

Submission to Australian Law Reform Commission Inquiry Discussion Paper, Review of the Family Law System (2018)

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1. Thank you for the opportunity to make a submission to the ALRC's review of the family law system. This submission is focused on sterilisation of girls with disability in the context of ALRC Discussion Paper Questions 9-1. However, the submissions are also relevant to the ALRC's consideration of irreversible deferrable medical interventions to modify the sex characteristics of children born with variations of sex characteristics ('intersex children').

Summary:

2. Disabled people, their representative organisations and ally scholars have long argued that sterilisation should be prohibited.¹ Disabled people, their representative organisations and ally scholars have argued that sterilisation is an injustice, a human rights abuse and completely contrary to the welfare, wellbeing and equality of girls with disabilities. This is particularly because sterilisation is carried out without

¹ See, eg, Leanne Dowse, Karen Soldatic, Aminath Didi, Carolyn Frohmader, and Georgia van Toorn, *Stop the Violence: Addressing Violence Against Women and Girls With Disabilities in Australia: Background paper* (Women with Disabilities Australia, 2013) <http://www.stvp.org.au/National-Symposium.htm>; Carolyn Frohmader, Women with Disabilities Australia, Submission No 49 to Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Carolyn Frohmader, 'Submission to the United Nations Committee Against Torture' (Submission, Women with Disability Australia, 24 September 2014); Carolyn Frohmader, Leanne Dowse and Aminath Didi, 'Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective' (Think Piece, January 2015, Women with Disability Australia); Carolyn Frohmader and Stephanie Ortoleva, 'The Sexual and Reproductive Rights of Women and Girls with Disabilities' (Issues Paper presented at ICPD Beyond 2014 International Conference on Human Rights, The Hague, Netherlands, 7–10 July 2013); Carolyn Frohmader and Therese Sands, Australian Cross Disability Alliance (ACDA) Submission No 147 to the Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability* (August 2015); Women With Disabilities Australia (WWDA), *Position Statement 4: Sexual and Reproductive Rights*, (September 2016, WWDA).

consent, is harmful and has lifelong physical, social and psychological impacts. The profound and ongoing impacts of sterilisation were illustrated in a recent ABC News story on Chanelle McKenna who was sterilised at age 11 without her knowledge or consent.²

3. The position on sterilisation held by various United Nations Human Rights bodies resonates with the calls for prohibition that have been made by disabled people, their representative organisations and ally scholars. Various United Nations Human Rights bodies have expressed the view that sterilisation is a breach of human rights.³ For example, the UN Special Rapporteur on the rights of persons with disabilities stated that:

States must immediately repeal all legislation and regulatory provisions that allow the administration of contraceptives to and the performance of abortion, sterilization or other surgical procedures on girls and young women with disabilities without their free and informed consent, and/or when decided by a third party. Furthermore, States should consider adopting protocols to regulate and request the free and informed consent of girls and young women with disabilities with regard to all medical procedures.

² Eliza Hull, 'When a Mother Steals Her Daughter's Right to Parent with a Forced Hysterectomy', *ABC Life*, 27 November 2018, <https://www.abc.net.au/life/forced-sterilisation-when-the-right-to-parent-is-removed/10548398>.

³ See, e.g., See generally Catalina Devandas Aguilar, Report of the Special Rapporteur on the rights of persons with disabilities: Sexual and reproductive health and rights of girls and young women with disabilities, 14 July 2017, A/72/133; Juan E Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN GAOR, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) [48]; Committee on the Rights of the Child, *General Comment No 13: The Right of the Child to Freedom from All Forms of Violence*, UN Doc CRC/C/GC/13 (18 April 2011) [16], [21]; Committee on the Rights of Persons with Disabilities, *General comment No. 3 - Article 6: Women and Girls with Disabilities*, 2 September 2016. In relation to Australia, see, eg, Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia, Adopted by the Committee at Its Tenth Session (2–13 September 2013)*, UN Doc CRPD/C/AUS/CO/1 (21 October 2013) 5–6 [39]–[40] ('*Concluding Observations*'); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN GAOR, 17th sess, Agenda Item 6, UN Doc A/HRC/17/10 (24 March 2011) 15 [86.39]. See discussion in Linda Steele and Beth Goldblatt, 'The human rights of women and girls with disabilities: Sterilisation and other coercive responses to menstruation' in Chris Bobel, Breanne Fahs, Katie Ann Hasson, Elizabeth Kissling, Tomi-Ann Roberts and Inga Winkler (eds), *The Palgrave Handbook of Critical Menstrual Studies* (forthcoming, on file with author).

