



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

September 4, 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 and addressing the ongoing practice of sterilisation of girls and women with disabilities in Australia, is a key focus of our work.

We write to you in your capacity as Australia's Attorney-General to request a copy of the Australian Government's formal response to the letter of 18 July 2011 from the High Commissioner for Human Rights, Special Procedures of the Human Rights Council [Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences] (see copy at Attachment A).

The 18 July 2011 letter from the Special Rapporteurs requested a formal response from the Australian Government in relation to the alleged ongoing practice of non-therapeutic, forced sterilisation of girls and women with disabilities in Australia. The letter requested information on a number of matters, including for example:

- details of any actions to prevent further non-therapeutic, forced sterilisation of girls and women with disabilities;
- details of any actions to sanction medical staff carrying out illegal non-therapeutic, forced sterilisations of girls and women with disabilities;
- details and results of any investigations and judicial or other inquiries carried out;
- details of any actions to ensure that reparation, including compensation and rehabilitation, is provided to those girls and women with disabilities who may have been forcibly sterilised;
- details of any actions to ensure that informed consent requirements are adequately implemented for all medical interventions with regard to children and persons with disabilities;
- measures being taken to ensure the enjoyment of the right to health of girls and women with disabilities.

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

WWDA understands that the Australian Government responded to this letter on 12 August 2011 (see copy at Attachment B) stating that: *“The Australian Government is currently considering the information and questions contained in the letter. The Government is consulting with relevant stakeholders, including state and territory governments, and will provide a full response by 17 October 2011.”*²

We also understand that, on 30th September 2011, the Australian Government provided a further response³ (see copy at Attachment C) stating, in part that:

“The Australian Government is currently considering the information and questions contained in the letter of 18 July 2011. The Commonwealth Attorney-General’s Department is in the process of compiling a detailed Australian Government response to this request for information. The Australian Government regrets that in order to ensure the Australian Government’s response to this request is as comprehensive as possible, further consultation with the State and Territory governments is required, and consequently it is unlikely that this consultation will be completed before the earlier indicated date for submission of 17 October 2011.....The Australian Government regrets this delay in response and will submit its final response to the Special Rapporteurs by 16 December 2011.”

There is no record of the Australian Government’s final response (by 16 December 2011) in the Communications Report of Special Procedures⁴ submitted at the Twentieth session of the Human Rights Council in June 2012.

In this context, WWDA is therefore seeking a response to the following:

1. Could you please advise whether the Australian Government provided its final response to the Special Rapporteurs by 16 December 2011, or has done so since that date?
2. If the Australian Government has provided its final response to the Special Rapporteurs, could you please provide WWDA with a copy of the response, given that our organisation is a key stakeholder in this matter?
3. If the Australian Government has not provided its final response to the Special Rapporteurs, could you please advise WWDA as to the reason why this has not occurred?
4. If the Australian Government has not provided its final response to the Special Rapporteurs, could you please advise WWDA of when the final response will be submitted?

We would greatly appreciate your urgent attention to this matter and 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

² Australian Permanent Mission to the UN, Note Number: 108/2011

³ Australian Permanent Mission to the UN, Note Number: 127/2011

⁴ UN General Assembly, Human Rights Council, *Communications report of Special Procedures*, 15 June 2012, A/HRC/20/30.

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
Senator Hon Jan McLucas, Parliamentary Secretary for Disabilities & Carers
Hon Julie Collins, Minister for the Status of Women
Hon George Brandis, Shadow Attorney General
Members, Standing Council on Law and Justice (Australia)

ATTACHMENT A

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL Health (2002-7) G/SO 214 (89-15)
AUS 2/2011

18 July 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/22 and 16/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged ongoing practice of non-therapeutic, forced sterilization of girls and women with disabilities in Australia.**

According to the information received:

It is alleged that non-therapeutic, forced sterilization is performed on young girls and women with disabilities for various purposes, including pregnancy prevention, population control, menstrual management and personal care. Reportedly, non-therapeutic sterilization is sterilization 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 individuals. Forced sterilization refers to sterilization that has occurred in the absence of the individual's consent.

It is also alleged that cases of non-therapeutic, forced sterilization of girls have occurred in greater numbers than those formally authorized by courts and tribunals. It is further alleged that the existing State and Territory legislation and federal court mechanisms have not adequately addressed non-therapeutic, forced sterilizations of young girls with disabilities, in particular with regard to preventing such children from being taken out of Australia for sterilization procedures elsewhere.

While we do not wish to prejudge the accuracy of these allegations, we would appreciate information from your Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of girls and women with disabilities. This right is enshrined, inter alia, in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified on 10 December 1975), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are

accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. In that connection, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights elucidates that the right to health contains both freedoms and entitlements and holds that “the freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” (para. 8). I would also like to refer your Excellency’s Government to General Comment No. 5 of the Committee, which holds that “Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy...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) [of the International Covenant on Economic, Social and Cultural Rights]” (para.30).

