with disabilities in society. It also seeks to create greater awareness among governments and other relevant institutions of their obligations to fulfil, respect, protect and promote human rights and to support and empower women with disabilities, both individually and collectively, to claim their rights.

More information about WWDA can be found at the organisation's extensive website:

www.wwda.org.au

Previous Newsletters and Update Reports are available on the WWDA website at:

www.wwda.org.au/bulletin.htm

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WWDA SUBMISSION TO THE CONSULTATION PAPER ON THE ESTABLISHMENT OF THE ROYAL COMMISSION INTO CHILD SEXUAL ABUSE

On Monday 12 November 2012 the Prime Minister Julia Gillard announced the establishment of a Royal Commission into institutional responses to instances and allegations of child sexual abuse in Australia. The Terms of Reference and the membership of the Commission are currently being developed. The Australian Government is putting in place a broad consultation process to ensure the perspectives of key stakeholders inform the decisions that need to be taken in establishing the Royal Commission. As part of this consultation process, the Australian Government released a *Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse*. The paper sought the input of interested individuals and organisations on issues such as the scope of the Terms of Reference, the form of the Royal Commission, the number and type of Royal Commissioner/s and the reporting timetable for the Royal Commission.

In late November, WWDA developed a brief Submission in response to the Consultation Paper. WWDA welcomes the Royal Commission as a long-overdue opportunity to address the pervasive and high incidence of sexual violence and abuse of girls with disabilities, both historically and currently, and we look forward to further opportunities to contribute to the Commission as it unfolds.

WWDA's brief Submission is reproduced here.



THE CONTEXT

In Australia, girls and women with disabilities experience high levels of sexual assault and domestic/family violence, and have high levels of unmet needs in terms of access to sexual assault, violence and related community support services. It is now widely acknowledged that compared to non-disabled girls and women, women and girls with disabilities are at greater risk of severe forms of violence; they experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators; they have considerably fewer pathways to safety, and are less likely to report experiences of violence - yet programs and services for this group either do not exist or are extremely limited. In Australia, responses to violence against girls and women with disabilities have traditionally been characterised by limited recognition by governments and the service sector of the nature and extent of the problem; inadequate research; incomplete or partial response structures, and scarce resources to support advocacy in the area.^{1,2,3}

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Girls and women with disabilities in Australia live in and experience, a vast range of 'institutional' settings, such as group homes, supported residential facilities, licenced and un-licenced boarding houses, psychiatric/mental health community care facilities, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services. Girls and women with disabilities in institutions are at particular and significant risk of sexual violence and abuse due to a range of factors, including: the reinforced demand for compliant behaviours, their perceived lack of credibility, their social isolation and lack of access to learning environments, their dependence upon others, their lack of access to police, support services, lawyers or advocates; the lack of public scrutiny of institutions; and the entrenched sub-culture of violence and abuse prevalent in institutions.⁴

Research shows that:

- institutional sexual abuse is a significant and un-addressed problem for girls and women with disabilities;⁵
- more than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives;⁶
- the rates of sexual victimisation of girls and women with disabilities ranges from four to 10 times higher than for non-disabled women and girls;⁷
- the overwhelming majority of perpetrators of sexual abuse of disabled girls and women in institutions are male caregivers, a

significant portion of whom are paid service providers who commit their crimes in disability service settings, and other forms of institutional settings;⁸

- perpetrators frequently target and select their victims for their perceived powerlessness and vulnerability - and for their seeming limitations;⁹
- crimes of sexual violence committed against girls and women with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences;¹⁰
- lack of reporting of sexual abuse of girls and women with disabilities in institutions, and cover up by staff and management, is acknowledged as a widespread and common problem in Australia,¹¹ and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators;
- police are often reluctant to investigate or prosecute when a case involves a girl or woman with a disability in an institutional setting; and they also fail to act on allegations because there is no 'alternative to the abusive situation';¹²
- girls and women with disabilities, particularly those with intellectual and/or cognitive disabilities have less chance of being believed when reporting sexual abuse than non-disabled women and girls.¹³

Two recent examples highlights some of these facts:

In June 2011, the South Australian Health Complaints Commissioner reported that there had been five cases of rape and

serious sexual assault against girls and women with disabilities in the past year and, in the worst case of abuse in care, a 15 year old victim had become pregnant with the suspected rapist's child but the man had disappeared before any action could be taken against him. None of the five cases resulted in any serious police action because of a lack of corroboration or the extent of the impairment of the alleged victim.¹⁴

In July 2011, authorities in South Australia decided not to proceed with a case claiming sexual abuse of a child with an intellectual disability. The prosecution formed the view that the child could not give reliable evidence. The accused was released. Although it transpired that up to 30 other intellectually disabled children had been abused by the accused (a volunteer bus driver with a school for intellectually disabled children) and introduced into a ring of paedophiles,¹⁵ the police and the school authorities did not tell all the parents whose children had come into contact with the accused.¹⁶ It was only as a result of a chance encounter between the parents, that the full extent of their children's abuse was revealed.

In recent times, the Australian Government has conceded that violence against girls and women with disabilities in Australia is 'widespread', and that women with disabilities, particularly those with intellectual disabilities, are extraordinarily vulnerable to violence and abuse.¹⁷ Yet violence against girls and women with disabilities in institutions remains largely outside the increasing public debate and policy responses to violence against women. In 2010, the United Nations made very strong recommendations regarding the need for **urgent** action by Australian governments to address the violence and

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abuse experienced by girls and women with disabilities living in institutions or supported accommodation.¹⁸ However, there is no evidence to date of any Government response to this specific recommendation, and there appears to be little interest in establishing a national response to address violence against girls and women with disabilities in institutions.

The sexual abuse of girls and women with disabilities, particularly of those in institutions, continues in a culture of silence, invisibility and apathy. There have been, and remain, significant systemic failures in legislation, regulatory frameworks, policy, administrative procedures, availability and accessibility of services and support, to prevent and address the sexual abuse epidemic of girls and women with disabilities. Underlying these systemic failures is an entrenched culture throughout all levels of Australian society that devalues, stereotypes and discriminates against girls and women with disabilities, and invariably perpetuates and legitimises not only the multiple forms of violence perpetrated against them, but also the failure of governments to recognise and take action on the issue.

WWDA trusts that the Royal Commission into Institutional Responses to Child Sexual Abuse will do justice to the many girls and women with disabilities who have been let down by the very systems and settings which should be affording them, care, sanctuary and protection.

Terms of Reference, Scope and Function of the Royal Commission into Institutional Responses to Child Sexual Abuse

Given the short time frame for responses to the *Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse*, WWDA has taken this opportunity to highlight some key points

for consideration in setting the scope and function of the Royal Commission. We respectfully request that they be considered in the establishment of the Commission, including the setting of the Terms of Reference (TOR).

Women With Disabilities Australia (WWDA) recommends that:

1. In keeping with the Australian Government's international human rights obligations, the TOR should be framed within a strong human rights framework, specifically the Convention on the Rights of the Child (CRC), and its four core principles: non-discrimination; best interests of the child; right to life, survival and development; and, respect for the views of the child. The TOR should also be underpinned by human rights principles that ensure inclusiveness for marginalised populations, such as people with disabilities, including: respect for the dignity, autonomy and independence of people with disabilities, and respect for the evolving capacities of children with disabilities.
2. The TOR should explicitly recognise and articulate the imperative to direct particular attention to marginalised, targeted and vulnerable groups. Those responsible for establishing the Royal Commission must ensure that additional resources and a wide range of specially tailored measures are made available for this purpose.
3. Gender analysis must be employed in the design of the Royal Commission in order to acknowledge that whilst both girls and women, and men and boys can be perpetrators and/or victims of sexual abuse, statistics and research overwhelmingly indicate that the majority of incidents are perpetrated by men and boys against women and girls.
4. 'Institutions' must be conceptualised and defined in a way which ensures that the full range of 'institutional' settings as experienced by children/people with disabilities, are included in all aspects of the work of the Royal Commission, including the TOR.
5. Definitions and understandings of 'sexual abuse' must be inclusive of the forms of sexual abuse as experienced by children/people with disabilities and encompass the circumstances and contexts within which children/people with disabilities experience, and have experienced such abuse.
6. The Royal Commission must make all necessary adjustments to ensure that people with disabilities, including those with cognitive and communication impairments are able to give evidence and bear witness to the abuses they have encountered. Critically, the Royal Commission must be structured and operationalised in ways that are fully inclusive of, and accessible to, people with disabilities. The Royal Commission processes must enable and encourage people with disabilities, particularly girls and women with disabilities, to voice their experiences and speak their histories in a safe and supportive environment.
7. The Royal Commission must critically examine the barriers and failures of current systems in identifying, reporting, preventing, responding to, and achieving justice for people with disabilities who have experienced, and borne witness to, sexual abuse.

