



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 Robert McClelland
Attorney General
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

March 11, 2010

Dear Attorney-General McClelland

Women With Disabilities Australia (WWDA) writes to seek clarification and further information from you regarding information provided by the Australian Government to the United Nations (UNESCAP) Questionnaire for Governments on Implementation of the Beijing Declaration and Platform for Action (BPFA) and the outcomes of the twenty-third special session of the General Assembly (2000). As I am sure you are aware, Australia's response to the Questionnaire is publicly available on the UNESCAP website at:

http://www.unescap.org/ESID/GAD/Issues/Beijing+15/index_questionnaire.asp

Specifically, WWDA has a number of concerns relating to page 14 of the Australian Government's response, which provides information regarding sterilisation of children with disabilities. The response states in part:

In August 2003, the Standing Committee of Attorney General's [sic] (SCAG) considered that a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of minors was appropriate. A Working Group drafted a Model Sterilisation Bill which was released for consultation in September 2006. In response to comments received together with evidence and information gathered relating to this issue, a comprehensive review of the Bill took place. The review indicated that sterilisations of children with an intellectual disability had declined since the 1997 report - to very low numbers. Evidence also indicated that alternatives to surgical procedures to manage the menstruation and contraceptive needs of women are increasingly available and seem to be successful in the most part. Further, while it was not possible to be definitive due to limitations in the available information, the review concluded that existing processes to authorise sterilisation procedures appeared to be working adequately due to improvements in treatment options and wider community awareness.

In the context of this response, WWDA is seeking clarification and further information on a number of issues:

1. In relation to the “comprehensive review of the Bill” can you advise WWDA as to how to obtain the information from this review and when this information will be made public? WWDA, along with a number of other stakeholders provided input to this process, yet has not been able to source a copy of any report or documentation detailing the outcomes of the review. Whilst WWDA appreciates that the Review commenced in the term of the previous Government, the fact that the current Government is citing evidence from this ‘comprehensive review’ in its above response to the UN Beijing+15 process suggests that the Australian Government has access to the information gathered during the Review. In view of the fact that WWDA has received support for its submissions and reports on sterilisation from various UN bodies and a wide range of international organisations, WWDA anticipates that the review will have canvassed international information.

In the interests of Government transparency WWDA requests that this Review Report be made publicly available on your website, and in addition requests a copy of the Review Report.

2. The Australian Government’s response states that the review indicated a decline in the sterilisations of children with an intellectual disability since the 1997 report¹ to “very low numbers”. WWDA is deeply concerned at this response. Clearly, sterilisation of minors (regardless of the number) is a fundamental breach of a child’s human rights, a violation of their right to bodily integrity and a clear contravention of a number of human rights treaties to which Australia is a party. It must also be made clear here that gender and disability go hand in hand when sterilisation in family law is examined - the overwhelming majority of sterilisations and certainly all the cases heard by relevant Australian courts and tribunals involve girls with intellectual impairments. WWDA requests clarification from the Australian Government as to what “very low numbers” actually means. Specifically, we seek quantification and specific data on:

- the number of applications sought for sterilisation of minors for the period 1997-2009 broken down by year and by jurisdiction;
- the number of sterilisation procedures performed on minors for the period 1997-2009 broken down by year and by jurisdiction.

WWDA is very concerned that some procedures which effectively result in sterilisation, may not be actually named as “sterilisation”. WWDA therefore requests that the data include all procedures which do result in sterilisation – including tubal ligation, total hysterectomy, and partial hysterectomy.

3. The Australian Government’s response to the UN Questionnaire states that ‘evidence’ indicates that alternatives to sterilisations are ‘increasingly available and seem to be successful in the most part’. WWDA requests information from the Australian Government that demonstrates this ‘evidence’ along with detailed information on what evaluation the Government has conducted to inform its position that these alternatives to sterilisation are “successful in the most part”.

4. The Government’s response identifies the difficulty in “being definitive” due to limitations in information yet goes on to assert that existing processes to authorise sterilisation procedures “appear” to be working adequately. WWDA questions how the Government can make such an assertion in the absence of reliable information. WWDA therefore requests detailed information from the Government which demonstrates ‘adequacy’ of the existing processes to authorise sterilisation procedures.

¹ Nowhere in Australia’s response does it reference, cite or explain what the ‘1997 report’ is. WWDA assumes the ‘1997 report’ refers to Brady, S. & Grover S. (1997) *The Sterilisation of Girls and Young Women in Australia - A legal, medical and social context*. Report commissioned by the Federal Disability Discrimination Commissioner for the Human Rights and Equal Opportunity Commission.

