



Women
With
Disabilities
Australia
(WWDA)

Sterilisation of Women and Girls with Disabilities - An update on the issue in Australia

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The right to bodily integrity and the right of a woman to make choices about her reproduction are enshrined in a number of international human rights treaties and instruments to which Australia is a party. However, in Australia in the 21st century there are numbers of women and girls with disabilities who have been and continue to be, denied their right to bodily integrity through the ongoing practice of 'non-therapeutic' [1] or 'forced' sterilisation [2].

In 2001, Women With Disabilities Australia (WWDA) the national peak body representing women and girls with disabilities in Australia, completed a national research study into sterilisation and reproductive health of women and girls with disabilities. The resulting report *'Moving Forward'* recommended 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. 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 [3]. Successive Australian Governments have to date failed to substantially address and respond to any of the recommendations stemming from WWDA's national project, which was completed in 2001.



Photo courtesy of European Disability Forum
http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=24842

For more than a decade now, women with disabilities and their supporters have been speaking out, demanding action to address what they see as an extreme human rights violation and calling for support services and compensation [4]. They have maintained that non-therapeutic sterilisation is a question for adulthood not childhood, an act of violence and a form of social control, an irreversible medical procedure with profound physical and

psychological effects, and a gross violation of an individual's human rights [5]. As one of the key proponents advocating on the issue and calling for reform, WWDA has insisted that the Australian Government take all

necessary steps to stop the forced sterilisation of women and girls with disabilities. This work [6] has included calls for the Australian Governments to:

- develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life;
- address the cultural, social and economic factors which drive the sterilisation agenda;
- commit resources to assist women and girls with disabilities and their families and carers to access appropriate reproductive health care; and,
- create the social context in which all women and girls are valued and respected.

In August 2003, the Standing Committee of Attorneys-General (SCAG) [7] agreed that a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of minors was appropriate, and began the process of developing draft legislation in this area [8]. In November 2006, the Standing Committee of Attorneys General (SCAG), released for consultation with selected stakeholders, its draft Bill (*Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*) [9]. The Bill set out the procedures that jurisdictions could adopt in authorising the sterilisation of children who have an intellectual disability [10].

WWDA did not support the development of a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of children with an intellectual disability. WWDA is of the view that sterilisation is a question for adulthood not childhood. WWDA continued its decade long advocacy campaign urging all Australian Governments to work together to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life [11]. WWDA's position has been recommended and endorsed by over 100 Australian non-government organisations through the 2008 Australia NGO Submission to the UN Committee on Economic, Social and Cultural Rights [12].

At the SCAG meeting on 28 March 2008, Ministers agreed that *'there would be limited benefit in developing model legislation'* and the issue of *'Sterilisation of Intellectually Disabled Minors'* was removed from the SCAG Agenda. Ministers also agreed to *'review current arrangements to ensure that all tribunals or bodies with the power to make orders concerning the sterilisation of minors with an intellectual disability are required to be satisfied that all appropriate alternatives to sterilisation have been fully explored and/or tried before such an order is made'* [13]. There is no evidence to date that these reviews have been conducted.

Despite strong condemnation of forced sterilisation from many sources including women's organisations, disability rights organisations and international and national human rights bodies [14], women and girls with disabilities in Australia still experience, and face a serious threat of forced sterilisation. The United

Nations Committee on the Rights of the Child has criticised the Australian Government for its regulation of the practice of sterilisation in light of its status as a breach of children's human rights [15]. The Australian Government's Fourth Report to the UN under the Convention on the Rights of the Child [16], submitted in 2009, suggests that the Government remains of the view that sterilisation is acceptable for children [girls] with disabilities:

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

Women with disabilities and their advocates have condemned the Australian Government for framing sterilisation as a medical and behavioural issue rather than a human rights issue, inferring that sterilisation is acceptable for children [girls] with disabilities, and for suggesting that prohibiting sterilisation of minors will somehow adversely impact on children [girls] with disabilities [17].

WWDA has strongly recommended to the Australian Government/s that the issue of sterilisation of intellectually disabled minors remain as a standing item on the SCAG agenda until such time that universal legislation has been developed which prohibits sterilisation of any child unless there is a serious threat to health or life. However, WWDA's recommendation has, to date, been rejected, and in August 2009 the Federal Attorney-General, Hon Robert McClelland dismissed the issue [18]:

While appreciating your organisation's long advocacy on this issue.....I do not propose at this time to develop Commonwealth legislation or to pursue the issue further through SCAG.