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States should consider reparations and redress mechanisms for girls and young women with disabilities who have been subjected to harmful practices, such as forced sterilization and forced abortion, particularly within institutions.⁴

4. In general, legal regulation of sterilisation and the associated failure to prohibit sterilisation violates multiple human rights, including the following rights contained in the UN Convention on the Rights of Persons with Disabilities: right to non-discrimination (Art 5 and Art 6 CRPD), right to equality before the law (Art 12 CRPD), right to personal integrity (Art 17 CRPD), right to freedom from torture (Art 15 CRPD), right to freedom from violence (Art 16 CRPD), right to family (Art 23 CRPD), and right to health (Art 25 CRPD).
5. Various United Nations Human Rights bodies have specifically stated that the Australian government is breaching its obligations to protect the human rights of girls with disabilities in failing to prohibit sterilisation. Such statements have even been made following the recommendations made in the 2013 Senate Committee report on sterilisation which were purportedly framed in terms of human rights.⁵ In direct response to the 2013 Senate Committee report, the United Nations Committee on the Rights of Persons with Disabilities ('the Committee') stated in 2013 that it was 'deeply concerned that the Senate inquiry report ... puts forward recommendations that would allow this practice to continue'.⁶ The Committee urged Australia to adopt laws prohibiting sterilisation 'in the absence of their prior, fully informed and free

⁴ Catalina Devandas Aguilar, Report of the Special Rapporteur on the rights of persons with disabilities: Sexual and reproductive health and rights of girls and young women with disabilities, 14 July 2017, A/72/133, [29]-[30]; [40]; [49].

⁵ For a detailed human rights critique of the 2013 Senate Committee recommendations, see Linda Steele, 'Court-Authorised Sterilisation and Human Rights: Inequality, Discrimination and Violence Against Women and Girls with Disability?' (2016) 39(3) *UNSW Law Journal* 1002.

⁶ Committee on the Rights of Persons with Disabilities (CRPD), *Concluding Observations on the Initial Report of Australia, Adopted by the Committee at Its Tenth Session (2–13 September 2013)*, 21 October 2013, UN Doc CRPD/C/AUS/CO/1, [39].

consent'.⁷ More recently, the Committee in its List of Issues for Australia's second and third periodic report has requested the Australian Government:

Please provide information on the measures taken to harmonize the legal frameworks at the national, state and territory levels that, in the absence of the free, prior and informed consent of the person concerned, prohibit the following:

- (a) Sterilization of children and adults with disabilities;
- (b) Administration of unnecessary medical interventions, with particular attention to an individual's sexual and reproductive health and to people born with variations of sex characteristics.⁸

6. In response, the Australian Government in its September 2018 second and third periodic report under the CRPD stated: 'Part of the ALRC review of the family law system (discussed under Issue 7) is considering whether changes should be made to the Family Court's welfare jurisdiction to support best outcomes for children'.⁹ It is submitted that in order to adequately respond to the Committee's request to the Australian Government and to genuinely bringing Australia's law into line with international human rights, it is imperative that the ALRC consider recommending prohibition of sterilisation and irreversible deferrable medical interventions to modify the sex characteristics of children born with variations of sex characteristics.
7. I submit that it is important for the ALRC to consider why the Australian political and legal systems are so invested in the continuation of sterilisation even in the face of

⁷ Committee on the Rights of Persons with Disabilities (CRPD), *Concluding Observations on the Initial Report of Australia, Adopted by the Committee at Its Tenth Session (2–13 September 2013)*, 21 October 2013, UN Doc CRPD/C/AUS/CO/1, [40].

⁸ Committee on the Rights of Persons with Disabilities (CRPD), *List of issues prior to the submission of the combined second and third periodic reports of Australia*, 21 September 2017, UN Doc CRPD/C/AUS/QPR/2-3, [20] (emphasis added).