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8. The Commissioner/s, researchers and other relevant personnel appointed to undertake the work of the Royal Commission should be required to possess and demonstrate a sound understanding of human rights, gender, and the issue of sexual abuse in the context of marginalised, targeted and vulnerable populations, including those with disabilities.
9. Mechanisms should be established which enable girls and women with disabilities, including through their representative organisations and networks, to meaningfully participate in all aspects of the Royal Commission, on an equal basis with other women and girls. Organisations, networks and groups of girls and women with disabilities must be adequately resourced and supported in order to facilitate the participation of girls and women with disabilities, both individually and collectively.
10. The Royal Commission establish, as a priority and at the outset, the provision of specialised mechanisms and funding for ongoing counselling and support to women and girls with disabilities who have experienced and borne witness to, sexual abuse.
- Commission, you may provide an email or postal contact address through one of the following ways:
- Telephoning the national call centre on: 1800 099 340
- Submit using the online form at: <http://childabuseroyalcommission.dpmc.gov.au/enquiry>
- By post to the following address:
Secretariat
Royal Commission into Child Sexual Abuse
PO Box 6555
CANBERRA ACT 2600
- More information on the Royal Commission into Child Sexual Abuse can be found at: <http://childabuseroyalcommission.dpmc.gov.au/>

For more information on the Royal Commission into Child Sexual Abuse

The terms of reference for the Royal Commission will ask that it seek submissions from the public. The Commission will also have the power to call witnesses and take evidence. It is likely the Royal Commission will begin its work in early 2013. If you would like your details passed on to the Secretariat of the Royal

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8. Sobsey & Doe; cited in Elman, A. (2005) OpCit.
9. Elman, A. (2005) OpCit. See also Women With Disabilities Australia (WWDA) (2007b) OpCit.
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13. In Frohmader, C. (2011) OpCit.
14. Ibid.
15. Australian Broadcasting Corporation (ABC) (2011) *Church denies disabled kids' sex abuse cover-up*. ABC TV 'Four Corners' September 26, 2011. Accessed online October 2011 at: <http://www.abc.net.au/news/2011-09-26/four-corners-child-abuse-claims/2942602>
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SENATE INQUIRY INTO INVOLUNTARY OR COERCED STERILISATION OF PEOPLE WITH DISABILITIES IN AUSTRALIA

Systemic prejudice and discrimination against women and girls with disabilities continues to result in widespread denial of their right to experience their sexuality, to have sexual relationships and to found and maintain families. The right to bodily integrity and the right of a woman to make her own reproductive choices are enshrined in a number of international human rights treaties and instruments. However, throughout the world, women and girls with disabilities have been, and continue to be, denied these rights through the practice of forced and coerced sterilisation.

Forced/Involuntary sterilisation refers to medical procedures which permanently remove an individual's ability to reproduce. It occurs when a person is sterilised after expressly refusing the procedure, without her knowledge or is not given an opportunity to provide consent. Coerced sterilisation occurs when financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure. Women and girls with disabilities are particularly vulnerable to forced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.

On 20 September 2012 the Senate referred the following matter to the Senate Community Affairs Committee for inquiry and report by 24 April 2013:



The involuntary or coerced sterilisation of people with disabilities in Australia, including:

- (a) the types of sterilisation practices that are used, including treatments that prevent menstruation or reproduction, and exclusion or limitation of access to sexual health, contraceptive or family planning services;
- (b) the prevalence of these sterilisation practices and how they are recorded across different state and territory jurisdictions;
- (c) the different legal, regulatory and policy frameworks and practices across the Commonwealth, states and territories, and action to date on the harmonisation of regimes;
- (d) whether current legal, regulatory and policy frameworks provide adequate:
 - (i) steps to determine the wishes of a person with a disability,
 - (ii) steps to determine an individual's capacity to provide free and informed consent,
 - (iii) steps to ensure independent representation in applications for sterilisation procedures where the subject of the application is deemed unable to provide free and informed consent, and
 - (iv) application of a 'best interest test' as it relates to sterilisation and reproductive rights;

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- (e) the impacts of sterilisation of people with disabilities;
- (f) Australia's compliance with its international obligations as they apply to sterilisation of people with disabilities;
- (g) the factors that lead to sterilisation procedures being sought by others for people with disabilities, including:
 - (i) the availability and effectiveness of services and programs to support people with disabilities in managing their reproductive and sexual health needs, and whether there are measures in place to ensure that these are available on a non-discriminatory basis,
 - (ii) the availability and effectiveness of educational resources for medical practitioners, guardians, carers and people with a disability around the consequences of sterilisation, and
 - (iii) medical practitioners, guardians and carers' knowledge of and access to services and programs to support people with disabilities in managing their reproductive and sexual health needs; and
- (h) any other related matters.

Additional context (not part of the formal terms of reference)

In 2011, the Report of the United Nations Human Rights Council Working Group on the Universal Periodic Review for Australia identified issues around Australia's human rights protections for people with disabilities. This is relevant to the current inquiry. See in particular recommendation 86.39 (page 15) of the Working Group Report, available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/working_group_report/draft_report.pdf

The Senate Committee is seeking written submissions from interested individuals and organisations preferably in electronic form submitted online at <https://senate.aph.gov.au/submissions/pages/index.aspx> or sent by email to community.affairs.sen@aph.gov.au as an attached Adobe PDF or MS Word format document. The email must include full postal address and contact details. Alternatively, written submissions may be sent to the Committee Secretary at the address provided below.

The closing date for submissions is 22 February 2013.

You can check this website for updates on the Inquiry, and also to view other Submissions:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/index.htm

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WWDA Executive Director Carolyn Frohmader continues to work with Senate Committee Secretariat staff to assist with preparation and background work for the Inquiry. Carolyn is also liaising with networks and organisations of women and girls with disabilities regarding the possibility of hosting small focus groups early next year to enable the Senate Committee members to speak directly to people with disabilities to ensure they have the opportunity to get their voices heard in the Inquiry. WWDA will also be submitting a detailed written Submission to the Inquiry. Carolyn will also be appearing as a witness to the Senate inquiry Preliminary Hearing, to be held in Melbourne on December 11th.

In late November, Carolyn participated in a Podcast interview with Disability Discrimination Commissioner Graeme Innes to discuss the issue of sterilisation and reproductive rights of women and girls with disabilities. The audio of the podcast is available at: <http://humanrights.gov.au/podcasts/index.html>

If you need help to tell the Senate your story/views, or would like WWDA to tell the Senate your story/views on your behalf, please contact WWDA. You don't have to give your name. You can remain anonymous.

BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

BY CAROLYN FROHMADER

FOR WOMEN WITH DISABILITIES AUSTRALIA (WWDA)
© DECEMBER 2012

“I THINK THERE SHOULD BE AN ACT THAT SHOULD GO THROUGH PARLIAMENT, IT MUST BE A STERILISATION ACT THAT STOPS GIRLS AND WOMEN WITH INTELLECTUAL DISABILITIES BEING STERILISED.”