The Australian Government has ratified the Convention on the Rights of Persons with Disabilities (CRPD) which contains specific articles related to the rights of children and the right to family, and at Article 23 states that people with disabilities (including children) have a right to retain their fertility. These articles make it clear that the Australian Government is obligated to address the sterilisation of minors as a human rights abuse. A view that considers 'authorisation' of sterilisations of minors is not in keeping with these human rights commitments. WWDA is of the view that no tribunal, court, parent or guardian has the right to authorise sterilisation of minors in the absence of a serious threat to health or life.

There have been no instances in Australia where authorisations to sterilise have been sought for minors *without* disabilities in the absence of a threat to life or health. 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. Children with disabilities have the same right as children without disabilities not to be sterilised.

In its 2009 response to the United Nations Questionnaire on the Implementation of the Beijing Platform for Action (BPA), [19] the Australian Government conceded that “low numbers” of children with disabilities continued 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 appeared 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 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 also formally called on the Australian Government to act under its external affairs power to legislate to prohibit non-therapeutic sterilisation of minors unless there is a serious threat to health or life [20]. WWDA is yet to receive any of the information requested.

In July 2010, WWDA was represented on the Australian NGO delegation to the 46th session of the Committee on the Elimination of Discrimination against Women (CEDAW). For the first time, the CEDAW Committee accepted a separate Shadow Report from WWDA, focusing solely on the situation of women with disabilities in Australia, and including detailed information on the issue of forced sterilisation of women and girls with disabilities [21]. WWDA’s representative on the Australian NGO delegation had the opportunity to address the CEDAW Monitoring Committee, to discuss critical elements of WWDA’s Shadow Report, particularly the issues of forced sterilisation and violence.

On 30th July 2010, the CEDAW Monitoring Committee released its Concluding Observations on Australia’s performance regarding the implementation of CEDAW [22]. The Committee made very strong recommendations regarding the need for **urgent action** by Australian governments in relation to women with disabilities. In relation to the issue of sterilisation the Committee stated:

The Committee recommends that the State party 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.

As of November 2010, Australian legislation still fails to prohibit forced sterilisation.

Core International Human Rights Treaties:

Convention on the Rights of Persons with Disabilities (CRPD) *Articles: 5, 6, 7, 12, 15, 16, 17, 23, 25*

Convention on the Rights of the Child (CRC) *Articles: 2, 6, 12, 19, 23, 24, 37*

International Covenant on Civil and Political Rights (ICCPR) *Articles: 7, 23, 24, 26*

International Covenant on Economic, Social and Cultural Rights (ICESCR) *Articles: 10*

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) *Articles: 2, 3, 12, 16, General Recommendation 18*

- A number of treaties to which Australia is a party, include articles dealing with the right to marry and *found a family*, protection of the family, mother and children. Articles also address the rights of the child to life and *development*; the rights of the child to protection from *all forms* of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse. The Convention on the Rights of the Child (CRC) for example, explicitly recognises that children with disabilities should enjoy all the rights set forth in the CRC, on an equal basis with others. The Convention on the Rights of Persons with Disabilities CRPD, (which Australia ratified in 2008), contains a number of articles which make explicit the need for States Parties to take all necessary measures to ensure the full enjoyment by women and children with disabilities of all human rights and fundamental freedoms on an equal basis with others. It contains specific articles related to the rights of children and the right to family, and at Article 23 states that people with disabilities have a right to retain their fertility.
- In its 2006 General Comment No. 9 on the Rights of Children with Disabilities, the Committee on the Rights of the Child expressed its deep concern about *'the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities.'* The Committee emphasised that forced sterilisation *'seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects'* [23]. The Committee urged States parties to *'prohibit by law the sterilisation of children on grounds of disability.'* In considering Australia's report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: *'prohibit the sterilisation of children, with or without disabilities...'* [24].

- Australia is a party to the International Covenant on Economic, Social and Cultural Rights (ICESC). The Committee on Economic, Social and Cultural Rights in its 1994 General Comment No.5 on Persons with Disabilities referred to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly on 20 December 1993, stating that *'persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood'*. The Committee emphasised that *'both the sterilisation of, and the performance of an abortion on, a woman with disabilities without her prior consent are serious violations of article 10 (2) [of the International Covenant on Economic, Social and Cultural Rights]'* [25].

