1 November 2012

Committee Secretary
Senate Standing Committee on Community Affairs
P.O. Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

This is my submission to your Committee's inquiry on “the Involuntary or Coerced Sterilization of People with Disabilities in Australia”. Let me begin by telling you about a particular instance of involuntary sterilization of which I am aware that happened in Queensland in 2007. The victim was a young lady called who is a friend of my fiancee and I. was recently divorced and had two children whom she had brought up who were of primary school age.

A person with this condition superficially resembles someone with Down's Syndrome, but has a normal level of intelligence. had been diagnosed with Down's Syndrome and believed she had Down's Syndrome, but was obviously intelligent and self-reliant.

Some weeks after we first met her new social worker with the Health Department arranged for to be made a client of the “Office of the Adult Guardian”. A hearing was held in Brisbane in absence in which she was deprived of her civil rights, and the “Adult Guardian” and Public Trustee were appointed to manage her affairs. The “Adult Guardian” promptly gave away custody of two children, whom we had met.

Next, a Health Department doctor told that she had cervical cancer and would die within a year. The doctor persuaded her to have a hysterectomy. I know of another client of the “Adult Guardian” who was told that she would die with one year and this was entirely false. The doctor later wrote a letter saying that she did not have a terminal illness. Apparently, doctors were being instructed by the “Adult Guardian” to lie to clients and tell them they were terminally ill, so they would consent to things like giving up custody of their children or hysterectomies that no-one in their right mind would consent to.

I understand the argument that there are some people with disabilities who are not able to look after children. If they have children, their parents will end up having to look after their children. Also, their children may have the same disability as them, and it will end up with the government having to pay for health care. The problem is that involuntary sterilization is open to abuse, and people are being caught up in it who ought not to be affected.

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As if this is not bad enough, these tribunals are not bound by rules of evidence, and are having people sterilized and euthanized based on gossip.

For example, there is not a shred of evidence that has Down's Syndrome, but she is being treated by the guardianship tribunal as though she had this condition. There are people who are obviously not mentally retarded, who are being dealt with by guardianship tribunals, stripped of their civil rights, and locked up in "Dickensian boarding houses".

There are a number of measures within the legislative power of the Commonwealth that could be taken to prevent these sort of things happening. First, using the Commonwealth's judicial power, the Commonwealth could ban doctors from lying to patients. This could be done on the basis that if doctors lie to patients, patients will give incorrect testimony to Commonwealth courts, and it will result in courts making wrong decisions.

Secondly, the United Nations Convention for the Protection of Persons with Mental Illness insists that patients who appear before guardianship tribunals or mental health tribunals have legal representation, no matter what the circumstances. In practice, such patients almost never have legal representation. The Commonwealth could enact that those patients are entitled to legal aid to be paid out of the Consolidated Revenue.

Third, there could be a law, based on the Commonwealth's judicial power, banning people from writing reports saying a patient is mentally incapacitated, unless the report gives all the facts on which the conclusion is based, including the exact words used by the patient. This used to be a rule of evidence, but is no longer followed, since tribunals are not bound by rules of evidence. Had this rule been followed, the guardianship tribunal would not have been able to take away rights, as there is nothing a doctor could say in a report to justify a conclusion that she has Down's Syndrome.

Fourth, there could be a law based on the Commonwealth's treaty power banning operations which could result in sterilization, except with the patient's consent, or by order of a court or tribunal that has found the patient to be suffering from certain genetic diseases such as Down's Syndrome. Such a law would oblige the court to keep a record of the DNA test which resulted in the court believing the person to have the genetic disease.

Yours faithfully,

Geoff Bird