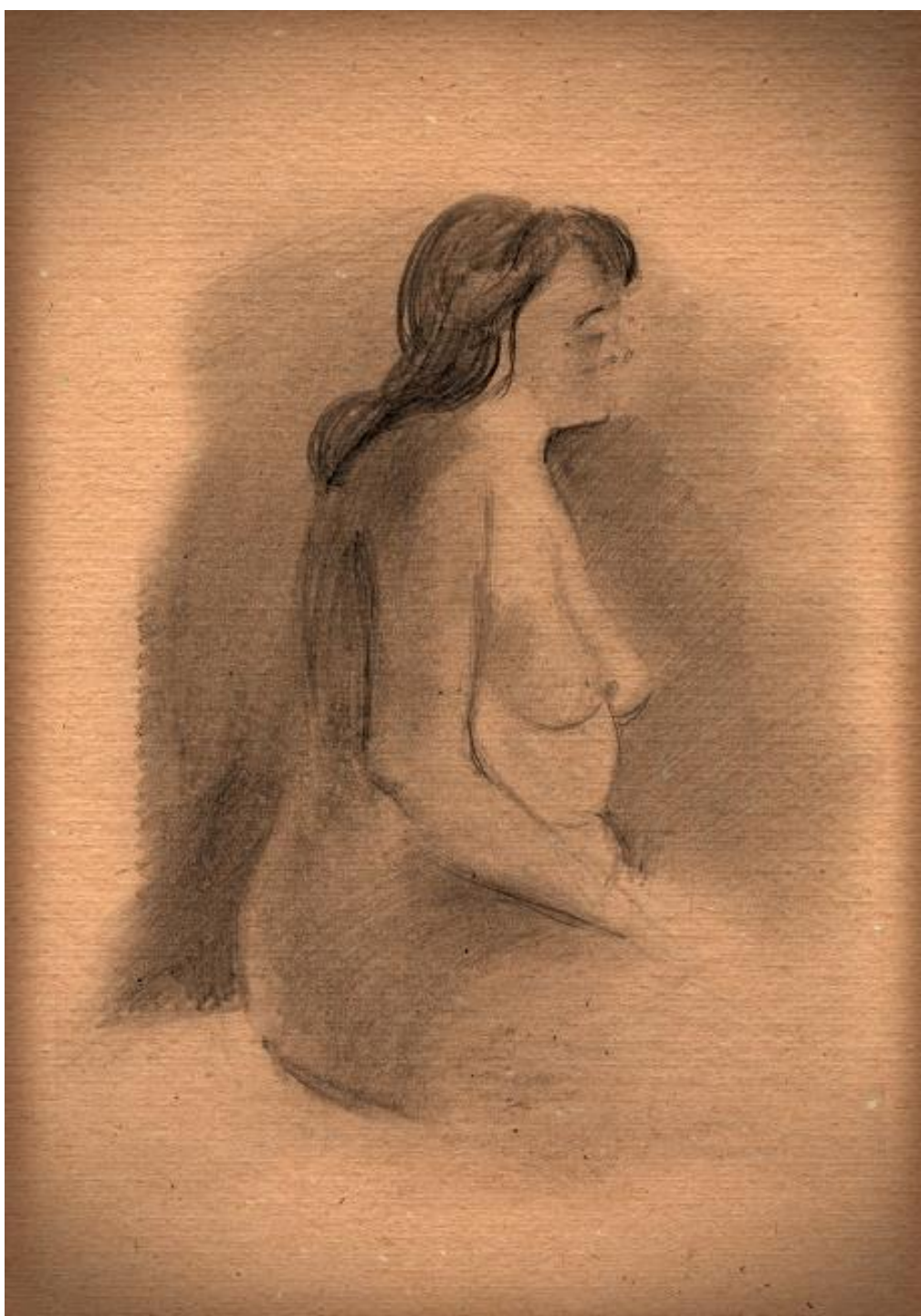


Women With Disabilities Australia (WWDA)



Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia

Summary & Recommendations of WWDA's Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia

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This document provides a brief overview of, and the recommendations from, the Submission from Women With Disabilities Australia (WWDA) to the Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia.

