March 7, 2012

Dear Minister Morton

As you may be aware, Women With Disabilities Australia (WWDA) is the national peak body representing women and girls with disabilities in Australia. 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 women with disabilities to freedom from violence, exploitation and abuse and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA.

WWDA understands that the Western Australian Government proposes to introduce into Parliament a new Mental Health Bill 2011. We further understand that this Draft Bill has been prepared for public comment. In this context, WWDA is writing to express our deep concern at a particular element of the proposed Draft Bill which we believe contravenes many of the human rights instruments to which Australia is a signatory and, most critically, infringes on disabled women and girls fundamental human right to bodily integrity.

Whilst WWDA does not have the capacity nor the resources to provide detailed feedback on the Draft Mental Health Bill 2011 in its entirety, we wish to express our alarm and deep concern at the section of the Draft Bill which relates to Sterilisation Procedure (at Part 12, Division 3; paragraphs 208-210, pp.135-136).

It would appear from the Draft Bill, that the Western Australian Government is proposing to legislate that a sterilisation procedure could be performed on a child who has a mental illness provided that the child has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself and/or has given informed consent to the sterilisation procedure being performed.

WWDA is of the view that this section of the Draft Bill, is in direct breach of the United Nations Convention on the Rights of Persons with Disabilities (CRPD); the International Covenant on Economic, Social and

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1 UN General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007, A/RES/61/106. 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.
Cultural Rights (ICSCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

Articles within these treaties to which Australia is a party, make it clear that the Australian Government is obligated to address the sterilisation of minors as a human rights abuse. A view that considers ‘authorisation’ of sterilisations of minors is not in keeping with these human rights commitments.

The United Nations, through various treaty monitoring bodies, has repeatedly and consistently recommended that the Australian Government comply with the recommendations of the CEDAW Committee, the Committee on the Rights of the Child, and the Human Rights Council, and act immediately to develop national legislation prohibiting the non-therapeutic sterilisation of girls and of adult women with disabilities in the absence of their fully informed and free consent. These Committees have clarified that except where there is a serious threat to life or health, the practice 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, should be prohibited by law.

Non-therapeutic sterilisation is sterilisation for a purpose other than to treat some malfunction or disease and it refers to procedures carried out in circumstances that do not involve a serious threat to the health or life of the individual. Forced sterilisation refers to sterilisation that has occurred in the absence of the individual’s consent. Non-therapeutic, forced sterilisation is a gross violation of human rights. It is an irreversible medical procedure with profound physical and psychological effects. It is an act of violence, a form of social control, and a violation of the right to be free from torture or cruel, inhuman or degrading treatment. In all cases, the decision to undergo non-therapeutic sterilisation should be undertaken by consenting adult and never imposed on a child.
There have been no instances in Australia where authorisations to sterilise have been sought for minors without disabilities in the absence of a threat to life or health. The sterilisation of a child in circumstances other than where there is a serious threat to the health or life of that child effectively denies the child present and future enjoyment of her or his human rights. Children with disabilities have the same right as children without disabilities not to be sterilised. No tribunal, court, parent or guardian has the right to authorise sterilisation of minors in the absence of a serious threat to health or life.

In June 2011, the International Federation of Gynaecology and Obstetrics (FIGO) issued new guidelines on female contraceptive sterilisation and informed consent (see attached). These Guidelines explicitly state that ‘only women themselves can give ethically valid consent to their own sterilisation. Family members including husbands, parents, legal guardians, medical practitioners and, for instance, government or other public officers, cannot consent on any woman’s or girl’s behalf.’

The Australian Government, and indeed the West Australian Government, have a responsibility to develop policies and legislation that conform, and give effect to the human rights obligations as set out in the international human rights treaties Australia has ratified, along with the various international declarations and consensus documents to which it is a party.

In this context, we therefore request your urgent invention, as Minister for Mental Health, to immediately repeal Part 12: Division 3 [Sterilisation Procedure] from the [Draft] Mental Health Bill 2011.

We look forward to your earliest response on this critical matter.

Yours Sincerely

Carolyn Frohmader
Executive Director

cc. Ms. Navi Pillay, UN High Commissioner for Human Rights
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. Graeme Innes, Disability Discrimination Commissioner, Australian Human Rights Commission
Ms. Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission
Hon Nicola Roxon, Attorney General
Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs
Senator Hon Jan McLucas, Parliamentary Secretary for Disabilities & Carers
Hon Julie Collins, Minister for the Status of Women
Dr. Tom Shakespeare, Department of Violence and Injury Prevention and Disability, World Health Organisation
Ms Marta Santos Pais, Special Representative of the UN Secretary General on Violence Against Children
Hon George Brandis, Shadow Attorney General
Hon. Christian Porter, WA Attorney General
Mr. Eddie Bartnik, WA Mental Health Commissioner
Hon John Quigley, WA Shadow Attorney General