PARTICIPANT, STAR CONFERENCE ON STERILISATION, 1990¹



Systemic prejudice and discrimination against women and girls with disabilities continues to result in widespread denial of their right to experience their sexuality, to have sexual relationships, to make decisions about their own bodies, and to found and maintain families. The right to bodily integrity and the right of a woman to make her own reproductive choices are enshrined in a number of international human rights treaties and instruments to which Australia is a party. However, in Australia there are women and girls with disabilities who have been and continue to be, denied these rights through the ongoing practice of ‘forced/ involuntary’ and ‘coerced’ sterilisation.²

Women and girls with disabilities are particularly vulnerable to forced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.³ The forced sterilisation of disabled women and girls is recognised under international human rights law as an act of violence,⁴ a form of social control,

and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.⁵ Sterilisation disproportionately affects women and girls and is a gendered issue. Whilst there may be instances where disabled men and boys are subject to sterilisation procedures, all cases that have come to the attention of relevant authorities in Australia (including Courts and Guardianship Tribunals) have involved the sterilisation of girls with intellectual disabilities.⁶ There have been no instances in Australia where authorisations to sterilise have been sought for children without disabilities in the absence of a threat to life or health.⁷

The sterilisation of a child in circumstances other than where there is a serious threat to the health or life of that child effectively denies the child present and future enjoyment of her or his human rights. The main reasons used to justify forced sterilisations in Australia have generally fallen into four broad categories,⁸ all couched as being in the

“best interests” of women and girls with disabilities:

- The genetic/eugenic argument
- For the good of the state, community or family (to reduce ‘burden of care’),
- Incapacity for parenthood
- Prevention of sexual abuse

For more than twenty years, women with disabilities and their allies have been asking successive Australian Governments to show national leadership and undertake reforms to address the forced sterilisation of women and girls with disabilities, and to develop policies and programs that enable disabled women and girls to realise their human rights on an equal basis as others.

In 1990, women with intellectual disabilities, their families, support persons, and service providers, came

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together at a conference in Victoria to examine the issue of sterilisation. The conference was called 'My Body, My Mind, My Choice'. It was organised by STAR, an independent community organisation that advocates for the rights of people with an intellectual disability. At the time, STAR stated:

*'All women with intellectual disabilities have the right to control their own bodies. STAR is concerned at the ease with which hysterectomy and tubal ligation are promoted as the solutions to menstrual management and contraception for women with intellectual disabilities. Existing and viable options are often not explored and parents and other caregivers are not made aware of these, or are discouraged from understanding their effectiveness.'*⁹

The STAR Conference resolutions included amongst other things, the need for law reform; the need for information, education, and training of both women with intellectual disabilities and service providers; and the need for women with disabilities to be treated as equals and to be treated with dignity and respect.

In October 1992, the then Federal Minister for Justice (Senator Tate) commissioned the Family Law Council¹⁰ to undertake an inquiry into sterilisation and other medical procedures on children. The Recommendations from the Inquiry, published in 1994, included:

- that there should be a new division in the Family Law Act regulating sterilisation of young people;
- that the legislation would indicate four situations in which sterilisation could never be authorised: a) sterilisation for eugenic reasons; b) sterilisation purely for contraceptive purposes; c) sterilisation as a means of masking or avoiding the consequences of sexual abuse; or, d) sterilisations performed on

young women prior to the onset of menstruation, based on predictions about future problems that might be encountered with menstruation.

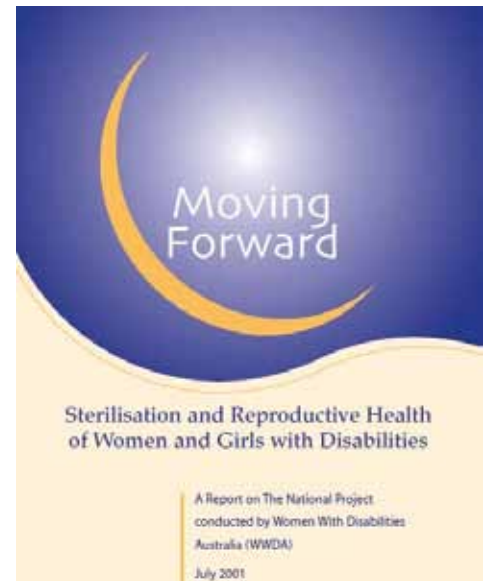
The Family Law Council further recommended that:

- the legislation should provide that no person under the age of 18 shall be sterilised unless the procedure is necessary to save life or to prevent serious damage to the person's physical or psychological health.

The Recommendations of the Inquiry were never implemented.

In 2001, Women With Disabilities Australia (WWDA) completed a national research study into sterilisation and reproductive health of women and girls with disabilities. Initially, the project was titled 'Sterilisation and Reproductive **Rights** of Women and Girls with Disabilities' however government funding was approved only on the proviso that the title of the project be changed to 'Sterilisation and Reproductive **Health** of Women and Girls with Disabilities'. This small, one word difference spoke volumes about the underlying current in the national approach to reproductive issues for women and girls with disabilities in Australia. The resulting report of the project, entitled 'Moving Forward' recommended, amongst other things,¹¹ the banning of all sterilisations of girls under the age of 18 years and the prohibition of sterilisation of adults in the absence of informed consent, except in circumstances where there is a serious threat to health or life.

Successive Australian Governments failed to substantially address and respond to any of the recommendations stemming from WWDA's national project. Instead, from 2003 to 2007, the Australian Government pushed ahead with a proposal to develop legislation



aimed to **regulate** authorisation of sterilisation of minors with a 'decision-making disability' rather than **prohibit** this form of violence. The Government disbanded this work in 2008, declaring that 'there would be limited benefit in developing model legislation'¹³ and advised WWDA that it had no intention of pursuing the issue of reform any further.¹⁴ This was despite the fact that the Australian Government conceded that: a) girls with disabilities continue to be sterilised in Australia,¹⁵ and b) 'unrecorded and unauthorised non-therapeutic sterilisations of young women with intellectual disabilities [are] being undertaken in Australia'.¹⁶

Instead of developing universal legislation which prohibits the sterilisation of women and children except in those circumstances where there is a serious threat to life or health, the Government has consistently taken the view that there are instances in which sterilisation can and should be authorised, as evidenced in its 2009 Report to the United Nations under the Convention on the Rights of the Child (CRC):

A blanket prohibition on the sterilisation of children could lead to negative consequences for some individuals.

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Applications for sterilisation are made in a variety of circumstances. Sometimes sterilisation is necessary to prevent serious damage to a child's health, for example, in a case of severe menstrual bleeding where hormonal or other treatments are contraindicated. The child may not be sexually active and contraception may not be an issue, but the concern is the impact on the child's quality of life if they are prevented from participating to an ordinary extent in school and social life.

In its 2009 response to the United Nations *Questionnaire on the Implementation of the Beijing Platform for Action (BPA)*,¹⁷ the Australian Government conceded that "low numbers" of children with disabilities continue to be sterilised in Australia. The Government further claimed that '*alternatives to surgical procedures to manage the menstruation and contraceptive needs of women are increasingly available and seem to be successful in the most part*,' and that although there are 'limitations' in available information, '*existing processes*

to authorise sterilisation procedures appear to be working adequately due to improvements in treatment options and wider community awareness.' In response to this, in March 2010, WWDA wrote formally to the [then] Federal Attorney-General requesting quantification and specific data on sterilisation of minors, along with detailed information on what evaluation the Government has conducted to inform its position that alternatives to sterilisation are "successful in the most part". WWDA has never received any of the information requested. WWDA also formally called on the Australian Government to act under its external affairs power as provided in Section 51 of the Australian Constitution,¹⁸ to legislate to prohibit sterilisation of minors unless there is a serious threat to health or life.¹⁹

In June 2011, WWDA lodged a formal complaint with four of the United Nations Special Rapporteurs, requesting urgent intervention from each of their offices simultaneously.²⁰ The Special Rapporteurs²¹ wrote to the Australian Government on 18 July 2011 seeking a formal response in relation to the alleged ongoing practice of non-therapeutic, forced sterilisation of girls and women with disabilities in Australia. The Government's response, provided to the UN on 16 December 2011, outlined the different laws governing sterilisation in Australia; and stated that '*sterilisations are authorised only where they are the last resort, as less invasive options have failed or are inappropriate, and where they are in a person's best interests*'. The 28 page response suggests the Australian Government remains of the view that there are instances in which non-therapeutic sterilisation of children and of adults with disabilities in the absence of their free and informed consent, can and should be authorised.