⁹ Commonwealth of Australia, *Australia's Combined Second and Third Periodic Report under the Convention on the Rights of Persons with Disabilities*, 1 September 2018, [232].

such long term activism by women with disabilities and representative organisations and the unequivocal human rights case against sterilisation. It is also important for the ALRC to consider why there is so much resistance to respecting the views and wishes of women with disabilities and their representative organisations. These questions cut to the very core of Australia's obligations under the CRPD. The CRPD is driven by the ethics of 'nothing about us, without us' and people with disabilities having autonomy and self-determination over their bodies and lives. Indeed, this is also reflected at a domestic level through the NDIS narrative of 'choice and control', the move across the disability sector to phasing out with a view to eliminating restrictive practices, and also in the ongoing focus across a number of jurisdictions in addressing violence against women with disabilities. In light of these international and domestic social and political shifts it is unclear why the Australian political and legal system remains steadfast in its specific support for permitting sterilisation of children with disabilities.

8. Sterilisation is fundamentally an issue of human rights with drastic lifelong impacts that continue into adulthood. Sterilisation should not be trivially reduced to being a mere issue of parental care of a child, how parents can best meet a child's purported immediate 'welfare' or 'medical' needs, and how parents can most efficiently acquit their care responsibilities. This is strikingly demonstrated by the recent ABC News story about Chanelle McKenna.¹⁰
9. It is completely inappropriate for sterilisation to be within the jurisdictions of the Family Court and guardianship tribunals. If sterilisation is understood as being about human rights and not mere parental or guardian care, then it arguably does not fall within the subject matter jurisdiction of these decision-making bodies. These bodies are not driven by human rights considerations and thus they should not be involved in decisions about sterilisation because this undermines sterilisation as a human rights issue. Moreover, the current use of the Family Court's welfare jurisdiction to authorise

¹⁰ Eliza Hull, 'When a Mother Steals Her Daughter's Right to Parent with a Forced Hysterectomy', *ABC Life*, 27 November 2018, <https://www.abc.net.au/life/forced-sterilisation-when-the-right-to-parent-is-removed/10548398>.

sterilisation of girls with disabilities is inconsistent with the role of the family law system in protecting girls from family violence.¹¹

10. Similar issues to those raised above arise in relation to intersex children. Intersex people and their representative organisations and allies have argued for the prohibition of irreversible deferrable medical interventions to modify the sex characteristics of children born with variations of sex characteristics ('intersex children').¹² Furthermore, various United Nations Human Rights bodies have expressed the view that such interventions breach human rights.¹³ Earlier this year in its Concluding Observations on the eighth periodic report of Australia, the UN Committee on the Elimination of Discrimination Against Women recommended that the Australian government:

Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent, implement the recommendations made by the Senate in 2013 on the basis of its inquiry into the involuntary or coerced sterilization of intersex persons, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures;¹⁴

11. As argued by Intersex Human Rights Australia, the Family Court should not have the power to authorise sterilisation, or other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics.

¹¹ Linda Steele, 'Disability, Abnormality and Criminal Law: Sterilisation as Lawful and Good Violence' (2014) 23(3) *Griffith Law Review* 467.

¹² See, eg, Intersex Human Rights Australia, 'Submission to the Australian Human Rights Commission on protecting the rights of people born with variations in sex characteristics in the context of medical interventions', 30 September 2018, <https://ihra.org.au/wp-content/uploads/2018/09/IHRA-submission-AHRC.pdf>; Intersex Human Rights Australia, 'Submission to the Australian Law Reform Commission on the Review of the Family Law System – Issues Paper', 7 May 2018, <https://ihra.org.au/wp-content/uploads/2018/05/IHRA-20180507-ALRC.pdf>.

¹³ See, eg, Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Eighth Periodic Report of Australia', CEDAW/C/AUS/CO/8, 25 July 2018, para 25(c).

¹⁴ See, eg, Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Eighth Periodic Report of Australia', CEDAW/C/AUS/CO/8, 25 July 2018, para 26(c).

