

Opening statement to Senate Community Affairs References Committee inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia

Graeme Innes AM, Disability Discrimination Commissioner, Australian Human Rights Commission

Thank you Madame Chair for the opportunity to appear before the Committee as representatives of the Australian Human Rights Commission.

The Commission has long had concerns about the involuntary and coerced sterilisation of children, with or without disability, and the sterilisation of adults with disability in the absence of their fully informed and free consent. As discussed in the Commission's submission, the Commission has also been concerned for some time that the legal and regulatory frameworks and guidelines built around the concept of court (or tribunal) authorisation for sterilisations have failed to protect women and girls with disability from involuntary or coerced sterilisation. The system of court or tribunal authorisation has not prevented women and girls with disability from being involuntarily or coercively sterilised, either with or without such authorisation.

Involuntary and coerced sterilisation of people with disability are forms of violence and violate multiple human rights of people with disability, including the rights to be free from torture and violence, to enjoy health (including sexual and reproductive health), and to retain their fertility, found a family and make their own decisions about reproduction. More recently there has been wider recognition that forced sterilisation constitutes torture. For example, just this year, and this is cited in Women With Disabilities Australia's submission to this Inquiry, the UN Special Rapporteur on Torture stated:

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.¹

Also this month, at the 57th session of the Commission on the Status of Women, the agreed conclusions also included reference to forced sterilisation of women and girls with disabilities as a form of violence. The Commission on the Status of Women urged all governments to condemn and take action to prevent violence against women and girls in health care settings, including forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as forced hysterectomy, forced caesarean section, forced sterilisation, forced abortion, and forced use of contraceptives, especially for particularly vulnerable and disadvantaged women and girls, including women and girls with disabilities.

It is the human rights perspective that the Commission brings to the issue. The Commission acknowledges the broader work of other organisations on this issue, and in particular the work of Women With Disabilities Australia and People with Disability Australia.

The Commission's submission principally focuses on the human rights issues related to involuntary and coerced sterilisation of people with disability. The Commission notes that in Australia the practices of involuntary and coerced sterilisation are predominantly directed against women and girls with disability. While the Commission's submission focuses on women and girls with disability, as they experience significantly higher rates

of involuntary and coerced sterilisation, the submission recognises that boys and men with disability who are subject to involuntary and coerced sterilisation are entitled to the same human rights protection against violations of their rights as women and girls with disability. Accordingly, the recommendations made in the Commission's submission are structured so as to ensure that the human rights of boys and men with disability are also addressed.

People with disability are entitled to enjoy all their human rights, including sexual and reproductive rights, on an equal basis with the rest of the Australian population.

In the Commissions view national legislation should be enacted to criminalise, except where there is a serious threat to life or health, (i) the sterilisation of children (regardless of whether they have a disability), and (ii) the sterilisation of adults with disability in the absence of their fully informed and free consent. The removal of a child or adult with disability from Australia with the intention of having a prohibited sterilisation performed should also be criminalised.

In addition to these legislative measures, policy and educative measures need to be developed and implemented. These measures should include a national monitoring system of the number of applications for and number of orders made to sterilise people with disability. We note that although the health system collects clear health data on sterilisation procedures conducted in hospitals, this data may not reference whether the person in question has a disability or may not include all people with disability. This may mask the reality of what is occurring to women and girls with disability.

A broad education and support framework regarding the sexual and reproductive rights of people with disability also needs to be developed and implemented. This education framework should include training on the human rights recognised in the *Convention on the Rights of Persons with Disabilities* and the *Convention on the Elimination of All Forms of Discrimination against Women* for all health service providers, professionals and staff working with people with disability.

The Commission does not wish to diminish the distress that many parents and carers experience as a result of the lack of adequate supports and services for their sons and daughters with disability to live a life with dignity and free from violence. I know many submissions to this Inquiry discuss this. It is for this reason that the Commission recommended that a broad range of supports and services be provided. I also wish to acknowledge that many parents and carers have spoken very loudly about the rights of their sons and daughters with disability to live a life with dignity and have equal rights like their other children and people in society. One example is the submission by Ms Katherine Knight who will be appearing before the Committee this afternoon.

The Commission welcomes this inquiry and the breadth of issues and perspectives included in the terms of reference.

We would be happy to answer the Committee's questions on either the areas addressed in our submission, or on other areas you consider relevant.

Thank you Madame Chair.

¹ 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