Since 2005, United Nations treaty monitoring bodies have consistently and formally recommended that the Australian Government enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.

Most recently in June 2012, the Committee on the Rights of the Child (CRC), in its Concluding Observations²² to the Fourth periodic report of Australia,²³ expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disabilities "*is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities.....*". The Committee urges the State party to: '*Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities.*' Furthermore, the Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government '*develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent.*'

In January 2011, in follow-up to Australia's Universal Periodic Review, the UN Human Rights Council endorsed a recommendation specifically addressing the issue of sterilisation of girls and women with disabilities. It specifies that the Australian Government should

BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities without their informed and free consent.²⁴

In July 2010, at its 46th session, the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern in its Concluding Observations on Australia at the ongoing practice of non-therapeutic sterilisations of women and girls with disabilities and recommended that the Australian Government ‘enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.’²⁵

In 2005, the Committee on the Rights of the Child in considering Australia’s combined second and third periodic reports²⁶ under Article 44 of the *Convention on the Rights of the Child (CRC)*, recommended that ‘the State party.....prohibit the sterilization of children, with or without disabilities....’²⁷ and in 2007 clearly articulated its position on sterilisation of girls with disabilities, clarifying that States parties to the CRC are expected to **prohibit by law** the forced sterilisation of children with disabilities.²⁸

To date, the Australian Government has failed to comply with any of these recommendations.

In February 2011, the Committee on the Rights of the Child issued General Comment 13, ‘*The right of the child to freedom from all forms of violence*’, through which the Committee identifies forced sterilisation of girls with disabilities as a form of violence and clearly articulates that **all** forms of violence against children are unacceptable

without exception.²⁹ The Committee on Economic, Social and Cultural Rights (CESCR) has made it clear that forced sterilisation of girls and women with disabilities is a breach of Article 10 of the *Convention on Economic, Social, and Cultural Rights*.³⁰ Similarly, the Human Rights Committee has clarified to State parties that forced sterilisation is in contravention of Articles 7, 17 and 24 of the *International Covenant on Civil and Political Rights (ICCPR)*.³¹

In 2009, the Committee Against Torture recommended that States parties to the *Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* take **urgent** measures to investigate promptly, impartially, thoroughly, and effectively, allegations of involuntary sterilisation of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.³² The United Nations Special Rapporteur on Torture has emphasised that forced sterilisation of women with disabilities may constitute torture or cruel or inhuman treatment, and that forced sterilization constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.³³ As highlighted earlier, all cases that have come to the attention of relevant authorities in Australia (including Courts and Guardianship Tribunals) have involved the sterilisation of girls with intellectual disabilities.³⁴ Similarly, there have been no instances in Australia where authorisations to sterilise have been sought for children without disabilities in the absence of a threat to life or health.³⁵

The *Beijing Declaration and Platform for Action (BPA)* identifies forced sterilisation as an act of violence and reaffirms the rights of women, including women with disabilities, to found and maintain a family, to attain the highest standard of sexual and reproductive health, and to make decisions concerning reproduction



*abolition of surgery and treatment without the full and informed consent of the patient”.*³⁹

As highlighted earlier, instead of complying with these international legal obligations and specific recommendations to prohibit the non-therapeutic and forced sterilisation of women and girls with disabilities, the Australian Government has to date, argued that: “*the Australian Government considers that the ‘best interests’ test as articulated and applied in Australia is consistent with Australia’s international obligations.*”⁴⁰ However, the Committee on the Rights of the Child (CRC) has made it clear that the principle of the ‘best interests of the child’ cannot be used to justify practices which conflict with the child’s human dignity and right to physical integrity:

“The Committee emphasizes that the interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human

BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

*dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.*⁴¹

In addition to the important analysis and condemnation of forced and coerced sterilisation of disabled women and girls by UN mechanisms, international medical bodies have now developed new protocols and calls for action to put an end to the practice of involuntary sterilisation. In June 2011, the International Federation of Gynecology and Obstetrics (FIGO) released new *Guidelines on Female Contraceptive Sterilization*⁴² shoring up informed consent protocols and clearly delineating the ethical obligations of health practitioners to ensure that women, and they alone, are giving their voluntary and informed consent to undergo a surgical sterilisation. Additionally, in September 2011, the World Medical Association (WMA) released a statement condemning the practice of forced and coerced sterilisation as a serious breach of medical ethics. WMA President, Dr. Wonchat Subhachaturas, called involuntary sterilisation "a misuse of medical expertise, a breach of medical ethics, and a clear violation of human rights." On behalf of the WMA, he issued a call to "all physicians and health workers to urge their governments to prohibit this unacceptable practice."⁴³

In October 2012, the International NGO Council on Violence against Children,⁴⁴ classified 'sterilisation of children with disabilities' as a harmful practice based on tradition, culture, religion or superstition.⁴⁵ It has urged states to prohibit the practice by law as a matter of urgency.

In 2012, the World Health Organisation (WHO) commenced work on the development of a WHO Statement on Involuntary Sterilization,⁴⁶ which addresses involuntary sterilisation of people with disabilities. The Statement will highlight the problem of involuntary sterilisation and will reaffirm the commitment of WHO to uphold human rights in the area of sexual and reproductive health. It will enable WHO to support Member States to ensure that law, policy and practice are in line with human rights standards and ethical principles and contribute to implementing best practices among policy-makers, professionals, and civil society. The Statement will be launched in the second quarter of 2013.

The Global Stop Torture in Health Care Campaign⁴⁷ has identified forced sterilisation as one of its three priority issues for international action.⁴⁸ In doing so, it states:

'Although sterilization may be carried out by individual health providers, it is ultimately the responsibility of governments to prevent such abuses from taking place. Governments must protect individuals from forced sterilization and guarantee all people's right to the information and services they need to exercise full reproductive choice and autonomy.'

In September 2012 the Australian Government announced a Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia.⁴⁹ The Inquiry is due to report in April 2013. The Senate Community Affairs Committee is seeking written submissions from interested individuals and organisations. The closing date for submissions is 22 February 2013.

On 10 December 2012, International Human Rights Day, the Australian Government released its National Human Rights Action Plan.⁵⁰ In releasing the Plan, the Federal Attorney General stated that *'This action plan explains in detail how Australia will implement the recommendations accepted during its Universal Periodic Review at the United Nations in 2011.'*⁵¹ As highlighted earlier in this paper, one of the UPR recommendations specifically called on the Australian Government to enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities without their informed and free consent. Yet the National Human Rights Action Plan addresses this recommendation in the following way: *'The Australian Government will work with states and territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability.'*⁵²

WWDA urges the Australian Government to uphold its international and domestic human rights obligations and enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent. Additionally, WWDA urges the Australian Government to act on WWDA's long-standing recommendations in relation to this issue and implement a range of specific strategies to enable women with disabilities to realise their rights to freedom from violence, to reproductive freedom and to found a family, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to privacy, and to health.⁵³

NEWS ARTICLE: COERCED STERILISATION 'SHOULD BE MADE UNLAWFUL'

THE FOLLOWING ARTICLE APPEARED IN THE CANBERRA TIMES NEWSPAPER ON TUESDAY 4 DECEMBER 2012, AND WAS WRITTEN BY CLAY LUCAS, WORKPLACE EDITOR FOR THE AGE.

The sterilisation of children without their consent must be criminalised, along with the taking of a disabled child overseas with the intention of having them sterilised, the Australian Human Rights Commission says. The recommendation is contained in the commission's submission to a Senate inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia, which began in September.

In Australia, involuntary or coerced sterilisations are predominantly performed on female children with a disability, and are performed for reasons including the management of menstruation and to prevent pregnancy. The exact number of involuntary or coerced sterilisations on women and girls each year in Australia is unknown, the Human Rights Commission said in its submission.

"However, the commission is concerned by reports that they continue to occur, and their rate may be increasing," the submission said.

Among five submissions received so far is one from an anonymous Australian mother, who argues that groups concerned about preserving the fertility rights of disabled people should be focused on more important quality-of-life issues. The unnamed mother says dealing with the menstruation of her daughter, who suffers from a moderate intellectual disability, had pushed her close to breaking point.