Independent oversight does not currently occur for all such interventions. As such, a genuine prohibition is needed for the same reason that a prohibition on the sterilisation of girls with disabilities is needed. Some cosmetic and ‘enhancement’ surgeries on intersex kids do not even need Court approval as ‘special medical procedures’ at present.¹⁵

12. Therefore, I support the position of People with Disability Australia and Intersex Human Rights Australia that the ALRC should not merely tinker at the edges of laws pertaining to sterilisation, or other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics (eg changing the test of authorisation, changing the decision making forum for authorisation). I submit that the ALRC should take the opportunity presented by this review to make recommendations to radically (and justly) reform laws so that sterilisation is prohibited and the human rights of women and girls with disabilities are genuinely protected. Specifically:

- a. The ALRC should recommend the prohibition of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics, and that the Family Court should not have jurisdiction to authorise such procedures.
- b. The ALRC should recommend the introduction of a human rights body to have oversight of prohibition of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics. This human rights oversight body should include members who are people with lived experience, human rights experts, and representative organisations. This is on the basis that any oversight of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex

¹⁵ See, eg, Intersex Human Rights Australia, ‘Submission to the Australian Human Rights Commission on protecting the rights of people born with variations in sex characteristics in the context of medical interventions’, 30 September 2018, <https://ihra.org.au/wp-content/uploads/2018/09/IHRA-submission-AHRC.pdf>; Intersex Human Rights Australia, ‘Submission to the Australian Law Reform Commission on the Review of the Family Law System – Issues Paper’, 7 May 2018, <https://ihra.org.au/wp-content/uploads/2018/05/IHRA-20180507-ALRC.pdf>.

characteristics should not be done through a jurisdiction directed towards authorising interventions (eg welfare jurisdiction or even guardianship tribunals). Instead, oversight should be flipped from overseeing regulation and the violation of human rights, to overseeing prohibition and the protection of human rights.

13. I also suggest that:

- a. The ALRC recommend that the Federal Government introduce reparations and redress mechanisms for people who have been sterilised or subjected to other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics, irrespective of whether these were 'legal' at the time the procedures occurred.
- b. The ALRC support the call for a Royal Commission into disability violence so issues of sterilisation can be more transparently considered.

14. It is promising to see that the ALRC through Questions 9-1 is considering the possibility of removing from the welfare jurisdiction sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics. Yet, it is concerning that the ALRC is not explicitly considering recommending prohibition of sterilisation. Questions 9-1 and accompanying commentary are fraught with some problematic assumptions that run counter to the recognition of human rights of girls with disabilities and intersex children. These assumptions effectively encourage respondents to narrow the scope both of their discussion and the possible solutions they identify to what will maintain the current status quo of legal regulation of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics and to continuing human rights violations:

- a. One implicit assumption is that sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics *should* be permitted because the ALRC asks whether sterilisation should be subject to legal authorisation or whether these

should take place without authorisation. The ALRC has not opened to discussion the possibility of prohibition of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics. For example, it states: 'there is scope for improvement in the current approach to *regulation* of these procedures'.¹⁶

- b. A related implicit assumption is that sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics are only ever anticipated in relation to children with disabilities and intersex children and would never even be comprehended as an option for other children. This is evident in the ALRC asking about authorisation of sterilisation specifically in relation to 'children with disability'. It is implicit within the narrow focus of this question that authorising is not even on the cards for children without disability, that it is beyond the threshold of what would be considered legally and ethically possible for these other children. If this were not so, the ALRC might have opened up the question of when children without disability could be sterilised (eg how to regulate sterilisation of non-disabled girl who are experiencing extreme period pain, noting that menstruation issues are not limited to girls with disabilities). In support of this observation of the very foundational inequality in who is even comprehended as the legal subjects of the Family Court's authorisation of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics, it is noted that there are no published welfare jurisdiction judicial decisions on these procedures on children without disabilities or who are not intersex children.
- c. Another implicit assumption is that regulation of sterilisation per se is compatible with the human rights of girls with disabilities. This is because

¹⁶ ALRC Discussion Paper, p 234 [9.108].

the ALRC asks what additional safeguards should be put in place to protect human rights in sterilisation decisionmaking.

