

# Submission to the Family Law Council

## Children with Disability Australia (CDA)

Children with Disability Australia (CDA) welcomes the opportunity to contribute to the Family Law Council's reference on *Families with complex needs and the intersection of the family law and child protection systems*. CDA will briefly highlight key considerations of relevance to children and young people with disability.

CDA is the national representative organisation for children and young people with disability aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services (DSS) and is a not for profit organisation. CDA has 5200 members nationally with the majority being families. CDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

There is a great paucity in local data as to the prevalence and impact of family violence and abuse upon children with disability in Australia and experiences of this cohort in the child protection and family law systems. International research indicates that children with disability are 3.4 times more likely to experience maltreatment than children without disability.<sup>1</sup> Existing research generally does not disaggregate the location of abuse (i.e. whether it occurred in the family home or an institutional setting). The limited small scale research that does exist has typically found an increased prevalence of domestic abuse among children with disability<sup>2</sup> and disability is often considered to be a 'risk factor' for familial abuse in child protection literature.<sup>3</sup> Further, children with disability face barriers in accessing child protection services, including support regarding domestic violence.<sup>4</sup> In cases where support services are accessed, staff may have limited experience and expertise in identifying and providing support to children with disability.<sup>5</sup>

Despite limited local research, children with disability are also known to be overrepresented in the out of home care system. For example, the Victorian Equal Opportunity and Human Rights Commission found that in June 2011, of 4,064 children in out of home care in Victoria, 579 or 14% had a disability.<sup>6</sup> This is almost double the prevalence rate of children with disability in the

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<sup>1</sup> J Knutson et al. 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child Abuse and Neglect*, Vol. 24, No. 10, p. 1257.

<sup>2</sup> I Brown et al. 2014, 'Quality of life, children with intellectual and developmental disabilities and maltreatment,' *International public health*, Vol. 6, No. 2, F Briggs 2005, 'Personal safety issues in the lives of children with learning disabilities,' *Children Australia*, Vol. 30, No. 2, p. 21.

<sup>3</sup> Australian Institute of Family Studies 2013, *Risk and protective factors for child abuse and neglect*, Commonwealth of Australia, Canberra, viewed 22 July 2015, <https://aifs.gov.au/cfca/publications/risk-and-protective-factors-child-abuse-and-neglect>.

<sup>4</sup> E Baldry et al. 2006, 'Domestic violence and children with disabilities: Working towards enhancing social work practice,' *Australian social work*, Vol. 59, No. 2, p. 189, 193.

<sup>5</sup> Ibid, p. 189.

<sup>6</sup> Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria*, Carlton, p. 7.

total Australian population (7.3%).<sup>7</sup> The same research suggests that children with disability are more likely to be in residential care than children without disability in the out of home care system.<sup>8</sup>

CDA's issues paper *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability* draws from recent research and from national approaches in child protection and disability to better understand the causes, experience and responses to abuse and neglect of children and young people with disability. This paper provides further discussion of issues relevant to the Council's inquiry and is provided for consideration.

A further issue of concern relates to the forced sterilisation of children and young people with disability. Forced or coerced sterilisation occurs when children, young people and their guardians and families cannot exercise free and informed choice in relation to the procedure. There are numerous reasons cited for the sterilisation of children and young people with disability, including to prevent wanted or unwanted pregnancies, eugenic motivations of preventing the procreation of people with disability or to 'manage' menstruation.<sup>9</sup> There is limited information available about the prevalence of experiences of coerced sterilisation among children and young people with disability. Often, experiences of sterilisation are not disclosed until children have reached adulthood.

Since the High Court's ruling in 1992 in *Marion's Case* it has been required that court authorisation is required before any child can be sterilised. Currently, in all Australian states and territories, the authorisation of either the Family Court of Australia or a state or territory guardianship tribunal is required before a child or adult with disability can be involuntarily sterilised (except in emergency situations in which there is a serious threat to life or health). Despite this legal framework being in place it is the view of many disability organisations and the Australian Human Rights Commission that it has failed to protect people with disability.<sup>10</sup> Further, the concluding observations of the United Nations regarding Australia's meeting of its obligations under the *Convention on the Rights of Persons with Disabilities* stated it is "deeply concerned" by Australia's record on the practice and urges the adoption of "national uniform legislation prohibiting the use of sterilisation of boys and girls with disabilities."<sup>11</sup>

CDA strongly believes that forced sterilisation needs to be recognised as a form of abuse. CDA has recommended to relevant inquiries that national legislation be passed that criminalises, except where there is a serious threat to life, the sterilisation of children (regardless of disability). Given the power of the Family Court of Australia to authorise the procedure, CDA would like to highlight this important consideration and emphasise the need for safeguards to ensure that the right of children and young people to make decisions about their own bodies and reproductive rights are respected.

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<sup>7</sup> Australian Bureau of Statistics 2012, 'Disability, Ageing and Carers, Australia: Summary of Findings, 2012,' Commonwealth of Australia, Canberra.

<sup>8</sup> Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria*, p. 7.

<sup>9</sup> Women with Disabilities Australia 2013, *Dehumanised: The forced sterilisation of women and girls with disabilities in Australia*, Rosny Park, pp. 36-57.

<sup>10</sup> Senate Community Affairs Reference Committee 2013, *Report into the involuntary or coerced sterilisation of people with disabilities in Australia*, Commonwealth of Australia, Canberra, viewed 5 August 2014, <http://goo.gl/Hmy4rS>.

<sup>11</sup> United Nations Committee on the Rights of Persons with Disabilities 2013, *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013)*, p. 6.

The specialist needs of children with disability in cases where the family law and child protection system intersect is therefore an essential area for further research and consideration. Thank you for the opportunity to contribute to this Inquiry and please do not hesitate to contact CDA if there are any questions regarding issues raised in this submission.