"She refuses point-blank to wear a bra, and there was no way in the world she would tolerate wearing a pad in her underwear," the mother said. "It was impossible for school to be able to manage her." The mother said society had "washed its hands of the responsibility of children like mine ... They don't jump up and down about her right to have a job or a meaningful adult life." The mother said allowing a medical procedure to stop her daughter's periods "for the rest of her life would only be a blessing to her and to me ... This should not be a legal problem," she said. "This should be between the person with a disability, their family and their doctors."

The Senate committee, which will report back in April, is holding a public hearing as part of the inquiry in Melbourne next Tuesday.

Stella Young, editor of ABC's Ramp Up website, dedicated to disability issues, said sterilisation of disabled girls had been extremely common. "You would hope it has become less common," she said, but that procedure rates had not dropped by as much as expected over the past decade. Ms Young said sterilisation of disabled people "only happens to women," and that this made it clear it was to do with a woman's sexuality. "For women with a disability it's seen [that] sexual impulses need to be regulated."

Ms Young is disabled, and her parents were asked if they would like to have her sterilised in 1986, when she was



Stella Young (photo courtesy ABC)

in hospital to treat a broken leg. Her parents were horrified and refused, she said. Ms Young said it was crucial that disabled women felt there were safeguards against things being done to their bodies without their consent.

"I am really lucky having parents who were on the ball," she said, but others were not.

Source: <http://www.canberratimes.com.au/national/coerced-sterilisation-should-be-made-unlawful-20121203-2ar3g.html>

Submissions made to the Senate Inquiry are available on the Inquiry website at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/submissions.htm

UPDATE ON WWDA NATIONAL VIOLENCE REFORM PROJECT

The First Action Plan (2010–2013) of the Australian Governments' *National Plan to Reduce Violence against Women and their Children 2010–2022*, (the National Plan), includes two key 'immediate national initiatives' specifically focused on women with disabilities. They are to: a) Investigate and promote ways to improve access and responses to services for women with disabilities; and b) Support better service delivery for children, Indigenous women and women with disabilities through the development of new evidence based approaches where existing policy and service responses have proved to be inadequate. As part of the first Action Plan (2010–2013) the Australian Government has engaged WWDA to deliver a national reform project which will identify and build the evidence base to inform best practice service delivery to address and prevent violence against women with disabilities.

The national reform project '*Stop the Silence: Stop the Violence: Improving Service Delivery for Women with Disabilities*' (STVP) is being implemented by WWDA in collaboration with the University of New South Wales (UNSW) and People with Disability Australia (PWDA). The STVP is being funded by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) under the National Plan.

The long-term objective of the *Stop the Violence Project* (STVP) is to contribute towards improving the quality of life for women with disabilities in Australia in order to promote and protect their rights to freedom from violence, exploitation and abuse.



The immediate objective of the project is to investigate and promote ways to support better practice and evidence-based service system improvements to prevent violence and improve access to, and responses of, governments and services for women and girls with disabilities experiencing, or at risk of violence. System improvements include improving education and awareness about sexual, physical and verbal assault, domestic violence and family violence for women and girls with disabilities on the part of government and community service providers, family members and others involved in the lives of women and girls with disabilities, and the community.

The project is national in scope. Although it is recognised that this project will not be able to address the myriad issues and complexities inherent in the multiple forms of violence perpetrated

against women with disabilities, it is expected that the successful implementation of this project will lay the groundwork for improved service provision for women with disabilities who are experiencing, or are at risk of, violence through:

- Stakeholder engagement and consultation;
- Building the evidence base by mapping good policy and practice models;
- Conducting a high-level, cross-sector national symposium on violence against women with disabilities.
- Developing a Good Policy and Practice Compendium to address violence against women with disabilities.

UPDATE ON WWDA NATIONAL VIOLENCE REFORM PROJECT

The project seeks to achieve these outcomes through the following key activities:

- Establishment of a project management and governance structure through recruiting project staff/personnel; by establishing a Project Implementation Committee (PIC) and by developing a detailed project plan.
- Engaging with key stakeholders at the national and state/territory levels by establishing a Project Steering Group (PSG) and using multiple consultative and feedback mechanisms.
- Compiling a Research Report mapping the national context through collecting and collating information on existing legislation and policies and through the conducting of a comprehensive literature review.
- Organising a high-level, cross-sector National Symposium on Violence against Women with Disabilities to promote the research findings, inform the development of the Good Policy and Practice Compendium, and to promote consensus on good practice for future actions by stakeholders.

- Development of a Good Policy and Practice Compendium by building on the evidence base and centralising knowledge and practice examples gathered from the research and National Symposium. The Compendium will include information and resources aimed at improving service delivery responses to address and prevent violence against women with disabilities, as well as models and approaches to support engagement, participation, representation and decision making of women with disabilities.
- Consolidating and finalising the outcomes from the project in a Final Report with recommendations for the way forward.

The Project Steering Group is currently being established and will be chaired by Ms Elizabeth Broderick, the Sex Discrimination Commissioner at the Australian Human Rights Commission (AHRC). The PSG will include representation from each State and Territory Government and will be responsible for providing oversight and influence with stakeholders for the success of project strategies, activities and outcomes. A Key Informant Reference Group will also be established with membership drawn from a range of sectors

WWDA will continue to keep members updated on the progress of the STVP Project. A Stakeholder Engagement and Consultation Strategy for the STVP is currently being finalised and a Project website will also be developed in the coming weeks in order to keep interested parties updated on the STVP.

If you would like more information on the *STVP Project* please contact:

Sonya Price-Kelly
STVP Executive Officer
Email: sonyapk@pwd.org.au
Ph: (02) 9370 3100

AUSTRALIAN INDONESIA PARTNERSHIP FOR JUSTICE PROGRAM – WWDA’S WORK IN JAKARTA

In the last issue of WWDA-News, we reported on WWDA’s work in Jakarta, Indonesia in July 2012. WWDA was invited by the Australian Human Rights Commission (AHRC) to be an Australian Expert as part of an Australian delegation travelling to Jakarta, Indonesia, to co-facilitate six days of training on the Convention on the Rights of Persons with Disabilities (CRPD), with specific reference to eliminating violence against women with disabilities. This was a joint partnership between the AHRC, the Australian Indonesian Partnership for Justice (AIPJ, AusAID) and Komnas Perempuan (the Commission for Women, Indonesia). WWDA was chosen as experts in this field because of our internationally recognised work in this area and our human rights approach to addressing the issue of violence against women with disabilities. WWDA President, Karin Swift, from Queensland, proudly represented WWDA in this capacity. During the 6 days of training, Karin facilitated sessions on the following topics: the experience of violence against women with disabilities, the CRPD and violence against women with disabilities, key strategies to end violence against women with disabilities and successful advocacy strategies.

The training program was a great success, and WWDA was delighted to be invited back to participate in the second stage of the Australian Indonesian



Participants at the Workshops in July 2012

Partnership for Justice (AIPJ) Training Program, being implemented in early December 2012. Karin Swift was asked to continue representing WWDA in this training role. The second stage of the training includes a National Conference and a Roundtable Discussion on the CRPD and its relationship to Ending Violence Against Women with Disabilities in Indonesia. Karin will be facilitating sessions on Violence against Women with Disabilities, and Disability Discrimination. Commissioner Graeme Innes will be attending to give the Keynote Address at the National Conference.

Using WWDA as case study, Karin will also be presenting sessions on strategies to develop shadow reports to UN treaty monitoring committees (such as the CRPD and CEDAW) and how Indonesian women with disabilities can use the Shadow Reporting process to further their efforts to address violence against women with disabilities.

A Report on Karin’s experience will be provided in the next edition of WWDA News.

ARTICLE: MEN WITH DISABILITIES FOUR TIMES MORE LIKELY TO BE SEXUALLY ABUSED THAN MEN WITHOUT DISABILITIES

Previous studies have documented that women with disabilities are more likely to be sexually assaulted than women without disabilities. A new study published online today in the *American Journal of Preventive Medicine* is the first population-based investigation to examine sexual violence victimization against men with disabilities. Researchers report that men with disabilities are more than four times more likely to be victimized by sexual assaults compared to men without disabilities.

