

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S43 of 2019

No. S44 of 2019

No. S45 of 2019

BETWEEN:

The Queen

Appellant

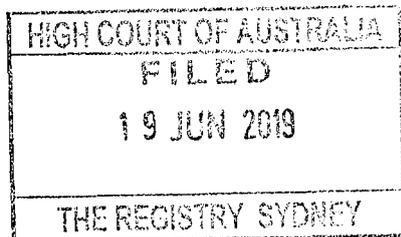
and

A2

Kubra Magennis

Shabbir Mohammedbhai Vaziri

Respondents



**APPELLANT'S NOTE ON WORLD HEALTH ORGANISATION'S
RECOMMENDATIONS**

Part I:

1. The appellant certifies that this note is in a form suitable for publication on the internet.

Part II:

2. On 4 May 1994, the Minister reading the Crimes (Female Genital Mutilation) Amendment Bill 1994 (NSW) ("the Bill") for a second time in the New South Wales Legislative Council said:¹

"The practice has been condemned at an international level. The World Health Organisation has recommended that governments adopt clear national policies to abolish the practice."

3. At the hearing of these appeals on 12 June 2019, the appellant was granted leave to file a note outlining the relevant recommendations of the World Health Organisation in existence at the time of the Second Reading Speech for the Bill in 1994.

¹ Legislative Council, *Hansard*, 4 May 1994 at 1859 (Joint Book of Authorities (JBA) 762).

Actions of World Health Organisation in relation to female genital mutilation

4. In 1979, a seminar on “Traditional Practices Affecting the Health of Women and Children” was held in Khartoum in association with the World Health Organization Regional Office for the Eastern Mediterranean. The topic of “female circumcision” was discussed.² Two papers that were presented described types of female circumcision.³ The first, regarding the practice of female circumcision in Egypt, is recorded as saying:

“from field work done recently, three types of circumcision could be delineated:

1. Sunna type in which the clitoris is snipped.
2. Second type in which the labia minora and part of clitoris are removed.
3. Total removal of clitoris and labia.”

5. The second paper, delivered by a “WHO Temporary Adviser” from the Ministry of Health in Somalia “cited the different forms of circumcision as”:

- “1. Mild Sunna
2. Modified Sunna
3. Partial or total clitoridectomy
4. Infibulation (Pharaonic female circumcision).”

6. The seminar resulted in the following recommendations:⁴

- “(i) Adoption of clear national policies for the abolition of female circumcision.
- (ii) Establishment of national commissions to coordinate and follow up the activities of the bodies involved including, where appropriate, the enactment of legislation prohibiting female circumcision.
- (iii) Intensification of general education of the public, including health education at all levels, with special emphasis on the dangers and the undesirability of female circumcision.
- (iv) Intensification of education programmes for traditional birth attendants, midwives, healers and other practitioners of traditional medicine, to demonstrate the harmful effects of female circumcision

² The terminology of “female genital mutilation” (as opposed to “female circumcision”) became prevalent in the 1980s. The Inter African Committee on Traditional Practices Affecting the Health of Women and Children proposed the change in terminology in 1990: see World Health Organisation, *Female genital mutilation: An overview*, 1998 at 2-3, 60-61. Relevant portions of the document are available at: <https://apps.who.int/iris/handle/10665/42042>

³ World Health Organization, Regional Office for the Eastern Mediterranean, “Seminar on Traditional Practices Affecting the Health of Women and Children”, Khartoum, 10-15 February 1979 at 10, 14. Document available from World Health Organisation at: <https://apps.who.int/iris/handle/10665/254379>

⁴ Ibid at 24-25.

with a view to enlisting their support along with general efforts to abolish this practice.”

7. It appears that these recommendations were endorsed by the World Health Organisation in public statements during the 1980s. A publication of the World Health Organisation in 1998 (*Female genital mutilation: An overview*), records, in its discussion of “WHO policies and activities”, that:⁵

“In August 1982, WHO made a formal statement of its position to the United Nations Commission on Human Rights, endorsing the recommendations of the Khartoum seminar. WHO’s main points were:

- that governments should adopt clear national policies to abolish the practice of female genital mutilation, and to inform and educate the public about its harmfulness; ...”

The Queensland Law Reform Commission extracted, in its report, part of a similar “position statement” from 1984.⁶ The appellant has been unable to locate copies of the 1982 or 1984 statement referred to.

8. In January 1994, the Director-General of the World Health Organisation provided to the Executive Board of the World Health Organisation a report entitled “Maternal and child health and family planning: Current needs and future orientation”.⁷ The World Health Assembly in 1993 had requested that the Director-General submit such a report to the Executive Board.⁸ In the report, the Director-General invited the Executive Board to consider a draft resolution calling for, *inter alia*, the establishment of “national policies and programmes that will effectively abolish female genital mutilation”.
9. On 25 January 1994, the Executive Board of the World Health Organisation resolved (EB93.R10), in terms substantially consistent with those suggested by the Director-General:⁹

⁵ World Health Organisation, *Female genital mutilation: An overview*, 1998 at 59-60.

⁶ Queensland Law Reform Commission, *Female Genital Mutilation*, Report No. 47 (September 1994) at 53-54 (JBA 852-853).

⁷ Document available at: <https://apps.who.int/iris/handle/10665/171782>

⁸ Forty-Sixth World Health Assembly, Resolution WHA46/18 (12 May 1993). The material from the Family Law Council set out the 1993 recommendation that the Director-General report on these issues, but seems not to refer to the material from 1994 in connection with that report, as submitted, and the response of the Executive Board: see Discussion Paper at [4.09]-[4.10] (JBA 608); Report at [4.09]-[4.10] (JBA 669-670).

⁹ Resolution available at: <https://apps.who.int/iris/handle/10665/172016>

“The Executive Board,

Having considered the report by the Director-General on maternal and child health and family planning: current needs and future orientation,

...

3. RECOMMENDS to the Forty-seventh World Health Assembly the adoption of the following resolution:

The Forty-seventh World Health Assembly,

...

Reaffirming its support for the United Nations Convention on the Rights of the Child, and United Nations Economic and Social Council resolution 251 of 1992 on traditional practices affecting the health of women and children;

Recognizing that although some traditional practices may be beneficial or harmless, others, particularly those relating to female genital mutilation and early marriage and reproduction, cause serious problems in pregnancy and childbirth and have a profound effect on the health and development of children, including child care and feeding, creating risks of rickets and anaemia;

...

2. URGES all Member States:

(1) to assess the extent to which harmful traditional practices affecting the health of women and children constitute a social and public health problem in any local community or sub-group;

(2) to establish national policies and programmes that will effectively, and with legal instruments, abolish female genital mutilation, marriage and childbearing before biological and social maturity, and other harmful practices affecting the health of women and children; ...”

10. The Forty-Seventh World Health Assembly, in turn, adopted the resolution recommended by the Executive Board on 10 May 1994 (WHA47.10).¹⁰

11. In the appellant’s submission, the matters set out above reflect the World Health Organisation’s position on female genital mutilation, to which reference was made in the Second Reading Speech. That position emerged following the recommendation in 1979 that “clear national policies” be adopted “for the abolition of female circumcision”. The expression of the World Health Organisation’s position that was most temporally proximate to the Second Reading Speech was the resolution of the Executive Board of the World Health Organisation in January 1994 that member

¹⁰ Resolution available at: <https://apps.who.int/iris/handle/10665/177378>

states be urged “to establish national policies and programmes that will effectively, and with legal instruments, abolish female genital mutilation”.

Dated: 19 June 2019



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