WWDA's full Submission to the Inquiry is entitled:

'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'

WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia

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<http://www.wwda.org.au/senateinquiry2012.htm>

Acknowledgment

In presenting this Submission to the Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia, WWDA wishes to acknowledge and thank all the women who have been involved with Women with Disabilities Australia (WWDA).

We dedicate this work to all those who have suffered discrimination and the devastating life-long impact of forced or coerced sterilisation and other violations of their reproductive health rights. Although we can never take away the pain and trauma of those women and girls affected, we trust that our work will ensure that this gross violation of the human rights of women and girls with disabilities will never be allowed to occur again.

To our sisters in other countries who are also continuing the fight to stop the practice of forced and coerced sterilisation of women and girls, we hope our work can contribute in some small way to your efforts.

Overview

1. Australia is a country that prides itself on values and principles which provide the basis for a free and democratic society, including for example: the equal worth, dignity and freedom of the individual; equality under the law; equality of opportunity; equality of men and women; and the right of its citizens to participate fully in the economic, political and social life of the nation.¹ However, these entitlements remain a distant goal for many women and girls with disabilities. In contemporary Australia, many are denied the most fundamental rights and freedoms, they are not treated with dignity and respect, they remain profoundly more disadvantaged than their male counterparts; are systematically denied opportunities to develop, gain an education and live a full and meaningful life. They experience multiple forms of discrimination, and widespread, serious violation of their human rights.
2. Denial of these rights and freedoms is predicated on the assumption - usually implicit - that there are degrees of being human, and that only the "fully human" are entitled to enjoy the advantages of our society and the full protection of its laws. Since ability and intelligence are highly valued in our society, they are closely associated with being human. 'Diminished ability and intelligence', on the other hand, is equated with lower forms of life. Women with disabilities have typically been perceived as sub-human - lacking such basic human needs as the need for love, intimacy, identity and freedom. Dehumanising conditions - such as those which still pervade many of our state institutions - have been rationalised on the basis that women with disabilities do not have the same needs and feelings as the "fully human", and hence that they do not need privacy, personal property, recognition, intimacy or freedom of choice. Viewed as "undesirable" and as potential threats to society, women with disabilities have often been isolated in institutions and otherwise prevented from fully participating in society.²
3. The right to bodily integrity and bodily autonomy, including 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, women and girls with disabilities in Australia have failed to be afforded, or benefit from, these provisions in international human rights law. Instead, systemic prejudice and discrimination against them continues to result in widespread denial of their right to make decisions about their own bodies, experience their sexuality, have sexual relationships, and found

¹ Commonwealth of Australia (2009) *A Stronger, Fairer Australia: National Statement on Social Inclusion*. Department of the Prime Minister and Cabinet, Canberra; McClelland, R. in Commonwealth of Australia (2010) *Australia's Human Rights Framework*, Attorney-General's Department, Canberra; Australian Government *Australian Values Statement*, Department of Immigration & Citizenship, available online at: <http://www.immi.gov.au/living-in-australia/values/statement/long/>; Commonwealth of Australia (2007) *Life in Australia*; Department of Immigration & Citizenship, available online at: http://www.immi.gov.au/living-in-australia/values/book/english/lia_english_full.pdf

² Roos, P. (1975) Psychological Impact of Sterilization on the Individual; *Law and Psychology Review*, Issue 45, pp.45-54.

and maintain families. In Australia there are women and girls with disabilities who have been and continue to be, denied these and other fundamental human rights through the ongoing Government sanctioned practice of 'forced/involuntary' and 'coerced' sterilisation.³

4. Forced sterilisation – that is, sterilisation in the absence of the free and informed consent of the individual concerned - including instances in which sterilisation has been authorised by a third party, without that individual's consent⁴ - is an act of violence,⁵ a form of social control, and a clear and documented violation of the right to be free from torture.⁶ Forced sterilisation of girls and women with disabilities is internationally recognised as a harmful practice based on tradition, culture, religion or superstition.⁷ Perpetrators⁸ are seldom held accountable and women and girls with disabilities who have experienced this violent abuse of their rights are rarely, if ever, able to obtain justice. Successive Australian Governments have not acknowledged this pervasive practice, nor expressed regret, nor offered redress to the women and girls affected.
5. Forced sterilisation constitutes torture.⁹ The right to be free from torture is one of the few absolute and non-derogable human rights, a matter of *jus cogens*,¹⁰ a peremptory norm of customary international law, and as such is binding on all States, irrespective