“Men with disabilities are at a heightened risk for lifetime and current sexual violence victimization,” according to lead investigator Monika Mitra, PhD, Research Scientist, Center for Health Policy and Research, and Assistant Professor, Department of Family Medicine and Community Health, University of Massachusetts Medical School. “The most notable finding is that the prevalence of lifetime sexual violence, completed rape, and attempted rape against men with disabilities was comparable to that against women without disabilities, and past-year rates for men with disabilities exceeded those for women without disabilities.”

Dr. Mitra adds that “this study also broadened research of such victimization against men with disabilities beyond the intimate partner context to acquaintances and strangers, as well as family members, intimate partners, and dates. This is particularly relevant for people with disabilities whom earlier studies have suggested are especially likely to experience abuse from caregivers and personal care and other attendants, in addition to intimate partners.”

Investigators from the University of Massachusetts Medical School and the Massachusetts Department of Public Health used data from close to 22,000 respondents collected as part of the 2005–2009 Massachusetts Behavioral Risk Factor Surveillance System (MA-BRFSS), which is an annual health survey of non-institutionalized adults conducted in collaboration with the Centers for Disease Control and Prevention (CDC).

Approximately 13.9% of men with disabilities reported lifetime sexual violence, compared to 3.7% of men without disabilities, 26.6% of women with disabilities, and 12.4% of women without disabilities. Men with disabilities (5.3%) were more likely to report past-year sexual violence than men (1.5%) and women (2.4%) without disabilities and less likely than women with disabilities (6.3%).

Participants were asked (1) whether anyone ever had or attempted to have sex with them without their consent; and (2) whether in the past year anyone had touched them sexually without their consent/despite their objections or had exposed them to non-consensual sexual situations that did not involve physical touching.

To determine disability status, respondents were asked whether they had limitations because of physical, mental, or emotional problems, any health problem that required use of special equipment, trouble learning, remembering or concentrating because of a health problem or impairment, or a physical, mental, emotional, or communication-related disability. Those responding yes to any of these questions and whose disability had limited their activities for at least one year were classified as having a disability.

The article is “*Sexual Violence Victimization Against Men with Disabilities*” by Monika Mitra, PhD, Vera E. Mouradian, PhD, and Marci Diamond, MPA. It appears in the *American Journal of Preventive Medicine*, Volume 41, Issue 5 (November 2011) published by Elsevier.

Source: http://www.elsevier.com/wps/find/authored_newsitem.cws_home/companynews05_02098

ABUSE AGAINST CHILDREN WITH DISABILITIES

In early December 2012, Children With Disability Australia (CDA) released an Issues Paper entitled *'Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability'*.

Many families report to Children with Disability Australia (CDA) that their children are subjected to limited opportunities, low expectations, exclusion, bullying, discrimination, assault, and violation of their human rights.

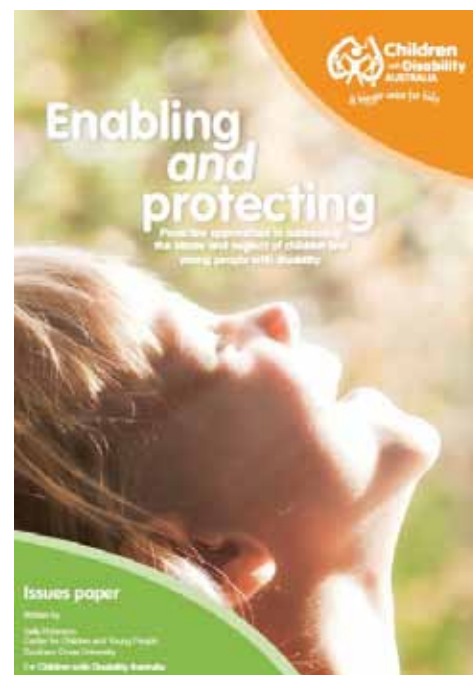
This paper draws from recent research about abuse and neglect and from national policy approaches in child protection and disability to better understand the causes, experience and responses to maltreatment of children and young people with disability.

A series of key concerns about abuse and neglect are raised to stimulate discussion and action which is in the interests of children and young people. Taking a rights informed approach, the paper focuses on building more effective national responses to children and young people who are maltreated.

Section One of the paper examines abuse and neglect of children and young people with disability, looking at prevalence, the kinds of maltreatment they experience; and the factors that increase risk. It includes a discussion around recognising harm; and highlights the lack of research with children and young people with disability that canvasses their experiences, views and

ideas about abuse, and about preventing harm. Section Two of the paper considers the current system responses to the abuse and neglect of children and young people with disability at a national level. It looks at Australia's international human rights obligations; domestic legislation; and key policy responses. Section 3 of the paper examines ways to prevent abuse and neglect of children and young people with disability. It looks at building capacity to resist abuse and neglect; safeguarding approaches in addressing abuse and neglect, and areas for further attention, including for example, the need for a national coordinated framework for the safeguarding of children and young people with disability to improve the way abuse and neglect of children with disability is responded to across key life domains, and to promote good practice in preventing maltreatment..

The Paper *'Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability'* is available for download in either Word or PDF format from the CDA website at: <http://www.cda.org.au>



NATIONAL DISABILITY INSURANCE SCHEME (NDIS) UPDATE

WHAT IS THE NDIS?

The NDIS, as proposed by the Productivity Commission, is a national, no-fault insurance approach to supporting people with disabilities, their families and their carers. It would create a secure, consistent pool of money from which support for people with disabilities, their families and carers could be drawn. The NDIS would create a nationally consistent, fair, efficient and effective system of support. It would also be more 'person-centred' and responsive to the individual needs of people with disabilities by giving them more choice and control over the supports they need.

The NDIS will be targeted in three tiers, or levels.

Tier One: this tier will be for the whole Australian population – to increase the social participation and minimise the impact of disability;

Tier Two: this tier will be for all people with disabilities (4 million) and their primary carers (800,000) who will get information, referral, web services and community engagement;

Tier Three: this tier is for people with disabilities up to aged pension age who have 'sufficient needs for disability support and early intervention' (approximately 410,000 people with disabilities).

The majority of funding at this point in time is directed to Tier Three.

The NDIS Launch Transition Agency has been set up by the Australian Government to implement the first stage of the NDIS. Starting from July 2013 the first stage of the NDIS will commence in South Australia, Tasmania, the ACT, the Hunter in NSW and the Barwon area of Victoria. These are the launch sites for the first stage. The Commonwealth and State/Territory governments are building the NDIS in these locations in the first instance to ensure that the implementation of the scheme is informed by feedback from people with disabilities, their families and carers, and service providers and community organisations. Governments want to make sure that they get this reform right so that they build a system that is sustainable over the long term for people with disabilities, their families and carers.

On 29th November, the Australian Government introduced the draft National Disability Insurance Scheme (NDIS) Bill into Parliament. The Bill creates the framework for the national scheme, including eligibility criteria, age requirements, and what constitutes reasonable and necessary support. The Australian Government is asking people with disabilities what they think about this Draft Bill.

In the Draft Bill, it says that

A person meets the *disability* requirements if:

- (a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments relating to a psychiatric condition; and
- (b) the impairment or impairments are, or are likely to be, permanent; and
- (c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities:
 - (i) communication;
 - (ii) social interaction;
 - (iii) learning;
 - (iv) mobility;
 - (v) self-care;
 - (vi) self-management; and
- (d) the impairment or impairments affect the person's capacity for social and economic participation; and
- (e) the person's support needs in relation to his or her impairment or impairments are likely to continue for the person's lifetime.

NATIONAL DISABILITY INSURANCE SCHEME (NDIS) UPDATE

In the Draft Bill, it also says that

A person meets the early intervention requirements if:

(a) the person:

(i) has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments relating to a psychiatric condition; or

(ii) is a child who has developmental delay; and

(b) the CEO is satisfied that provision of early intervention supports for the person is likely to:

(i) reduce the person's future needs for supports in relation to disability; or

(ii) mitigate, alleviate or prevent the deterioration of the functional capacity of the person to undertake communication, social interaction, learning, mobility, self-care or self-management; or

(iii) strengthen the sustainability of the informal supports available to the person.