Australia ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1983. CEDAW is a comprehensive international agreement that promotes women's equal attainment of economic, social, cultural, civil and political rights. CEDAW General Recommendation 18 [Disabled Women] was adopted by the CEDAW Committee in 1991 to ensure that States Parties understand that CEDAW also covers the human rights of disabled women. In considering the combined sixth and seventh report of Australia (CEDAW/C/AUL/7) at its 46th session (July 2010) the CEDAW Committee noted with concern that *'non-therapeutic sterilisations of women and girls with disabilities continue to be practiced in some states in Australia and notes that the Commonwealth Government considers this to be a matter for state governments to regulate.'* The Committee recommended that *'the State party 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.'* [26]

References and Notes

- [1] '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.
- [2] 'Forced sterilisation' refers to the performance of a procedure which results in sterilisation in the absence of the 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. 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.
- [3] 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.

- [4] Dowse, L. & Frohmader, C. (2001), Op Cit.
- [5] 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/polpapist07.htm>
- [6] For an overview of WWDA's work on Sterilisation, see: Sterilisation of Women and Girls with Disabilities at www.wwda.org.au/sterilise.htm
- [7] The Standing Committee of Attorneys-General (SCAG) is the national ministerial council made up of the Australian Attorney-General and the State and Territory Attorneys-General. SCAG provides a forum for Attorneys-General to discuss and progress matters of mutual interest. It seeks to achieve uniform or harmonised action within the portfolio responsibilities of its members
- [8] Standing Committee of Attorneys-General (SCAG) Working Group (2004) *Non-Therapeutic Sterilisation of Minors with a Decision-Making Disability - Issues Paper*. Available at: www.wwda.org.au/scagpap1.htm
- [9] Standing Committee of Attorneys-General (SCAG) Working Group (2006) *Issues Paper on the Sterilisation of Intellectually Disabled Minors*. Available at: www.wwda.org.au/scagpap2.htm
- [10] 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
- [11] Women With Disabilities Australia (WWDA) (2007) *The Development of Legislation to Authorise Procedures for the Sterilisation of Children with Intellectual Disabilities: Policy and Position Paper*. WWDA, Hobart, Tasmania. Available at: www.wwda.org.au/polpapist07.htm
- [12] Balgi, T., Pettitt, A., Schokman, B., & Lynch, P. (2008) *'Freedom, Respect, Equality, Dignity: Action'*. NGO Submission to the UN Committee on Economic, Social and Cultural Rights: Australia. Prepared on behalf of the Kingsford Legal Centre; the National Association of Community Legal Centres, and the Human Rights Law Resource Centre. (See page 89).
- [13] Standing Committee of Attorneys-General (SCAG) *Communique* 28 March 2008.
- [14] See for example: Committee on the Rights of the Child, General Comment No 9 (2006): The Rights of Children with Disabilities, UN Doc CRC/C/GC/9 (2007); Committee on the Rights of the Child, Concluding Observations: Australia, UN Doc CRC/C/15/Add.268 (2005) [46(e)]; Committee on Economic, Social and Cultural Rights (1994) Persons with Disabilities: CESCR General Comment 5 (31). Eleventh session, 1994.
- [15] In considering Australia's report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: *'prohibit the sterilisation of children, with or without disabilities'*. United Nations 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).
- [16] Australian Government, 2008, Fourth Report under the Convention on the Rights of the Child: Australia, October 2008, 159, p31. Accessed online August 2009 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_ReportsundertheConventionontheRightsoftheChild
- [17] Women With Disabilities Australia (WWDA) (2008) Correspondence to Attorney-General's Department regarding the Australian Government's Draft Fourth Report under the Convention on the Rights of the Child. July 14, 2008.
- [18] Hon Robert McClelland (Attorney-General) Correspondence to Women With Disabilities Australia (WWDA), 27 August, 2009.
- [19] 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

- [20] 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>
- [21] In 2009, Women With Disabilities Australia (WWDA) developed a detailed Submission to the *National Human Rights Consultation* (Australia). This Submission was accepted by the Committee on the Elimination of Discrimination against Women as a stand alone Shadow Report for the 46th session of CEDAW, 12 – 30 July 2010. A copy of WWDA’s Submission is available at:
http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WomenwithDisabilities_Australia46.pdf and/or
<http://wwda.org.au/citizen2006.htm>
- [22] 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. See: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>
- [23] Committee on the Rights of the Child, *General Comment No 9 (2006): The Rights of Children with Disabilities*, UN Doc CRC/C/GC/9 (2007). See: <http://www.ohchr.org/english/bodies/crc/comments.htm>
- [24] See above at [15].
- [25] Committee on Economic, Social and Cultural Rights (1994) *Persons with Disabilities: CESCR General Comment 5 (31)*. Eleventh session, 1994. See:
<http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d>
- [26] See above at [22].