It is deeply concerning that the ALRC's questions are implicitly premised on these assumptions.

15. The political status of people with disabilities has radically transformed since the eugenics era at the turn of the twentieth century and, indeed, even since *Marion's Case* and a string of disturbing Family Court decisions on sterilisation in the 1980s and 90s. Yet, the lawfulness of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics has remained constant across these shifts. It is still so that law privileges and authorises medical knowledge and views about children with disabilities and intersex children over the knowledge, views and lived experience of these people themselves. It is timely and urgent to ask why sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics are still lawful and socially acceptable.
16. Ultimately, it is hoped that this review does not simply follow 'business as usual' with yet another review that rubber stamps medical authority and enables the continuation of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics. This concern goes to the very heart of the ALRC's legislated functions, notably:

to review Commonwealth laws relevant to those matters for the purposes of *systematically developing and reforming the law*, particularly by:

(i) bringing the law into line with *current conditions* and ensuring that it *meets current needs*; and

(iv) *adopting new or more effective methods* for administering the law and dispensing justice;

(v) providing *improved access* to justice;¹⁷

If the ALRC does make the unfortunate recommendations to continue the regulation of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics, it is respectfully requested that the ALRC in its final report explicitly state *why* it is still just for children with disabilities and intersex children to be subjected to these procedures (rather than taking this for granted), why these kinds of procedures are not even comprehended in relation to other children, and in turn explain the particular approach to disability, intersex, equality and human rights on which the ALRC's conclusions are premised.

Response to Questions 9-1

Should authorisation by a court, tribunal, or other regulatory body be required for procedures such as sterilisation of children with disability or intersex medical procedures?

17. Sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics should not be permissible. Sterilisation should be prohibited. Beginning from a starting point of prohibition, the role of a decision-making body should be to oversee prohibition rather than to oversee authorisation.

What body would be most appropriate to undertake this function?

18. As stated above, if we begin from a starting point of prohibition of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics, it is unnecessary to have a decisionmaking body to oversee authorisation. Rather, what is required is a body which will oversee prohibition of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex

¹⁷ *Australian Law Reform Commission Act 1996* (Cth), s 21(1) (emphasis added).

characteristics in a framework of protecting children’s human rights, preventing human rights violations and providing appropriate remedies where such interventions occur contrary to prohibition. The Family Court and state guardianship tribunals are completely inappropriate to be this prohibition-focussed decisionmaking body.

In what circumstances should it be possible for this body to authorise sterilisation procedures or intersex medical procedures before a child is legally able to personally make these decisions?

19. In beginning from a foundation of prohibition of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics it is clear that it should never be possible for the Family Court, a state guardianship tribunal or the proposed human rights body to authorise such procedures without an individual’s consent.
20. The very framing of this question is problematic – it is phrased in a way that suggests that sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics would only be considered in relation to children with disabilities and intersex children and also in a way that suggests that the developing capacity of children with disabilities is somehow different to the developing capacity of other children. Such an approach is contrary to the right to equal legal capacity regardless of disability which emphasises providing supports to ensure equality in the exercise of legal capacity.¹⁸ It is submitted that instead of a deficit approach that uses legal capacity as a basis on which to justify sterilisation and irreversible deferrable medical interventions to modify the sex characteristics of children born with variations of sex characteristics without individuals’ consent, legal capacity should be a reference point for determining what support are needed to enable children to give their consent in a legal framework where procedures should not be permitted without their consent.

¹⁸ Article 12.

21. As an aside the ‘disability’ vs ‘capacity’ approach to regulation of sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics (which is exemplified by the Royal Australian and New Zealand College of Psychiatrists quoted at [9.92] of ALRC Discussion Paper) is problematic. It is problematic because in reality disability and incapacity are one and the same thing because it is only the incapacity of a child with disability or intersex child that in practice enlivens these procedures (there are no known cases of such procedures on children who are not intersex or who are not disabled). Using ‘capacity’ instead of ‘disability’ in the context of a legal framework of regulation of sterilisation and irreversible deferrable medical interventions to modify the sex characteristics of children born with variations of sex characteristics (which is only used in relation to children with disabilities and intersex children) is simply legitimating these procedures by cloaking the inherently discriminatory and violent effects of this regulatory legal framework in the purportedly value neutral and disability neutral paradigm of individual, psychological ‘capacity’.