If you would like to comment on the Draft Bill, you can go to the Government's NDIS website and go to the 'Your Say' section at: <http://yoursay.ndis.gov.au/draftbill>

NDIS PRACTICAL DESIGN FUND PROJECTS

On December 3rd, the Australian Government announced 73 successful projects that will share funding from the \$10 million NDIS Practical Design Fund to help prepare for the introduction of the NDIS. The Practical Design Fund identifies practical solutions and innovative approaches to assist people with disabilities, their families and carers and the disability sector get ready for the NDIS. The organisations receiving funding include Carpentaria Disability Service which will receive \$172,000 to help increase the number of Indigenous people trained as disability workers in remote communities. It will also help to deliver appropriate training materials to support Indigenous people attain their Units of Competency for the Certificate III in Disability Work. Ability Technology Ltd also received \$141,380 to develop an interactive website to allow people to explore the assistive technology options available to them. It will use interactive scenes from a typical home and provide advice by highlighting typical household objects and the suitable assistive technology devices for operating them.

The Parliamentary Secretary for Disabilities and Carers, Senator Jan McLucas said the Australian Government is working to build an NDIS to make sure Australians with disability get the care and support they need, no matter where they live or how they acquired their disability. "The Government has committed \$1 billion to launch an NDIS from mid-next year," Senator McLucas said. "The first stage of an NDIS will benefit more than 20,000 people with a permanent and significant disability, their families and carers in South Australia, Tasmania, the ACT, areas in the Hunter region of NSW and the Barwon region of Victoria. "This will give people with disability, their family and carers access to real choice and control over these supports—meaning more control over their lives."

View the full list of the organisations receiving funding as part of the Practical Design Fund at: <http://www.ndis.gov.au/towards/projects/the-practical-design-fund/>

NEW SCHEME: SUPPORT FOR DADS AND PARTNERS TO TAKE SOME TIME WITH THEIR BABY

From 1 January 2013, the Australian Government's Dad and Partner Pay will be available to eligible working dads or partners.

An extension of the Paid Parental Leave scheme, the payment gives financial support for working dads or partners to spend more time with their family in the vital early months of a baby's life. The new payment adds to the options available to families from the Australian Government to balance work and family commitments.

The new payment is available to eligible working dads or partners who care for a child born or adopted from 1 January 2013. Claims must be lodged by the dad or partner who is eligible to receive the payment.

Eligible dads or partners will be able to access up to two weeks of government-funded pay at the rate of the National Minimum Wage (currently about \$606 per week before tax). Dad and Partner Pay will help dads or partners take time off to bond with their baby, share experiences as a family and support mums or partners during this time.

Working dads or partners, including those in part-time, casual, seasonal and contract employment or self-employed workers, those adopting and same-sex partners, may be eligible.

To help support you and ensure you have access to the latest resources, the Australian Government has developed materials for your reference.

Visit: www.australia.gov.au/dadandpartnerpay for more information.



...now comes
with 2 weeks pay
for dads or partners

JOIN WWDA!

The success of Women With Disabilities Australia (WWDA) relies heavily on the participation and goodwill of our members. We are always seeking women with disabilities who would like to represent WWDA at government consultations, workshops, forums and committees, as well as helping us in other ways such as commenting on WWDA documents and reports; presenting papers at Conferences; writing articles for our website, becoming members of our Management Committee and so on. WWDA is a Public Benevolent Institution, which means that donations over \$2 are tax deductible. Remember, becoming a financial member of WWDA entitles you to nominate for the Management Committee when vacancies arise and/or vote at annual elections.

WWDA's Membership Form is available from the WWDA website at:

<http://www.wwda.org.au/member.htm> or by contacting WWDA

NEWS WANTED FOR WWDA-NEWS!

Women with Disabilities Australia (WWDA) produces this newsletter, WWDA-News, quarterly. If any organisation or individual has any relevant information/news that you would like to share please forward to wwda@wwda.org.au for inclusion. We look forward to hearing from you. NB: Space is limited and the editorial committee reserves the right to decide the content of WWDA-News.

FIND US ON FACEBOOK!

You can also join WWDA's Facebook Page where you can keep up to date with new information and resources. Like us at:

<http://www.facebook.com/pages/Women-With-Disabilities-Australia-WWDA/202081393153894>

The Facebook logo, consisting of the word "facebook." in white lowercase letters on a blue rectangular background.

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BRIEFING PAPER: STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES: AN UPDATE ON THE ISSUE IN AUSTRALIA

1. See: *On The Record - A Report on the 1990 STAR Conference on Sterilisation: 'My Body, My Mind, My Choice'*. Edited by Fiona Strahan, Co-Editor Lois Brudenell. Available at: <http://www.wwda.org.au/record.htm>
2. '**Forced/involuntary sterilisation**' refers to the performance of a procedure which results in sterilisation in the absence of the free and informed consent of the individual who undergoes the procedure. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to health or life. **Coerced sterilisation** occurs when financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure. '**Non-therapeutic sterilisation**' is sterilisation for a purpose other than to 'treat some malfunction or disease': *Secretary, Department of Health and Community Services v JWB and SMB*, 1992, 175 CLR 218; 106 ALR 385. For further discussion, see for example: See: Dowse, L. & Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*, A Report on the National Project conducted by Women with Disabilities Australia (WWDA), Canberra. See also: Brady, S., Briton, J., & Grover, S. (2001) *The Sterilisation of Girls and Young Women in Australia: Issues and Progress*. A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioner; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available at: www.wwda.org.au/brady2.htm; See also: WWDA, Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper*. Available at: http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf
3. WWDA, Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA)(2011) Op Cit.
4. FIGO (International Federation of Gynecology and Obstetrics), *Contraceptive Sterilization Guidelines, Recommendation 5*. Available at: <http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf>.
5. UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, [paras.38, 39]. See also UN Committee Against Torture (CAT Committee), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2 [para.22]; UN General Assembly, *Rome Statute of the International Criminal Court* (last amended January 2002), 17 July 1998, A/CONF. 183/9 [Article 7(1)(g)].
6. Brady, S. (2001) *The sterilisation of girls and young women with intellectual disabilities in Australia: An audit of Family Court and Guardianship Tribunal cases between 1992-1998*. Available online at: www.wwda.org.au/brady2001.htm
7. See: Commonwealth of Australia (1994) *Sterilisation and Other Medical Procedures on Children*. A report to the Attorney-General prepared by the Family Law Council. Available at: <http://www.ag.gov.au/Documents/sterilisation-and-other-medical-procedures.htm> See also: See also: Brady, S., Briton, J., & Grover, S. (2001) Op Cit.
8. See: Frohmader, C. (2012) *'Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia'*. Available at: http://www.wwda.org.au/Moving_Forward_Gaining_Ground.pdf
9. *On The Record - A Report on the 1990 STAR Conference on Sterilisation*: Op Cit.
10. At the time of the Inquiry, the Family Law Council was a statutory authority established by section 115 of the Family Law Act 1975 to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning - (a) the working of this Act and other legislation relating to family law; (b) the working of legal aid in relation to family law; and (c) any other matters relating to family law.
11. The report also outlined a program of reconciliation; co-ordinated legislative and policy development; information, support and service models; consent considerations; approaches to reproductive health care and education; and data collection.
12. Standing Committee of Attorneys-General (SCAG) Working Group (2006) Draft 17: *Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*. Available at: www.wwda.org.au/sterbill06.pdf
13. Standing Committee of Attorneys-General (SCAG) *Communique* 28 March 2008.