³ '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 - including instances in which sterilisation has been authorised by a third party, without that individual's consent. Coerced sterilisation occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. 'Non-therapeutic sterilisation' has been defined as 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: Méndez, Juan. E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN.Doc A/HRC/22/53; 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

⁴ Centre for Reproductive Rights, European Disability Forum, InterRights, International Disability Alliance and the Mental Disability Advocacy Centre (2011) *Written Comments Submitted in the European Court of Human Rights: Joelle Gauer and Others [Applicant] Against France [Respondent]*, 16 August 2011. See also: Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.

⁵ The United Nations Special Rapporteurs on Violence Against Women have asserted that forced sterilisation is a method of medical control of a woman's fertility. It violates a woman's physical integrity and security and constitutes violence against women. See: Manjoo, Rashida (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*; UN General Assembly; UN Doc. A/67/227; and also 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].

⁶ Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; UN General Assembly, UN Doc. A/HRC/7/3; Committee on the Rights of the Child (2011) *General Comment No. 13: Article 19: The right of the child to freedom from all forms of violence*; UN Doc. CRC/C/GC/13.

⁷ International NGO Council on Violence against Children (October 2012) *Violating Children's Rights: Harmful practices based on tradition, culture, religion or superstition*. Accessed online October 2012 at: http://www.crin.org/docs/InCo_Report_15Oct.pdf

⁸ A State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres. As underlined by the Committee against Torture, the prohibition of torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors. See: Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.

⁹ See: Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit..

¹⁰ "Jus cogens, the literal meaning of which is "compelling law," is the technical term given to those norms of general international law that are argued as hierarchically superior. These are a set of rules, which are peremptory in nature and from which no derogation is allowed under any circumstances. The doctrine of international jus cogens was developed under a strong influence of natural law concepts, which maintain that states cannot be absolutely free in establishing their contractual relations. States were obliged to respect certain fundamental principles deeply rooted in the international community. The power of a state to make treaties is subdued when it confronts a super-customary norm of jus cogens. In other words, jus cogens are rules, which correspond to the fundamental norm of international public policy and in which cannot be altered unless a subsequent norm of the same standard is established. This means that the position of the rules of jus cogens is hierarchically superior compared to other ordinary rules of international law." Taken from: Hossain, K. (2005) *The Concept of Jus Cogens and the Obligation Under the U.N. Charter*. *Santa Clara Journal of International Law*, Vol. 3, pp.72-98. As detailed in *Prosecutor v. Furundzija* "The jus cogens nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. States are obliged not only to prohibit and punish torture, but also prevent its occurrence and consequently, are bound to put in place all those measures that may pre-empt the perpetration of torture. See: International human rights law not only prohibits torture (as well as any inhuman and degrading treatment) but also prohibits (a) the failure to adopt the national measures necessary for implementing the prohibition and (b) the maintenance in force or passage of laws which are contrary to the prohibition. See International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija*, Case IT-95-17/1-T; Judgement, 10 December 1998.

of whether they have ratified specific treaties.¹¹ A State cannot justify its non-compliance with the absolute prohibition of torture, under any circumstances. The UN Special Rapporteur on Torture has recently clarified:

*Forced interventions [including involuntary sterilization], often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged "best interest" of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.*¹²

6. Forced sterilisation breaches every international human rights treaty to which Australia is a party. Legal authorisation of forced sterilisation procedures directly implicate the Australian Government in the perpetration of torture against disabled women and girls. Any law which authorises forced sterilisation is a law which authorises violence against women, the consequence of which is severe pain and suffering,¹³ including '*drastic and emotionally painful consequences that are un-ending*'.¹⁴
7. The UN Special Rapporteur on Torture has made it clear that the failure of the State to exercise due diligence to intervene to prevent torture and provide remedies to victims of torture '*facilitates and enables non-state actors to commit acts impermissible under [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] with impunity,*' and its indifference or inaction provides a form of encouragement and/or de facto permission.¹⁵ The UN Committee Against Torture has also confirmed that States have a heightened obligation to protect vulnerable and/or marginalised individuals from torture and cruel inhuman and degrading treatment and to:

*'adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture.'*¹⁶

8. For more than twenty years, women with disabilities and their allies have been demanding successive Australian Governments show national leadership and undertake wide ranging reforms to stop the forced and coerced sterilisation of women and girls with disabilities, and develop policies and programs that enable disabled women and girls to realise their human rights on an equal basis as others. These recommendations to the Australian Government for action have been strongly echoed, supported and re-

¹¹ Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit., See also: Sifris, R. (2010) Conceptualising involuntary Sterilisation as 'Severe Pain or Suffering for the Purposes of Torture Discourse. *Netherlands Quarterly of Human Rights*, Vol.28/4, pp.523-547.

¹² Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.,

¹³ Sifris, R. (2010) Op Cit.

¹⁴ Ibid.

¹⁵ Centre for Reproductive Rights et al, Op Cit., Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit.,

¹⁶ Ibid.

iterated by several international human rights treaty monitoring bodies and mechanisms since 2005.¹⁷ That Australian Governments have chosen to ignore the voices of disabled women, as well as clear recommendations from the United Nations and international medical bodies, clearly demonstrates that disabled women and girls are not considered by our Governments as worthy of all that it means to be fully human.

9. No group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights, as women with disabilities.¹⁸ The practice of forced sterilisation is itself part of a broader pattern of denial of human and reproductive rights of Australian disabled women and girls which also includes systematic exclusion from appropriate reproductive health care and sexual health screening, forced contraception and/or limited contraceptive choices, a focus on menstrual suppression, poorly managed pregnancy and birth, selective or coerced abortion and the denial of rights to parenting.¹⁹ These practices are framed within traditional social attitudes that continue to characterise disability as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.²⁰

10. This Submission from Women With Disabilities Australia (WWDA) to the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia* supplements many of the submissions, reports, articles, and letters previously provided by WWDA to successive Australian Governments on this issue over the last twelve years. This Submission does not intend to replicate all that work,²¹ but instead seeks to highlight key issues for consideration, in recognition that women and girls with disabilities have the right to experience full and effective enjoyment of their human rights on an equal basis as others. Indeed, the right to be fully human.²²

11. This Submission examines the background to the issue of forced and coerced sterilisation of women and girls with disabilities in Australia and highlights the status of the issue in Australia today. It examines the rationale used to justify the forced sterilisation of disabled women and girls, including themes such as eugenics/genetics; for the good of the State, community or family; incapacity for parenthood; incapacity to develop and evolve; prevention of sexual abuse; and discourses around "best interest".

¹⁷ 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; 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; 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; 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).

¹⁸ Manjoo, Rashida (2012) UN Doc. A/67/227, Op Cit.

¹⁹ Dowse, L. and Frohmader, C. (2001) Op Cit.

²⁰ Dowse, L. (2004) *Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia*. Paper presented to Disabled Peoples' International (DPI) World Summit, Winnipeg, September 8-10, 2004. Available online at: <http://www.wwda.org.au/steril3.htm>; Steele, L. (2008) Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability; *Australian Journal of Family Law*, Vol.22, No.1.; Prilleltensky, O. (2003) A Ramp to Motherhood: The Experiences of Mothers with Physical Disabilities. *Sexuality and Disability*, Vol. 21, No. 1, pp. 21-47.

²¹ An extensive amount of this work is available on WWDA's website. See: <http://www.wwda.org.au/sterilise.htm>

²² *Universal Declaration of Human Rights*; proclaimed by the United Nations General Assembly on 10 December 1948 General Assembly resolution 217 A (III).

In doing so, this Submission analyses Australian Court and Tribunal applications and authorisations for sterilisation of disabled women and girls, and demonstrates that in reality, applications and authorisations for sterilisation have very little to do with the 'best interests' of the individual concerned, and more to do with the interests of others. This Submission demonstrates that the Australian Government's current justification of the "best interest approach" in the sterilisation of disabled women and girls, has in effect, been used to perpetuate discriminatory attitudes against women and girls with disabilities, and has only served to facilitate the practice of forced sterilisation.

