



Women
With
Disabilities
Australia
(WWDA)

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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Hon Nicola Roxon
Attorney General
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

July 13, 2012

Dear Attorney General Roxon,

As you are aware, Women With Disabilities Australia (WWDA) is the national non-government organisation representing women and girls with all types of disabilities in Australia.¹ Addressing the ongoing practice of sterilisation of girls and women with disabilities in Australia, is a key focus of our work. It is in this context that we write to seek your intervention and leadership.

We respectfully request that in your capacity as Australia's Attorney-General, you take immediate action to ensure the Australian Government complies with the recommendations of: the *Committee on the Elimination of Discrimination against Women* (CEDAW) in 2010, the *Committee on the Rights of the Child* in 2005 and 2012, and the Human Rights Council (UPR) in 2011, and *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*. WWDA understands that the Federal Government has the capacity to invoke its external affairs power as provided in Section 51 of the Australian Constitution,² to ensure that this national legislation is enacted as a matter of urgency.

In addition to the development and enactment of national legislation prohibiting the practice, WWDA requests that the Australian government implement a range of specific strategies to enable women with disabilities to realise their rights to freedom from violence, to reproductive freedom and to found a family, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to privacy, and to health. These strategies are detailed at the end of this Submission.

Forced and coerced sterilisation³ of girls and women with disabilities is a gross violation of the most fundamental human rights, yet remains an ongoing practice in Australia. Instead of developing and enacting universal legislation which prohibits this recognised form of torture and violence, successive Australian Governments have taken the view that there are instances in which sterilisation of disabled women and girls can, and should be authorised.⁴ Since 2005, United Nations treaty monitoring bodies have consistently and formally recommended that the Australia Government 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:

1. Most recently in June 2012, the Committee on the Rights of the Child (CRC), in its Concluding Observations⁵ to the Fourth periodic report of Australia,⁶ expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disabilities “*is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities.....*”. The Committee urges the State party to: ‘*Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities.*’ Furthermore, the Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government ‘*develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent.*’
2. In January 2011, in follow-up to Australia’s Universal Periodic Review, the UN Human Rights Council endorsed a recommendation specifically addressing the issue of sterilisation of girls and women with disabilities. It indicates that the state should:

Comply with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women concerning the sterilization of women and girls with disabilities (Denmark); Enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent (United Kingdom); Repeal all legal provisions allowing sterilization of persons with disabilities without their consent and for non-therapeutic reasons (Belgium); Abolish non-therapeutic sterilization of women and girls with disabilities (Germany).⁷

3. In July 2010, at its 46th session, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern in its Concluding Observations on Australia at the ongoing practice of non-therapeutic sterilisations of women and girls with disabilities and recommended that the Australian Government ‘*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.*⁸
4. In 2005, the Committee on the Rights of the Child in considering Australia’s combined second and third periodic reports⁹ under Article 44 of the Convention on the Rights of the Child (CRC), recommended that ‘*the State party.....prohibit the sterilization of children, with or without disabilities....*¹⁰ and in 2007 clearly articulated its position on sterilisation of girls with disabilities, clarifying that States parties to the CRC are expected to prohibit by law the forced sterilisation of children with disabilities.¹¹

To date, the Australian Government has failed to comply with any of these recommendations.

In February 2011, the Committee on the Rights of the Child issued General Comment 13, ‘*The right of the child to freedom from all forms of violence*’, through which the Committee identifies forced sterilisation of girls with disabilities as a form of violence and clearly articulates that **all** forms of violence against children are unacceptable without exception.¹² The Committee on Economic, Social and Cultural Rights (CESCR) has made it clear that forced sterilisation of girls and women with disabilities is a breach of Article 10 of the Convention on Economic, Social, and Cultural Rights.¹³ Similarly, the Human Rights Committee has clarified to State parties that forced sterilisation is in contravention of Articles 7, 17 and 24 of the International Covenant on Civil and Political Rights (ICCPR).¹⁴