WWDA is deeply concerned at the Australian Government's apparent indifference to the ongoing practice of sterilisation of children [girls] with disabilities. In its response to the UN Questionnaire on the implementation of the BPFA, the Australian Government concedes that children [girls] with disabilities continue to be sterilised in this country. This practice continues despite strong condemnation of 'non-therapeutic'² or 'forced'³ sterilisation from many sources including women's organisations, disability rights organisations and international and national human rights bodies.⁴ It is now more than four years since the UN Committee on the Rights of the Child (CRC) in considering Australia's report under Article 44 of the CRC (Fortieth Session), encouraged Australia to: '*prohibit the sterilisation of children, with or without disabilities...*'.⁵ Yet the Australian Government has failed to act on this recommendation.

The Australian Government has ratified the Convention on the Rights of Persons with Disabilities (CRPD) which contains specific articles related to the rights of children and the right to family, and at Article 23 states that people with disability have a right to retain their fertility. These articles 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. No tribunal, court, parent or guardian has the right to authorise sterilisation of minors. Sterilisation of minors must be prohibited except where there is a serious threat to life or health.

The Australian Government has a responsibility to develop national policies and legislation that conform to its human rights obligations as set out in the CESC⁶, CRPD⁷, CEDAW⁸ (and the other international human rights treaties it has ratified) along with the various international declarations and consensus documents to which it is a party.

It is clear that successive Australian Governments have, to date, failed consistently in their obligations to respect, protect, and fulfil the rights of girls with disabilities - who still experience, and face a serious threat of forced sterilisation. In failing to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life, the Australian Government is continuing to deny girls with disabilities their human rights and fundamental freedoms.

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. The Australian Government asserts that it is committed to '*work to promote human rights and the fundamental equality of all people*'⁹, however, it appears that this does not include protecting the fundamental right of girls with disabilities to bodily integrity.

² 'Non-therapeutic sterilisation' is sterilisation for a purpose other than to 'treat some malfunction or disease': Secretary, Department of Health and Community Services v JWB and SMB, 1992, 175 CLR 218; 106 ALR 385.

³ 'Forced sterilisation' refers to the performance of a procedure which results in sterilisation in the absence of the consent of the individual who undergoes the procedure. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to health or life.

⁴ See for example: Committee on the Rights of the Child, General Comment No 9 (2006): The Rights of Children with Disabilities, UN Doc CRC/C/GC/9 (2007). See: <http://www.ohchr.org/english/bodies/crc/comments.htm>; Committee on the Rights of the Child, Concluding Observations: Australia, UN Doc CRC/C/15/Add.268 (2005) [46(e)]; Committee on Economic, Social and Cultural Rights (1994) Persons with Disabilities: CESC General Comment 5 (31). Eleventh session, 1994. See: <http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d>

⁵ Committee on the Rights of the Child, Concluding Observations: Australia, UN Doc CRC/C/15/Add.268 (2005) [46(e)].

⁶ International Covenant on Economic, Social and Cultural Rights

⁷ Convention on the Rights of Persons with Disabilities

⁸ Convention on the Elimination of All forms of Discrimination Against Women

⁹ Hon Robert McClelland (Attorney-General) Correspondence to Women With Disabilities Australia (WWDA), 27 August, 2009.

WWDA is of the view that in order to protect the rights of girls with disabilities, uniform national legislation is required which prohibits the non-therapeutic sterilisation of minors in the absence of a threat to health or life.

Along with the information we have requested in this letter, we urge the Australian Government to act under its external affairs power to legislate to prohibit non-therapeutic sterilisation of minors unless there is a serious threat to health or life.

This letter has been endorsed by the organisations and individuals listed in the attached schedule.

We look forward to your earliest response.