12. The impact of forced sterilisation on women and girls with disabilities is also highlighted in this Submission, and reaffirms that forced and coerced sterilisation has long-lasting physical, psychological and social effects and causes severe mental pain and suffering, extreme psychological trauma, including depression and grief. It also demonstrates that for women with disabilities, the issue of forced sterilisation encompasses much broader issues of reproductive health, including for example: support for choices and services in menstrual management, contraception, abortion, sexual health management and screening, pregnancy, birth, parenting, menopause, sexuality, violence and sexual assault prevention and more.
13. This Submission looks in detail at forced sterilisation as a violation of human rights and provides an analysis of how the practice contravenes every international human rights treaty to which Australia is a party. It examines the human rights treaty monitoring bodies responses to the practice of forced sterilisation around the world and clearly demonstrates that Australia's apathy and indifference to the issue sees it lagging behind the rest of the developed world, at the expense of the human rights of disabled women and girls.
14. The Submission provides examples of several recent legal cases to highlight that the issue of forced and coerced sterilisation of women and girls is increasingly being recognised in Courts around the world, as a violation of women's fundamental human rights. Importantly, WWDA's Submission also examines redress and transitional justice for women and girls with disabilities who have been sterilised in the absence of their fully informed and free consent. In doing so, the Submission looks at the necessary components of redress and transitional justice, including for example: measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.
15. Given the magnitude of the issue of forced sterilisation of women and girls with disabilities, in that it represents just one element of a much broader pattern of denial of

human and reproductive rights of Australian disabled women and girls, it is outside the scope of this Submission to address in detail the wide-ranging and extensive raft of actions required to address the breadth and scope of issues involved. This Submission has, however, endeavoured to identify key recommendations for consideration, whilst acknowledging that much more intensive work is required. Critically, any work in this area, must be based on the understanding that women and girls with disabilities must be at the forefront of any and all consultative and decision-making processes.

16. Forced sterilisation of women and girls with disabilities, and the inadequacy of Australian Governments' responses to it, represent grave violations of multiple human rights. The Australian Government is obliged to exercise due diligence to: prevent the practice of forced and coerced sterilisation from taking place; investigate promptly, impartially and effectively all cases of forced sterilisation of women and girls with disabilities; remove any time limits for filing complaints; prosecute and punish the perpetrators, and, provide adequate redress to all victims of forced or coerced sterilisation. Meeting these obligations requires the Australian Government to take into account the marginalisation of disabled women and girls, whose rights are compromised due to deeply rooted power imbalances and structural inequalities, and to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights on an equal basis as others. Nothing less is acceptable.

17. Whilst WWDA welcomes the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia* as a long-overdue initiative and commends the Senate for recognising the imperative to address this long neglected yet urgent human rights issue, we re-iterate that there are absolutely no grounds or excuses which can be used to justify the torture of women and girls with disabilities by forced sterilisation.

Key Recommendations

Based on the information provided in this Submission, coupled with WWDA's extensive and dedicated work on this issue for more than twelve years, WWDA makes the following 18 Key Recommendations to the Australian Government through the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia*:

Recommendation 1

As an immediate action, in keeping with the human rights treaties to which Australia is a party, and consistent with the recommendations to the Australian Government from the United Nations *Committee on the Elimination of Discrimination Against Women* (CEDAW/C/AUS/CO/7), the *Committee on the Rights of the Child* (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the *Human Rights Council* (A/HRC/17/10), along with the *International Federation of Gynecology and Obstetrics (FIGO) Guidelines on Female Contraceptive Sterilization* (2011); recommendations of the *World Medical Association (WMA)* (2011) and the *International Federation of Health and Human Rights Organisations (IFHHRO)* (2011), and the February 2013 Recommendations of the *UN Special Rapporteur on Torture* (A/HRC/22/53) **enact national legislation prohibiting, except where there is a serious threat to life, 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.** Such legislation must prohibit the removal of a child or adult with a disability from Australia with the intention of having a forced sterilisation procedure performed.

Recommendation 2

In consultation with women with disabilities, and as a matter of urgency, establish and adequately resource a National Task Force²³ to develop a **Policy and Framework for Transitional Justice and Redress** to address the forced and coerced sterilisation of women and girls with disabilities in Australia. Such a policy and framework must be consistent with the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (A/RES/60/147), the *Convention on the Rights of Persons With Disabilities* (A/RES/61/106) and other relevant international standards and frameworks.²⁴ The following elements as articulated under the *Convention Against Torture [and Other Cruel, Inhuman or Degrading Treatment or Punishment]*, must

²³ Such a Task Force must include women with disabilities in its membership, and be chaired by a woman with a disability.