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14. Hon Robert McClelland (Attorney-General) *Correspondence to Women With Disabilities Australia* (WWDA), 27 August, 2009.
15. Australian Government (2009) *Response to the UNESCAP Questionnaire on the implementation of the outcome of the Fourth World Conference on Women (Beijing 1995)*. Available online at: www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds_to_Questionnaire/Australia.pdf [See page 14].
16. Australian Government (2006) *Sterilisation of Women and Young Girls with an Intellectual Disability - Report to the Senate*. Tabled by the Minister for Family and Community Services and the Minister Assisting the Prime Minister on the Status of Women, December 6, 2000. Available online at: www.wwda.org.au/senate.htm
17. See page 14 of the Australian Government response to the United Nations (UNESCAP) *Questionnaire for Governments on Implementation of the Beijing Declaration and Platform for Action (BPFA) and the outcomes of the twenty-third special session of the General Assembly (2000)* http://www.unescap.org/ESID/GAD/Issues/Beijing+15/index_questionnaire.asp
18. http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s51.html
19. See: Women With Disabilities Australia (WWDA) (2010) *Submission to the Australian Attorney-General on the issue of Sterilisation of Minors (March 2010)*. Available at: <http://wwda.org.au/sterilise2006.htm>
20. See: http://wwda.org.au/WWDA_Submission_SR2011.pdf
21. Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences.
22. UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4.
23. UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Fourth periodic report of States parties due in 2007: Australia*; 25 June 2009; CRC/C/AUS/4.
24. UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10.
25. Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7.
26. UN Convention on the Rights of the Child (CRC)(2004) *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention: Second and third periodic reports of States parties due in 1998 and 2003:Australia*; 29 December 2004; CRC/C/129/Add.4.
27. UN Committee on the Rights of the Child, Fortieth Session, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia*, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e).
28. CRC General Comment No.9 [at para.60] states: *'The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.'*
29. UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence*, 17 February 2011, CRC/C/GC/13 [paras.16, 21].
30. CESCR General Comment No.5 [at par 31] states: *Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood"....Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).*
31. See: Human Rights Committee (2000) International Covenant on Civil and Political Rights (CCPR), *General Comment No. 28: Equality of rights between men and women*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, [paras.11 & 20].
32. UN Committee Against Torture (2009), Forty-third session, *Concluding Observations: Slovakia*, para 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); Czech Republic, para 6(n), U.N. Doc. CAT/C/CR/32/2.
33. UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on torture and other cruel, inhuman or*

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- degrading treatment or punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, [paras.38, 39].
34. Brady, S. (2001) *The sterilisation of girls and young women with intellectual disabilities in Australia: An audit of Family Court and Guardianship Tribunal cases between 1992-1998*. Available online at: www.wwda.org.au/brady2001.htm
 35. Women With Disabilities Australia (WWDA) (2007) *Policy & Position Paper: The Development of Legislation to Authorise Procedures for the Sterilisation of Children with Intellectual Disabilities*. Available at: <http://www.wwda.org.au/polpapster07.htm>
 36. United Nations, *The Beijing Declaration and the Platform for Action: Fourth World Conference on Women*, Beijing, China, 4-15 September 1995; A/CONF.177/20/Add.1. [paras. 95-96]
 37. Radhika Coomaraswamy (1999), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].
 38. Article 23 reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others. Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity. Article 25 clearly articulates that free and informed consent should be the basis for providing health care to persons with disabilities.
 39. UN Committee on the Rights of Persons with Disabilities (CRPD Committee), *Concluding Observations: Tunisia*, para. 29, U.N. Doc. CRPD/C/TUN/CO/1 (2011).
 40. United Nations General Assembly, Human Rights Council (2011) *Report of the Working Group on the Universal Periodic Review: Australia; Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*. Seventeenth session, A/HRC/17/10/Add.1.
 41. CRC Committee General Comment No. 13 [at para.61] states: "The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."
 42. FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>
 43. 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 Sterilisation*: Press Release, 5 September 2011. Available at: <http://www.wwda.org.au/sterilWMA2011.htm>
 44. The International NGO Council on Violence Against Children was formed in 2007 to support strong and effective follow-up to the UN Study on Violence against Children. See: <http://www.crin.org/violence/NGOs/>
 45. International NGO Council on Violence against Children (October 2012) *Violating Children's Rights: Harmful practices based on tradition, culture, religion or superstition*. Available online at: http://www.crin.org/docs/InCo_Report_15Oct.pdf
 46. In recent months, WHO led a broad and inclusive consultation process which included: 12 September 2012: a meeting with governments and civil society during the Conference of States Parties in New York. After the consultation, participants were requested to comment on the Statement and twenty responses were received; 27 October 2012: a consultation with people with intellectual disabilities at the Global Forum of Inclusion International in Washington DC; Further consultation with people with intellectual disabilities on a plain language version of the Statement; 15-16 October 2012: an expert consultation held in Geneva to discuss the Statement in detail. As a result of these inputs, the proposed Statement has been strengthened. Other UN agencies are now reviewing the Statement and assessing how they may be able to support its implementation. See: http://www.who.int/disabilities/media/news/2012/14_11/en/index.html
 47. The Global Stop Torture in Health Care Campaign is an alliance of international health and human rights organisations working together to put an end to the abuse of individuals in health settings. It is co-ordinated by the Open Society Foundations. See: <http://www.stoptortureinhealthcare.org>
 48. See: <http://www.stoptortureinhealthcare.org/about-forced-sterilization>
 49. For more information on the Senate Inquiry, including updates and also to view other Submissions, go to: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/index.htm

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50. The National Human Rights Action Plan is available at: <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx>
51. The Hon Nicola Roxon MP, Attorney-General & Minister for Emergency Management, Media Release '*National Human Rights Action Plan Released*', 10 December 2012.
52. Commonwealth of Australia (2012) Australia's National Human Rights Action Plan 2012. Accessed online 10 December 2012 at: <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx>
53. In addition to the development and enactment of national legislation prohibiting the practice of forced/involuntary sterilisation, WWDA has repeatedly and consistently requested the Australian government to undertake the following steps to enable women with disabilities to realise their human rights, including their sexual and reproductive rights and their right to freedom from violence, and from torture or cruel, inhuman or degrading treatment or punishment:
 1. Provide redress to women and girls with disabilities who have been sterilised without their consent. Work in this area would need to include:
 - a) the provision of financial compensation and an official apology for discrimination;
 - b) the provision of specialised funding for qualified counsellors through a recognised body (such as Relationships Australia) to provide ongoing counselling and support to women with disabilities who are survivors of forced sterilisation;
 - c) the provision of specialised funding to the Disability Discrimination Legal Centres to support survivors of forced sterilisation with their claims to financial compensation.
 2. Address the cultural, social, and economic factors that drive the sterilisation agenda. Work in this area would need to include:
 - a) Commission and fund a national project on women with disabilities' right to reproductive freedom which:
 - addresses the incidence and long term effects of forced sterilisation for all women with disabilities, including those with psychiatric, cognitive, sensory and physical disabilities;
 - investigates the practice of menstrual suppression of girls and women with disabilities, including those in group homes and other forms of institutional care. Research into menstrual suppression practices must include:
 - o investigation into the non-consensual administration of Depo-Provera and other injectable contraceptives, the contraceptive pill, and other forms of contraception to women and girls with disabilities;
 - o investigation into the use of contraception as a form of social control of girls and women with disabilities;
 - o investigation into the long term physical and mental health and social effects of menstrual suppression practices.
 - b) Develop national protocols for health education curriculum (commencing at primary school level) which incorporate models of diversity that portray positive images of women with disabilities as parents and as sexual beings;
 - c) Fund a full time Project Officer position for Women With Disabilities Australia (WWDA) for a period of three years to conduct a national project which educates and informs women with disabilities of their right to reproductive freedom, including their right to sexuality and their right to parent;
 - d) Develop specific measures to ensure a gender perspective is incorporated into any national, state/territory initiatives undertaken as part of the domestic implementation of Article 8 [Awareness Raising] of the CRPD.
 3. Assist women and girls with disabilities and their families and carers to access appropriate reproductive health care. Work in this area would need to include:
 - a) Research and implement the specific supports required by carers to better assist them in managing the menstruation and reproductive health needs of women and girls with intellectual disabilities;
 - b) Investigate the feasibility of establishing a national scheme (similar to schemes such as the Continence Aids Payment Scheme), which provides funding for women and girls with disabilities and their families and carers to access appropriate reproductive health care;
 - c) Develop national sexual health protocols for women with disabilities that incorporate options for menstrual management and contraception.

