



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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Mr Claudio Grossman
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c/- Secretariat of the Committee against Torture (CAT)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Via E-mail: cat@ohchr.org

September 24th, 2014

Dear Mr Grossman,

I write from Women With Disabilities Australia (WWDA), the national Civil Society Organisation (CSO) representing disabled women and girls in Australia, in follow up to our correspondence to you of 5th February 2013. You may recall that our correspondence of February 2013, included documentation from WWDA to the CAT Committee, for consideration in the context of Australia's Fourth and Fifth Periodic Report [CAT/C/AUS/4-5] under article 19 of the *Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment*.

Since that time, there have been a number of escalating and urgent human rights violations which WWDA would like to update the CAT Committee on, as an Addendum to the documentation we provided to the Committee in February 2013. WWDA respectfully requests that the Committee give consideration to this additional information as part of its review of Australia during the CAT Committee's 53rd session (3 Nov 2014 - 28 Nov 2014). Given the high volume of material the CAT Committee will be considering for its 53rd session, WWDA has endeavoured to keep this update brief, but stresses the urgency of the issues we raise.

1. Violence against people with disabilities in institutional and residential settings

- 1.1. Violence against people with disabilities in institutional and residential settings – particularly sexual violence perpetrated against disabled women and girls - is Australia's hidden shame. It is an **urgent**, unaddressed national crisis, of epidemic proportions,ⁱ yet is excluded from national policy responses relating to domestic/family violence and sexual assault, and from national policy responses relating to advancing the human rights of people with disabilities. People with disabilities in Australia continue to experience violence (particularly sexual violence) in residential and institutional settings,ⁱⁱ where they frequently experience sustained and multiple episodes,ⁱⁱⁱ and are rarely believed if they try to report such violence. Lack of reporting, deliberate cover up by staff and management, and the culture within institutional and residential settings as breeding grounds for the perpetration of violence, is acknowledged as a widespread and common problem in Australia,^{iv} and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators.
- 1.2. Accompanying this Briefing Update is a document (*DPP v Kumar*) that highlights just some of these issues. The document is a copy of the sentencing transcript from a November 2013 Australian court case, whereby a casual worker employed at a supported accommodation facility in Victoria, was sentenced to 18 years jail for multiple counts of rape, torture and other sexual offences perpetrated

against three disabled women and one disabled man. Although harrowing reading, the sexual torture, violence, cruel, inhumane and degrading treatment perpetrated against these four disabled persons, is commonplace for many people with disabilities in institutional and residential settings in Australia. However, unlike in this particular case, most perpetrators are never brought to justice.^v

- 1.3. For a number of years now, human rights treaty monitoring bodies, disabled people's organisations (DPO's), human rights organisations, people with disabilities themselves, advocates, families and support persons - have called for urgent action by Australian governments to address violence, exploitation, and abuse experienced by people with disabilities in institutional and residential settings. In October 2013, the *Committee on the Rights of Persons with Disabilities*, in its *Concluding Observations [Australia]* [CRPD/C/AUS/CO/1], expressed its "deep concern" at the high rates of violence perpetrated against women and girls with disabilities^{vi} and recommended that Australian Governments act urgently to:
 - address and investigate, **without delay**, violence (particularly sexual violence), exploitation and abuse experienced by women and girls with disability in institutional settings;
 - include a more comprehensive consideration of women with disability in public programmes and policies on the prevention of gender-based violence; and,
 - ensure access for women with disability to an effective, integrated response system.
- 1.4. These recommendations from the CRPD Committee echo the 2006 and 2010 *Concluding Recommendations [Australia]* of the *Committee on the Elimination of All Forms of Discrimination against Women* [CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7]. The pervasive and high incidence of violence perpetrated against women and girls with disabilities, particularly those living in institutional and residential settings, was identified by the CEDAW Committee as an issue warranting urgent intervention. The Committee subsequently recommended that Australia address, as a matter of priority, the violence and abuse experienced by women with disabilities living in institutional and residential settings.
- 1.5. It is regrettable that successive Australian Governments have demonstrated apathy and disregard for these recommendations from treaty monitoring bodies for more than a decade,^{vii} and have failed to take any action on this national epidemic. The primary national policy frameworks available to address violence against people with disabilities in Australia (particularly women with disabilities), are the 12 year *National Plan to Reduce Violence Against Women and their Children 2010-2022*, the *National Framework for Protecting Australia's Children 2009-2020*, and the *National Disability Strategy 2010 – 2020* (NDS). However, none of these policy frameworks address violence, exploitation, abuse and neglect as experienced by people with disabilities, particularly those in institutional and residential settings. For example: the *National Plan to Reduce Violence Against Women and their Children* has little emphasis on girls with disabilities, focuses only on domestic/family violence and sexual assault; fails to address the many other forms of violence perpetrated against women and girls with disabilities; and specifically excludes residential and institutional settings. The *National Disability Strategy* is un-gendered, not resourced, and its sole strategy to address violence against people with disabilities is to 'develop strategies to reduce violence, abuse and neglect of people with disability'. This is yet to occur and in its first four years, there have been no such 'strategies' or 'initiatives' developed. The Australian Government has also commissioned a *Royal Commission into Institutional Responses to Child Sexual Abuse*,^{viii} which commenced in January 2013 and will continue until 2017. The Royal Commission has clear parameters set out in its Letters Patent [Terms of Reference] which limit its scope to a) children; and b) sexual abuse.
- 1.6. In an effort to address the abject failure by our Governments to take action to protect the human rights of some of our most vulnerable and exclude citizens, people with disabilities and their advocates have just launched their own national campaign, calling on the Australian Prime Minister to **urgently launch a national inquiry into violence, neglect and abuse against people with disabilities in residential and institutional settings** (see: <https://www.change.org/p/tony-abbott-to-urgently-launch-a-national-inquiry-into-violence-neglect-and-abuse-against-people-with-disability-in-residential-and-institutional-settings#>)