We would like to draw the attention of your Excellency’s Government to Article 17 of the Convention on the Rights of Persons with Disabilities (ratified on 17 July 2008), which states: “Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others”. We would also like to refer your Excellency’s Government to Article 23 of the Convention, which holds that “States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: (...) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized.”

Furthermore, we would like to draw the attention of your Excellency’s Government to Article 24 of the Convention on the Rights of the Child (ratified on 17 Dec 1990), which holds that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”. I would also like to refer your Excellency’s Government to General Comment No.9 of the Committee of the Rights of the Child which 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.”

We would also like to refer your Excellency’s Government to General Recommendation No. 18 of the Committee on the Elimination of Discrimination against Women, which recommends that “States parties [to the Convention in the Elimination of all Forms of Discrimination against Women (ratified on 28 July 1983)] provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life”. In that context, I would like to note paragraph 43 of the Concluding observations of the Committee on the Elimination of Discriminations against Women (CEDAW/C/AUL/CO/7, 30.07.2010) which recommended that Australia “enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization 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”.

Finally, we deem it appropriate to make reference to Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. In this context, we would also like to draw your attention to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International

Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

We urge your Excellency's Government to take all necessary measures to ensure the protection and full enjoyment of the right to the highest attainable standard of health for girls and women with disabilities in accordance with international standards.

It is our responsibility under the mandate provided by the Human Rights Council to seek to clarify all cases brought to my attention regarding the right to health. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation in addressing the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide details of any actions to prevent further non-therapeutic, forced sterilization of girls and women with disabilities?
3. Please provide details of any actions to sanction medical staff carrying out illegal non-therapeutic, forced sterilizations of girls and women with disabilities. Please provide details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to such cases. If no inquiries have been made, or if they have been inconclusive, please explain why.
4. Please provide details of any actions to ensure that reparation, including compensation and rehabilitation, is provided to those girls and women with disabilities who may have been forcibly sterilized?
5. Please provide details of any actions to ensure that informed consent requirements are adequately implemented for all medical interventions with regard to children and persons with disabilities?
6. What measures are being taken to ensure the enjoyment of the right to health of girls and women with disabilities?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports that will be submitted to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

ATTACHMENT B



Note Number: 108/2011

The Australian Permanent Mission to the United Nations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences.

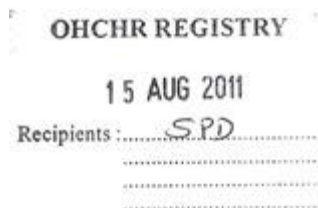
The Australian Government has the honour to refer to the Special Rapporteurs' letter of 18 July 2011 requesting the Australian Government's observations on the alleged practice of non-therapeutic, forced sterilisation of girls and women with disabilities in Australia.

The Australian Government is currently considering the information and questions contained in the letter. The Government is consulting with relevant stakeholders, including state and territory governments, and will provide a full response by 17 October 2011.

The Australian Permanent Mission to the United Nations avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights and the Special Rapporteurs the assurances of its highest consideration.



Geneva
12 August 2011



ATTACHMENT C



Note Number: 127/2011

The Australian Permanent Mission to the United Nations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences.

The Australian Government has the honour to refer to the Special Rapporteurs' letter of 18 July 2011 requesting the Government's response regarding the alleged practice of non-therapeutic, forced sterilisation of girls and women with disabilities in Australia.

The Australian Government has the further honour to refer to its correspondence of 12 August 2011, in which the Special Rapporteurs were informed that a response would be provided by the Australian Government by 17 October 2011.

The Australian Government is currently considering the information and questions contained in the letter of 18 July 2011. The Commonwealth Attorney-General's Department is in the process of compiling a detailed Australian Government response to this request for information.

The Australian Government regrets that in order to ensure the Australian Government's response to this request is as comprehensive as possible, further consultation with the State and Territory governments is required, and consequently it is unlikely that this consultation will be completed before the earlier indicated date for submission of 17 October 2011.

The Australian Government is committed to upholding its international obligations and would prefer to take more time to ensure an accurate and fully considered response can be prepared on this important topic.

OHCHR REGISTRY

- 5 OCT. 2011

Recipients : ... *SPO*

Australian Permanent Mission to the UN
Chemin des Fins 2 – Case Postale 102 – 1211 Geneve 19 Tel. 022 799 91 00 Fax 022 799 91 75

The Australian Government regrets this delay in response and will submit its final response to the Special Rapporteurs by 16 December 2011.

The Australian Permanent Mission to the United Nations avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences.