In 2009, the Committee Against Torture recommended that States parties to the Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) take urgent measures to investigate promptly, impartially, thoroughly, and effectively, allegations of involuntary sterilisation of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.¹⁵ The United Nations Special Rapporteur on Torture has emphasised that forced sterilisation of women with disabilities may constitute torture or cruel or inhuman treatment, and that forced sterilization constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.¹⁶ All cases that have come to the attention of relevant authorities in Australia (including Courts and Guardianship Tribunals) have involved the sterilisation of girls with intellectual disabilities.¹⁷ Similarly, there have been no instances in Australia where authorisations to sterilise have been sought for children without disabilities in the absence of a threat to life or health.¹⁸

The *Beijing Declaration and Platform for Action (BPA)* identifies forced sterilisation as an act of violence and reaffirms the rights of women, including women with disabilities, to found and maintain a family, to attain the highest standard of sexual and reproductive health, and to make decisions concerning reproduction free from discrimination, coercion, and violence.¹⁹ The United Nations Special Rapporteur on Violence Against Women has asserted that forced sterilisation is a method of medical control of a woman's fertility. It violates a woman's physical integrity and security and constitutes violence against women.²⁰

The *Convention on the Rights of Persons with Disabilities (CRPD)*, ratified by Australia in 2008, provides a basis for upholding the rights of persons with disabilities and contains specific articles of relevance to the issue of involuntary sterilisation.²¹ In one of its first recommendations to a state party, the Committee on the Rights of Persons with Disabilities recommended *"the abolition of surgery and treatment without the full and informed consent of the patient"*.²²

As highlighted earlier, instead of complying with these international legal obligations and specific recommendations to prohibit the non-therapeutic and forced sterilisation of women and girls with disabilities, the Australian Government has demonstrated an on-going indifference to this clear human rights violation, arguing that: *"the Australian Government considers that the 'best interests' test as articulated and applied in Australia is consistent with Australia's international obligations."*²³

However, the Committee on the Rights of the Child (CRC) has made it clear that the principle of the 'best interests of the child' cannot be used to justify practices which conflict with the child's human dignity and right to physical integrity:

*"The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."*²⁴

WWDA has long expressed our concern at the use of the 'best interests' test in relation to sterilisation of disabled women and girls. As argued in WWDA's 2001 Report on Sterilisation and Reproductive Health of Women and Girls with Disabilities, and still relevant today:

*'In making judgements about best interests it is crucial that we are clear about whose best interests are really at stake. We need to be clear about whether 'best interests' is judged according to human rights principles or whether the judgement is about the 'best compromise between the competing interests' of parents, carers, service providers and policy makers. To really determine 'best interest' for women and girls with disabilities it is crucial to focus on the fact that a woman with a disability, often a very young woman, will be subjected to an irreversible medical procedure with life-long consequences without informed consent.'*²⁵

In addition to the important analysis and condemnation of forced and coerced sterilisation of disabled women and girls by UN mechanisms, it is important to recognise that in the last year, international medical bodies have developed new protocols and calls for action to put an end to the practice of involuntary sterilisation. In June 2011, the International Federation of Gynecology and Obstetrics (FIGO) released new *Guidelines on Female Contraceptive Sterilization*²⁶ shoring up informed consent protocols and clearly delineating the ethical obligations of health practitioners to ensure that women, and they alone, are giving their voluntary and informed consent to undergo a surgical sterilisation. Additionally, in September 2011, the World Medical Association (WMA) released a statement condemning the practice of forced and coerced sterilisation as a serious breach of medical ethics. WMA President, Dr. Wonchat Subhachaturas, called involuntary sterilization “a misuse of medical expertise, a breach of medical ethics, and a clear violation of human rights.” On behalf of the WMA, he issued a call to “all physicians and health workers to urge their governments to prohibit this unacceptable practice.”²⁷

The right to bodily integrity and the right of a woman to make her own reproductive choices are enshrined in a number of international human rights treaties and instruments to which Australia is a party. The practice of forced and coerced sterilization of girls and women with disabilities is contrary to Australia’s domestic, regional and international legal obligations. These include the right to be free from cruel, inhuman, and degrading treatment; the right to liberty and security of person; the right to health and family planning; the right to informed consent; the right to privacy; the right to human dignity and physical and mental integrity; the right to freedom from violence, and the right to equality and to be free from discrimination.