2. Forced/Involuntary sterilisation of women and girls with disabilities

- 2.1. Forced sterilisation of women and girls with disabilities is a practice that remains legal and sanctioned by Governments in Australia. Since 2005, the United Nations treaty monitoring bodies have consistently and formally recommended that the Australian Government enact national legislation prohibiting the

use of sterilisation of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent [see for eg: CEDAW/C/AUS/CO/7; CRC/C/AUS/CO/4; CRC/C/15/Add.268; A/HRC/17/10; CCPR/C/AUS/Q/6]. The CRPD Committee, in its 2013 *Concluding Observations [Australia]* emphasised its “deep concern” at the ongoing practice of involuntary sterilisation, including “the failure of Australia to implement the recommendations from the Committee on the Rights of the Child (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the Human Rights Council (A/HRC/17/10), and the Report of the UN Special Rapporteur on Torture (A/HRC/22/53), which addresses concerns regarding sterilisation of children and adults with disabilities.” The Committee urged the Australian Government to adopt national uniform legislation prohibiting the use of sterilisation of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent.^{ix}

- 2.2. Accompanying this Briefing Update is a copy of WWDA’s Submission to the *Australian Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (the Inquiry was finalised in July 2013). WWDA’s Submission, entitled *Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia*’ establishes beyond doubt, that forced and coerced sterilisation of women and girls with disabilities is a form of torture – an inhuman practice which violates multiple human rights, and clearly breaches every international human rights treaty to which Australia is a party. In calling for national uniform legislation [prohibiting the use of sterilisation of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent], the CRPD Committee, in its 2013 *Concluding Observations [Australia]* clearly stated its “deep concern” that the “*Senate Inquiry Report into the Involuntary or Coerced Sterilisation of Persons with Disabilities, released in July 2013, presents recommendations, which would allow this practice to continue.*”

3. Forced/Involuntary Electroshock (ECT) of women and girls with disabilities

- 3.1. The UN Special Rapporteur on Torture, in his ground-breaking report of 2013 (which clarified practices that constitute torture and ill-treatment in health-care settings),^x made it clear that women living with disabilities, with psychiatric labels in particular, are at risk of multiple forms of discrimination, violence and abuse in health-care settings, including through non-consensual treatment, such as forced medication and electroshock procedures. The CRPD Committee has also recently recommended that Australia “*repeal all legislation that authorises medical interventions without free and informed consent of the persons with disabilities concerned, and legal provisions that authorize commitment of individuals to detention in mental health services, or the imposition of compulsory treatment.*”^{xi}
- 3.2. Yet in Australia, reports and available data indicate that there is a significant increase in the use of forced/involuntary electroshock (ECT) on women, including young women. There is a substantial difference in the numbers of men and women receiving both voluntary and involuntary ECT, with nearly three times as many women receiving ECT compared with men.^{xii} Women With Disabilities Australia (WWDA) has called on the Australian Government to commission a gendered, national Inquiry into the application for, and use of forced and/compulsory medical and psychiatric treatments and interventions on people with disabilities, including research into, and analysis of, the use of electroshock therapy on women and girls in Australia.^{xiii}

As always, Women With Disabilities Australia (WWDA) would be very happy to provide any additional information should it be required. We thank you for the opportunity to contribute to the work of the CAT Committee, and we trust that the information WWDA has provided will be considered in the context of Australia’s Fourth and Fifth Periodic Report [CAT/C/AUS/4-5] under article 19 of the *Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment*.