²⁴ See for eg: The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. Available at: <http://www.redress.org/downloads/publications/Nairobi%20Principles%20on%20Women%20and%20Girls.pdf>

be included: measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.

Recommendation 3

In developing measures of **rehabilitation and recovery** for those affected by forced sterilisation practices and other violations of their reproductive rights and freedoms, women and girls with disabilities must be actively consulted to identify the full range of rehabilitation and recovery measures required, which may include for example:

- specialised counselling, psychological, and social programs, services and supports;
- provision of legal services, supports and assistance for survivors;
- specialised women's health, allied health and medical programs, services and supports;
- specialised and targeted violence and sexual assault prevention services, programs and support;
- specialised reproductive and sexual health education and training services and programs;
- processes for memorialising and documenting the experiences, stories and histories of those affected.

Recommendation 4

Issue a **formal apology** that identifies the discriminatory actions, policies, culture and attitudes that result in forced and coerced sterilisation of people with disabilities and that acknowledges, on behalf of the nation, the harm done to those who have been forcibly sterilised and experienced other violations of their reproductive rights. The formal apology must be developed in consultation with those affected and their allies, and satisfy the five criteria for formal apologies as articulated by the Canadian Law Commission, which include:

- acknowledgment of the wrong done or naming the offence.
- accepting responsibility for the wrong that was done.
- the expression of sincere regret and profound remorse.
- the assurance or promise that the wrong done will not recur.
- reparation through concrete measures.

Recommendation 5

Provide **financial reparation** to women and girls with disabilities who have been forcibly sterilised. In establishing a scheme for financial reparation, the Australian Government should examine similar models used in Canada, Sweden and the US, including the *North Carolina Justice for Sterilization Victims Foundation*, established in 2010.

Recommendation 6

In consultation with people with disabilities and their allies, and consistent with the *Convention on the Rights of Persons With Disabilities*, act to undertake the following **legislative reforms**:

- enact national legislation that replaces regimes of substitute decision making for people with disabilities with supported decision-making;
- repeal any laws, policies and practices which permit guardianship and trusteeship for adults (and replace regimes of substitute decision-making with supported decision making);
- ensure that the requirement for prior, full and informed consent in all interventions and treatments concerning people with disabilities is enshrined in relevant legal frameworks at national and state/territory levels;
- ensure that criteria that determine the grounds upon which treatment can be administered in the absence of free and informed consent is clarified in the law, and that no distinction between persons with or without disabilities is made; and,
- ensure that any law or policy which restricts in any way, a disabled woman's [and girls] right to full enjoyment of her sexual and reproductive health rights and freedoms, is amended as a matter of urgency.²⁵

Recommendation 7

In keeping with recommendations from the *Committee on the Elimination of Discrimination Against Women* (CEDAW/C/AUS/CO/7), act to adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, and that structures, mechanisms and initiatives are established to enable and foster their participation and engagement. Inherent in this is the need for the Australian Government to undertake an **immediate and urgent review** of the level and adequacy of the annual funding provided by the Australian Government to Women With Disabilities Australia (WWDA) (\$163,000) including its staffing levels (1 EFT).

Recommendation 8

Act immediately to commission and adequately resource a **National Public Inquiry** into the removal and/or threat of removal of babies and children from parents with disabilities. Such an Inquiry must investigate reasons why in Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care.²⁶

²⁵ This includes laws, policies or programs that deny disabled women the right to found a family (including for eg: policies that deny access to assisted reproduction, adoption, surrogacy) and to maintain a family (eg: policies that enable removal of babies and children from parents with disabilities on the basis of parental disability).

²⁶ This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child's extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*. <http://www.publicadvocate.vic.gov.au/research/302/>

The Inquiry must also address the over-representation of parents with intellectual disabilities in care and protection proceedings.

Recommendation 9

Act immediately on the urgent recommendation of the *Committee on the Elimination of Discrimination Against Women (CEDAW/C/AUS/CO/7)*, to address the violence, abuse, neglect and exploitation experienced by women and girls with disabilities living in institutions or supported accommodation. Inherent in this is the need to develop and resource targeted, gendered initiatives to build capacity of individuals and organisations to prevent violence against people with disabilities and to ensure appropriate responses when it does occur.