As highlighted earlier in this Submission, in addition to the development and enactment of national legislation prohibiting the practice of forced/involuntary sterilisation, WWDA requests that the Australian government undertake the following steps to enable women with disabilities to realise their human rights, including their sexual and reproductive rights and their right to freedom from violence, and from torture or cruel, inhuman or degrading treatment or punishment:

1. Provide redress to women and girls with disabilities who have been sterilised without their consent.

Work in this area would need to include:

- a) the provision of financial compensation and an official apology for discrimination;
- b) the provision of specialised funding for qualified counsellors through a recognised body (such as Relationships Australia) to provide ongoing counselling and support to women with disabilities who are survivors of forced sterilisation;
- c) the provision of specialised funding to the Disability Discrimination Legal Centres to support survivors of forced sterilisation with their claims to financial compensation.

2. Address the cultural, social, and economic factors that drive the sterilisation agenda. Work in this area would need to include:

- a) Commission and fund a national project on women with disabilities’ right to reproductive freedom which:
 - addresses the incidence and long term effects of forced sterilisation for *all* women with disabilities, including those with psychiatric, cognitive, sensory and physical disabilities;
 - investigates the practice of menstrual suppression of girls and women with disabilities, including those in group homes and other forms of institutional care. Research into menstrual suppression practices must include:
 - investigation into the non-consensual administration of Depo-Provera and other injectable contraceptives, the contraceptive pill, and other forms of contraception to women and girls with disabilities;
 - investigation into the use of contraception as a form of social control of girls and women with disabilities;
 - investigation into the long term physical and mental health and social effects of menstrual suppression practices.

- b) Develop national protocols for health education curriculum (commencing at primary school level) which incorporate models of diversity that portray positive images of women with disabilities as parents and as sexual beings;
- c) Fund a full time Project Officer position for Women With Disabilities Australia (WWDA) for a period of three years to conduct a national project which educates and informs women with disabilities of their right to reproductive freedom, including their right to sexuality and their right to parent;
- d) Develop specific measures to ensure a gender perspective is incorporated into any national, state/territory initiatives undertaken as part of the domestic implementation of Article 8 [Awareness Raising] of the CRPD.

3. Assist women and girls with disabilities and their families and carers to access appropriate reproductive health care. Work in this area would need to include:

- a) Research and implement the specific supports required by carers to better assist them in managing the menstruation and reproductive health needs of women and girls with intellectual disabilities;
- b) Investigate the feasibility of establishing a national scheme (similar to schemes such as the Continence Aids Payment Scheme), which provides funding for women and girls with disabilities and their families and carers to access appropriate reproductive health care;
- c) Develop national sexual health protocols for women with disabilities that incorporate options for menstrual management and contraception.

It is clear that these legislative and policy measures are necessary to ensure that women and girls with disabilities enjoy all their rights, including sexual and reproductive rights, on an equal basis with other women and girls in Australia.

We greatly appreciate your urgent attention to this most critical issue and would be happy to provide any additional information you may require. We look forward to your earliest response.

Yours Sincerely,



Carolyn Frohmader
Executive Director



Margie Charlesworth
President [Acting]

- cc. Ms. Navi Pillay, UN High Commissioner for Human Rights
 Ms Laura Dupuy Lasserre, President, UN Human Rights Council
 Ms. Silvia Pimentel, Chairperson, Committee on the Elimination of Discrimination against Women
 Mr. Ron McCallum, Chairperson, UN Committee on the Rights of Persons with Disabilities
 Mr. Jean Zermatten, Chairperson, UN Committee on the Rights of the Child
 Ms. Michelle Bachelet, Executive Director, UN Women
 Mr. Anthony Lake, Executive Director, UNICEF
 Ms Rashida Manjoo, UN Special Rapporteur on Violence against Women
 Mr. Juan E Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 Ms Marta Santos Pais, Special Representative of the UN Secretary General on Violence Against Children
 Professor Gamal Serour, President, International Federation of Gynecology and Obstetrics
 Professor Hamid Rushwan, CEO, International Federation of Gynecology and Obstetrics
 Dr Jose Luiz Gomes Do Amaral, President, World Medical Association
 Mr Robert Simons, Chair, International Federation of Health & Human Rights Organisations
 Mr Peter Newell, Chair, Child Rights Information Network
 Mr. Graeme Innes, Disability Discrimination Commissioner, Australian Human Rights Commission
 Ms. Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission
 Dr. Tom Shakespeare, Department of Violence and Injury Prevention and Disability, World Health Organisation
 Dr Rupert Sherwood, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists
 Dr Steve Hambleton, President, Australian Medical Association
 Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs

¹ WWDA's work is grounded in a human rights framework, which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. Promoting the rights of disabled women and girls to freedom from violence, exploitation and abuse and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA. For more information on WWDA, go to: www.wwda.org.au

² http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s51.html

³ Forced sterilisation refers to medical procedures which permanently remove an individual's ability to reproduce. It occurs when a person is sterilised after expressly refusing the procedure, without her knowledge or is not given an opportunity to provide consent. Coerced sterilisation occurs when financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure. Women and girls with disabilities are particularly vulnerable to forced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name. The forced sterilisation of disabled women and girls is an act of unnecessary and dehumanising violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment. Sterilisation disproportionately affects women and girls and is clearly a gendered issue. See for example: Frohmader, C. (2012) *Moving Forward and Gaining Ground: The Sterilisation of Women and Girls with Disabilities in Australia*. Paper presented at the International Conference 'Challenges in the new millennium for women with disabilities', Madrid, 27th – 29th June 2012. See also: Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA)(2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper* (November). Available online at: http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf

⁴ 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/Humanrightsandantidiscrimination_ReportsundertheConventionontheRightsoftheChild

⁵ UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4.

⁶ UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Fourth periodic report of States parties due in 2007: Australia*; 25 June 2009; CRC/C/AUS/4.

⁷ UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10.

⁸ 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.

⁹ UN Convention on the Rights of the Child (CRC)(2004) *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention; Second and third periodic reports of States parties due in 1998 and 2003:Australia*; 29 December 2004; CRC/C/129/Add.4.

¹⁰ UN 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).

¹¹ CRC General Comment No.9 [at para.60] states: 'The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.'

¹² UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence*, 17 February 2011, CRC/C/GC/13 [paras.16, 21].

¹³ CESCR General Comment No.5 [at par 31] states: *Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood"....Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).*

¹⁴ See: Human Rights Committee (2000) International Covenant on Civil and Political Rights (CCPR), *General Comment No. 28: Equality of rights between men and women*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, [paras.11 & 20].

¹⁵ UN Committee Against Torture (2009), Forty-third session, *Concluding Observations: Slovakia*, para 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); Czech Republic, para 6(n), U.N. Doc. CAT/C/CR/32/2.

¹⁶ UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, [paras.38, 39].

¹⁷ Brady, S. (2001) *The sterilisation of girls and young women with intellectual disabilities in Australia: An audit of Family Court and Guardianship Tribunal cases between 1992-1998*. Available online at: www.wwda.org.au/brady2001.htm

¹⁸ 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/polpaster07.htm>

¹⁹ United Nations, *The Beijing Declaration and the Platform for Action: Fourth World Conference on Women*, Beijing, China, 4-15 September 1995; A/CONF.177/20/Add.1. [paras. 95-96]

²⁰ Radhika Coomaraswamy (1999), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].

²¹ Article 23 reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others. Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity. Article 25 clearly articulates that free and informed consent should be the basis for providing health care to persons with disabilities.

²² UN Committee on the Rights of Persons with Disabilities (CRPD Committee), *Concluding Observations: Tunisia*, para. 29, U.N. Doc. CRPD/C/TUN/CO/1 (2011).

²³ United Nations General Assembly, Human Rights Council (2011) *Report of the Working Group on the Universal Periodic Review: Australia; Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*. Seventeenth session, A/HRC/17/10/Add.1.

²⁴ CRC Committee General Comment No. 13 [at para.61] states: “*The Committee emphasizes that the interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity. An adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.*”

²⁵ 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.

²⁶ FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>

²⁷ World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilisation*: Press Release, 5 September 2011. Available at: <http://www.wwda.org.au/sterilWMA2011.htm>