We wish you a successful 53rd session.

Yours sincerely,



Carolyn Frohmader
Executive Director

Encl. *DPP v Kumar* [20 November 2013]

Frohman, C. (2013) *'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'*. WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia; ISBN: 978-0-9876035-0-0.

Endnotes:

ⁱ For example, figures from the Victorian Office of the Public Advocate (OPA) show that between 2006-2011, police examined more than 1000 cases of alleged abuse involving people with severe disabilities living in state residential care or private homes in Victoria - including 282 allegations of assault, 320 of rape, and six alleged abductions or kidnapping. See: 'Law failing to protect disabled in state care'; *The Age Newspaper*, April 24, 2011. Accessed online October 2011 at: <http://www.theage.com.au/victoria/law-failing-to-protect-disabled-in-state-care-20110423-1dse1.html>

ⁱⁱ Dowse, L., Soldatic, K., Didi, A., Frohman, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*. Background Paper. Hobart: Women with Disabilities Australia; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) *'Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia'*; Report of the Proceedings and Outcomes of the National Symposium on Violence against Women and Girls with Disabilities; Sydney, 25 October 2013. WWDA, Hobart, Tasmania. Available at: <http://wwda.org.au/issues/viol/viol2011/>

ⁱⁱⁱ Attard, M., & Price-Kelly, S. (2010) *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, PWDA, NSW.

^{iv} French, P. (2007) *Disabled Justice: The barriers to justice for persons with disability in Queensland*. Queensland Advocacy Incorporated (QAI), Brisbane. Accessed online October 2011 at: http://www.qai.org.au/images/stories/docs/1987-2007/doc_199.pdf; See also: Stewart, D. Chapter 11 Institutional culture and people with intellectual disabilities: Experiences of an inquirer. In Hauritz, M. Sampford, C. & Blencowe, S. (Eds) (1998) *Justice for People with Disabilities – Legal and Institutional Issues*. The Federation Press, Leichhardt, NSW.

^v In the case of *DPP v Kumar* (November 2013) the perpetrator pleaded guilty to the charges. It was only through the determination of individual advocates supporting the victims themselves, that the case was investigated at all. Because the perpetrator pleaded guilty to the charges, a criminal trial was avoided, meaning the victims did not have to endure the gender and disability bias so evident in the Australian criminal justice system.

^{vi} Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session* (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1; Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FAUS%2FCO%2F1&Lang=en

^{vii} See for eg: http://wwda.org.au/wp-content/uploads/2013/12/Final_Draft_DPO_Sub_DV_Senate2014.pdf

^{viii} See: <http://www.childabuseroyalcommission.gov.au/>

^{ix} CRPD/C/AUS/CO/1

^x Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53.

^{xi} CRPD/C/AUS/CO/1

^{xii} NSW Mental Health Review Tribunal (2010) *Annual Report of the Mental Health Review Tribunal*. Accessed online October 2011 at:

<http://www.mhrt.nsw.gov.au/mhrt/pdf/Annualreport200910.pdf>. See also: 'Electric shock therapy on the rise for young'; *Sydney Morning Herald*, June 26, 2011, Accessed online at: <http://www.smh.com.au/lifestyle/diet-and-fitness/electric-shock-therapy-on-the-rise-for-young-20110625-1gkic.html>

See also: 'Child shock therapy'; *Herald Sun Newspaper*, January 25, 2009. Accessed online December 2012 at:

<http://www.heraldsun.com.au/news/victoria/child-shock-therapy/story-e6frf7kx-1111118657718>; See also: 'Doctor's orders left woman frantic', *Sydney Morning Herald*, June 26, 2011, accessed at <http://www.smh.com.au/lifestyle/diet-and-fitness/doctors-orders-left-woman-frantic-20110625-1gkib.html> See

also: 'Victoria urged to ditch change to mental health law that allows electric shock therapy on children'; *ABC News*, 23 Mar 2014, accessed at:

<http://www.abc.net.au/news/2014-03-23/concern-over-legislation-allowing-shock-therapy-on-children/5339362>

^{xiii} Frohman, C. (2014) *'Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1. Available at:

<http://wwda.org.au/issues/gendis/gendis2011/>