Recommendation 10

As a matter of urgency, and consistent with recommendations from other key Australian disabled people's organisations, establish and adequately resource an independent, statutory, **national protection mechanism** for 'vulnerable' and/or 'targeted' adults, where the requirement for mandatory reporting is legislated.

Recommendation 11

Commission and fund a three year **national research study** on women and girls with disabilities' right to reproductive freedom which:

- investigates models of best practice in the delivery of sexual and reproductive health programs and services for women and girls with disabilities, including on all matters relating to parenthood and relationships;
- addresses the effects, including long-term effects, of forced and coerced sterilisation for all women and girls 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:

- investigation into the non-consensual and coerced administration of Depo-Provera and other injectable contraceptives, the contraceptive pill, and other forms of contraception to women and girls with disabilities;
- investigation into the use of contraception as a form of social control of girls and women with disabilities;
- investigation into the long term physical, psychological, and social effects of menstrual suppression practices.

Recommendation 12

In consultation with women with disabilities and their allies, **commission specific work** to assist women and girls with disabilities and their families and support persons to access appropriate reproductive health care. Work in this area would need to include:

- Researching and implementing the specific supports required by carers/support persons to better assist them in managing the menstruation and reproductive health needs of women and girls with intellectual and/or cognitive disabilities;
- Investigating the feasibility of establishing a national scheme (similar to schemes such as the Continence Aids Payment Scheme), which provides funding for all women and girls with disabilities and their families and support persons/carers to access appropriate reproductive health care;
- Developing national sexual health protocols for women and girls with disabilities that incorporate options for menstrual management and contraception.

Recommendation 13

Establish, and recurrently fund a **National Resource Centre for Parents with Disabilities**, focusing on pregnancy and birthing, adoption, custody, assisted reproduction, adaptive baby-care equipment, as well as general parenting issues. In establishing such a Resource Centre, the Australian Government should examine similar Centres available in other countries, such as the US organisation 'Through the Looking Glass'.²⁷

Recommendation 14

Recognise, **support and strengthen** the role of women with disabilities organisations, groups and networks in efforts to fulfil, respect, protect and promote their human rights, and to support and empower women with disabilities, both individually and collectively, to claim their rights. This includes the need to create an environment conducive to the effective functioning of such organisations, groups and networks, including adequate and sustained resourcing. Inherent in this, is the need for financial and political support to enable the establishment and recurrent funding of a peak NGO for women with disabilities in each State and Territory.

Recommendation 15

Ensure that information on women and girls with disabilities is provided in all human rights treaties **Periodic Reports** as a matter of course. This would include information on the

²⁷ Through the Looking Glass (TLG) is a national disability community based non-profit organization providing research, training, and services for families in which a child, parent or grandparent has a disability or medical issue. TLG includes the *National Center for Parents with Disabilities and their Families* which provides an extensive range of services and support for parents with disabilities. TLG is nationally recognised for designing and fabricating baby care equipment for parents and other caregivers with disabilities, as well as studying the impact of this equipment on parenting. An adaptive equipment hire service is just one of the many services available. See: <http://www.lookingglass.org/>

situation of women with disabilities under each right, including their current de-facto and de jure situation, measures taken to enhance their status, progress made and difficulties and obstacles encountered. Inherent in this is the need to ensure disaggregated data is included in information provided under each right.

Recommendation 16

Act to separate disability policy and disability support from family carer policy and support in order to **increase the autonomy** of women and girls with disabilities and challenge the stereotype of women and girls with disabilities as burdens of care.

Recommendation 17

Through the National Registration and Accreditation Scheme for the Health Professions (NRAS),²⁸ act to ensure that **accreditation of the training of health professionals** covered under the *Health Practitioner Regulation National Law Act 2009*, is contingent on disability, gender and human rights specific curriculum components.

Recommendation 18

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.

²⁸ For more information see: <http://www.ahpra.gov.au>

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Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia' is available for download in

PDF and Word versions, from the WWDA website at:

<http://www.wwda.org.au/senateinquiry2012.htm>