Yours sincerely



Carolyn Frohmader
Executive Director



Sue Salthouse
President

- cc. Ms Navanethem Pillay, UN High Commissioner for Human Rights
Mr. Alex Van Meeuwen, President, UN Human Rights Council
Mr. Ron McCallum, Chairperson, UN Committee on the Rights of Persons with Disabilities
Dr Tom Shakespeare, Department of Violence and Injury Prevention and Disability, World Health Organisation
Mr Graeme Innes, Disability Discrimination Commissioner, Australian Human Rights Commission
Ms Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission
Hon W.R. Shorten, Parliamentary Secretary for Disabilities & Children's Services
Hon Nicola Roxon, Minister for Health & Ageing
Hon Tanya Plibersek, Minister for the Status of Women
Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs

Schedule

Endorsements

This letter has been endorsed by the following organisations and individuals:

Organisations (Australia)

2020women Incorporated
Advocacy for Inclusion (ACT)
Advocacy Tasmania Inc
Asylum Seekers Resource Centre (ASRC)
Australasian Network of Students with Disabilities (ANSWD)
Australia Pacific Islands Disability Support Limited (APIDS)
Australian Federation of Disability Organisations (AFDO)
Australian Women's Health Network (AWHN)
Australian Women's Health Nurse Association Inc
Australian Womensport and Recreation Association Inc (AWRA)
City of Rockingham (WA)
Community Care, Community Wellbeing Group, Eurobodalla Shire Council (NSW)
Deaths in Custody Watch Committee of Western Australia Inc.
Disability Advocacy Service Alice Springs (NT)
Ethnic Child Care Family and Community Services Co-operative Ltd
Family Planning NSW
Family Planning QLD
Fitzroy Legal Service (VIC)
HC Harrison Consultants Pty Ltd (SA)
Hobart Women's Health Centre (TAS)
Human Rights Law Resource Centre
Immigrant Women's Support Service (QLD)
Inner West Disability Forum (NSW)
Mary Mackillop Outreach Sydney (NSW)
National Association of Community Legal Centres (NACLC)
National Council for Single Mothers and Their Children (NCSMC)
Network of Immigrant and Refugee Women of Australia Inc. (NIRWA)
People With Disabilities (WA) Inc
People with Disability Australia (PWDA)
Physical Disability Australia (PDA)
Public Interest Law Clearing House (PILCH) (VIC)
Queensland Centre for Intellectual & Developmental Disability (QCIDD)
Queensland Parents for People with A Disability Inc (QPPD)
Queenslanders with Disability Network (QDN) Inc
Queenslanders with Disability Network Inc
Sexual Health information networking & education SA Inc (SHine SA)
STAR Victoria Inc
Toora Women Inc (ACT)
United Nations Association of Australia, Status of Women
Victorian Women with Disabilities Network (VWDN)
Villamanta Disability Rights Legal Service Inc. (VIC)
Women's Activities and Self Help (WASH) House (NSW)

Women's Health NSW
Women's Electoral Lobby Australia
Women's Health Goulburn North East (NSW)
Women's Health in the North (VIC)
Women's Health South (TAS)
Women's International League for Peace and Freedom (Australia)
YWCA Australia

Organisations (International)

Access Tourism New Zealand (NZ)
Centre for Disability Studies, University of Leeds (UK)
Citizens' Constitutional Forum (FIJI)
Disabled Peoples' International (CANADA)
Disabled Peoples' International Europe (ITALY)
European Disability Forum (BELGIUM)
femLINKPACIFIC (FIJI)
Life Haven Inc (PHILIPPINES)
Maryland Disability Law Center (USA)
Society for Disabled Women Pakistan
U.S. Social Forum (USSF) - Disability Justice Committee (USA)
Zimbabwe Women with Disabilities in Development (ZWIDE)

Individuals

Alice Trott
Anuradha Mundkur, Independent Consultant (Gender and Development), (SA)
Assoc. Prof. Lee Ann Bassar (VIC)
Cheryl O'Brien (NSW)
Chris Brophy (TAS)
Conor Brian Scott (REPUBLIC OF IRELAND)
David Webb (VIC)
Dr Kristy Muir, Disability Studies and Research Centre, University of NSW
Dr Paul Levett (TAS)
Faye Druett (NSW)
Jan Jones (VIC)
Janet Price, Liverpool (UK)
Jill Fowler (SA)
Joanne Merrigan (QLD)
Julie Viney (SA)
Karen Gurney (VIC)
Karen McQuigg (VIC)
Kirsty Campbell (SA)
Leonie Davey (VIC)
Madge Scerha (QLD)
Margherita Coppolino (VIC)
Mary.Ballantine (WA)
Miss Fiona Johnstone (VIC)
Ms Bernadette Scalora (QLD)
Ms Val Johnstone (VIC)
Natalie Tomas (VIC)

Nola Buck (NSW)
Robyn James
Rose Cole (NSW)
Shawna Draxton
Steve Traynor
Theresa Bates (QLD)
Therese O'Malley (WA)
Toni-maree Rugen (TAS)
Trevor Harrison (SA)