Summary of the Position of the Voluntary Sterilisation Bill in relation to the UN Convention of the Rights of the Child

1. The Voluntary Sterilisation Act (the “Principal Act”) was enacted during the time when the government was trying to promote family planning.

2. Sterilisation is a major procedure that involves a violation of a person’s physical integrity and the irreversible termination of a person’s reproductive function. It often has profound physical and psychological effects on a person. The Act deals with permanent sterilisation such as tubal ligations and vasectomies. Although the medical procedures are simple and low risk, they have extremely serious implications for individuals as they permanently disable a person’s reproductive function.

3. Female sterilisation is much more common than male sterilisation in Singapore.

4. The right of a person to control his or her own body, particularly with regard to sexual and reproductive decisions, must be protected. These rights should apply regardless of one’s age, disability or health status.

5. The Principal Act was extremely problematic in relation to persons with mental illnesses and “mental deficiencies” and the main purpose of the Bill is to update the Principal Act to align it with the Mental Capacity Act 2008 (MCA) and the UN Convention on the Rights of Persons with Disabilities (CRPD), which Singapore will be signing at the end of this year.

6. The amendments in the Bill relating to persons lacking in mental capacity are satisfactory. MOH incorporated AWARE’s recommendations for the requirement of a court order to authorise the sterilisation of persons lacking in mental capacity.

7. However, the provisions relating to the sterilisation of minors (persons below 21) are still problematic. The Bill provides that the a Minor can be sterilised if:

a) where she is married, she gives consent

b) where she is not married, she and one parent or guardian gives consent.

8. The Bill provides for the doctor to explain to both the meaning and consequences of the procedure and to certify that the child and the parent / guardian both understand it. There is no requirement for the doctor to be an independent third party.

9. We are of the view the Bill in its present form contravenes the State’s obligations under the United Nations Convention of the Rights of the Child (UNCRC) as it does not provide for any requirement or mechanism to ensure that the decision is made in the best interest of the child. This is especially necessary where the child is very young.

Article 3 of the UNCRC provides that:

> "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
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> 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

10. To comply with the UNCRC, the Bill should provide:

a) that the decision for the sterilisation of the child should be one that is in the best interest of the child; and

b) that there should be an independent party who assesses this. This party should ideally be the Court to be consistent with the current provisions on the sterilisation of persons lacking mental capacity.

11. The State may argue that there is sufficient protection given that the doctor has to certify that the child understands the nature and consequences of the procedure.

However, a child who understands the nature and consequences of the procedure may be too young to decide whether this is in her best interest. A doctor, who is trained to carry out medical procedures, may not be in a position to assess whether a child truly understands the nature and consequences of the procedures. This is placing a very heavy and unfair burden on the doctor. Further, there is no provision for the doctor to be an independent party.

12. In Australia[1], the position is that the decision to authorise sterilisation should be differentiated from many other activities consented to by parents as guardians of their children for the following reasons:

a) the difficulties associated with assessing the child's understanding and ability to consent, such that there is a significant risk that the wrong decision will be made;

b) the social and psychological as well as biological consequences of the procedure warrant the provision of non-medical as well as medical opinions, which court authorisation would ensure;

[1] Margaret Harrison, "What's New in Family Law? Parental Authority and its Constraints. The Case of 'Marion'," *Family Matters* 32 (August 1992): 10-12, http://www.aifs.gov.au/institute/pubs/fm1/fm32mh.html.

c) court authorisation would also protect children from possible competing and perhaps even conflicting interests, such as those of the primary care-givers, as it is the child's interests (rather than the interests of a carer) which would be the primary consideration of the court.

13. A number of countries have specific age requirements for sterilisation. The most common minimum age is 25, and can be found in Austria, Croatia, Denmark, Iceland, Liechtenstein, Norway, Portugal, and Sweden. In Slovenia, the minimum age is 35. Where sterilisation is specifically allowed by statute but no age is mentioned, the age is usually assumed to be that of majority, although in some countries persons younger than the age of majority are considered competent to consent to medical treatment, presumably including sterilisation.[2]

14. We are also concerned that the Bill provides that the consent of one parent alone (not both parents) is sufficient. This seems to contravene Article 18 of the UNCRC, which provides that:

> "Both parents have common responsibilities for the upbringing of the child and assistance shall be given to them in the performance of the parental responsibilities."

15. One way to deal with this is to adopt the scheme in Schedule 2 of the Women's Charter which sets out the persons who have to give consent for the marriage of a Minor. The provisions deal with various scenarios, including where parents are living together, where one parent is dead or has abandoned the family and where the child is illegitimate.

For the full elaboration of AWARE's position: See: http://www.aware.org.sg/2012/09/21542/

[2] EngenderHealth. *Contraceptive Sterilisation: Global Issues and Trends*. New York: EngenderHealth, 2002, page 93. http://www.engenderhealth.org/files/pubs/family-planning/ factbook_chapter_4.pdf