What additional legislative, procedural or other safeguards, if any, should be put in place to ensure that the human rights of children are protected in these cases?

22. Beginning from a starting point of prohibition, sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics per se constitute a violation of human rights. Therefore, no legislative, procedural or other safeguards can protect children’s human rights if sterilisation and other deferrable surgeries to modify the sex characteristics of children with disabilities or variations of sex characteristics are permissible.
23. The ALRC is urged not to follow the recommendations made by the 2013 Senate Community Affairs References Committee in its inquiry into sterilisation,¹⁹ including those regarding the ‘development of uniform model legislation to regulate the sterilisation of people with disability’.²⁰ Finetuning legal tests, procedural safeguards

¹⁹ Senate Community Affairs References Committee, Parliament of Australia, *Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (2013).

²⁰ Australian Law Reform Commission, *Review of the Family Law System: Issues Paper*, IP 48 (Australian Law Reform Commission, March 2018) [135].

and the role of the judiciary simply further entrenches the court and judiciary's complicity in sterilisation, rather than negating its violence and injustice. This much is clear from the unequivocal statements by international human rights bodies discussed above. Similarly, the ALRC should not follow the Senate Committee's recommendations related to the regulation of sterilisation pursuant to a test of 'best protection of rights'. This is because these recommendations were premised on a foundational position of the fundamental inequality of girls with and without disabilities which completely negates the rights of girls with disabilities to non-discrimination and equality.²¹ This inequality was naturalised in the inquiry by reason of medicalised assumptions about the mental incapacity of girls with disabilities which renders them absolutely different to girls without disability. The recommendations of this inquiry cannot be sustained in light of the compelling arguments and evidence provided by disability rights and international human rights organisations concerning the status of sterilisation as a grave human rights violation.

²¹ Linda Steele, 'Court-Authorised Sterilisation and Human Rights: Inequality, Discrimination and Violence Against Women and Girls with Disability?' (2016) 39(3) *UNSW Law Journal* 1002.

Further documents

Please refer to the following publications where the above points have been explored:

- Linda Steele, 'Making Sense of the Family Court's Decisions on the Non-Therapeutic Sterilisation of Girls with Intellectual Disability' (2008) 22(1) *Australian Journal of Family Law* pp 1-23
- Linda Steele, 'Sterilisation, Disability and Wellbeing: The Curative Imaginary of the "Welfare Jurisdiction"' in Claire Spivakovsky, Kate Seear and Adrian Carter (eds), *Critical Perspectives on Coercive Interventions: Law, Medicine and Society* (Routledge, 2018)
- Linda Steele, 'Court-Authorised Sterilisation and Human Rights: Inequality, Discrimination and Violence Against Women and Girls with Disability?' (2016) 39(3) *UNSW Law Journal* pp 1002-1037
- Linda Steele, 'Disability, Abnormality and Criminal Law: Sterilisation as Lawful and Good Violence' (2014) 23(3) *Griffith Law Review* pp 467-497
- Linda Steele, 'Lawful Institutional Violence Against Disabled People' (2017) 143 (November/December) *Precedent* pp 4-8
- Linda Steele, 'Temporality, Disability and Institutional Violence: Revisiting *In Re F*' (2017) 26(3) *Griffith Law Review* pp 378-400, DOI: 10.1080/10383441.2017.1436368
- Linda Steele and Leanne Dowse, 'Gender, Disability Rights and Violence Against Medical Bodies' (2016) 31(88) *Australian Feminist Studies* pp 117-124, DOI: 10.1080/08164649.2016.1224081
- Linda Steele and Beth Goldblatt, 'The human rights of women and girls with disabilities: Sterilisation and other coercive responses to menstruation' in Chris Bobel, Breanne Fahs, Katie Ann Hasson, Elizabeth Kissling, Tomi-Ann Roberts and Inga Winkler (eds), *The Palgrave Handbook of Critical Menstrual Studies* (forthcoming, on file with author)