



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*

PO Box 605, Rosny Park, 7018 TASMANIA  
AUSTRALIA

Ph: +61 3 62448288 Fax: +61 3 62448255

Email: [wwda@wwda.org.au](mailto:wwda@wwda.org.au)

Web: [www.wwda.org.au](http://www.wwda.org.au)

Hon Helen Morton MLC  
Minister for Mental Health  
7th Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

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 the person 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);<sup>1</sup> the International Covenant on Economic, Social and

---

<sup>1</sup> 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 (ICESCR)<sup>2</sup>; the International Covenant on Civil and Political Rights (ICCPR),<sup>3</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>4</sup>, the Convention on the Elimination of Discrimination Against Women (CEDAW),<sup>5</sup> and the Convention on the Rights of the Child (CRC).<sup>6</sup>

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,<sup>7</sup> the Committee on the Rights of the Child,<sup>8</sup> and the Human Rights Council,<sup>9</sup> 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.**<sup>10</sup>

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.<sup>11</sup> **In all cases, the decision to undergo non-therapeutic sterilisation should be undertaken by consenting adult and never imposed on a child.**

---

<sup>2</sup> UN Committee on Economic, Social and Cultural Rights (CESCR Committee) *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).

<sup>3</sup> 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, [at para.11 & 20].

<sup>4</sup> 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]. See also UN Committee Against Torture (CAT Committee), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2 [para.22]; UN General Assembly, *Rome Statute of the International Criminal Court* (last amended January 2002), 17 July 1998, A/CONF. 183/9 [Article 7(1)(g)]. See also: UN Committee Against Torture (CAT Committee), *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.

<sup>5</sup> Committee on the Elimination of Discrimination Against Women (CEDAW Committee) (1999), *General recommendation No. 24: Article 12 of the Convention (women and health)*, A/54/38/Rev.1, chap. I; [para.22].

<sup>6</sup> UN Committee on the Rights of the Child (CRC Committee), *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]. *CRC Committee 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." *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."

<sup>7</sup> CEDAW Committee (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. See <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>8</sup> In considering Australia's report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: 'prohibit the sterilisation of children, with or without disabilities'. United Nations 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).

<sup>9</sup> 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.

<sup>10</sup> See for eg: CEDAW Committee (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. See <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>11</sup> See for eg: 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.doc](http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.doc) (Word version) or [http://www.wwda.org.au/Sterilization\\_Disability\\_Briefing\\_Paper\\_October2011.pdf](http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf) (PDF version).

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 Gynecology 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