

The Right to Privacy for Older People- A Legal Perspective

Presented by Ms Kim Boettcher at IFA 12th Global Conference on Ageing

Attorney, The Aged-care Rights Service Inc. Sydney, Australia



Health, Security and Community
10-13 June 2014, HICC Hyderabad India



What is Privacy?

Universal Declaration of Human Rights

Article 12:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Overview

- Health and medical records
- Legal and financial records
- E-records
- Physical privacy
- Privacy over personal information



All central to respect and dignity of older people

Health and Medical Records

Staff at an aged care home disclose confidential medical diagnosis and medication details to relatives without consent of the older person.

An emergency call system operator gives confidential records to a retirement village company.

The law?

The reality?



Legal and Financial Records

A retirement village company asks for copies of all residents' wills by written notice forthwith.

A paid carer asks for financial records and takes over withdrawing money from the ATM every Thursday.

The law? An Australian legislation example

The reality?

The result?



E-records

Staff assist a resident to access the internet and then stand over the resident whenever he sends emails, updates his insurance policies and so on.

The law?

The reality?



Physical Privacy

An older person at a hostel is moved between wards partially dressed and is usually lifted onto his bed with a hoist half naked in an open ward.

The law?

The Reality?



The Importance of Dignity

Older people find it easier to talk about the absence of dignity by reference to violations to the right to privacy and dignity.

An Australian example- filming older people and media

Quakers Hill Fire
Sydney



Privacy over personal information

Does a home carer paid to carry out cleaning have the right to ask an older person about their sexuality, gender, ethnicity, or past personal history?

The law?

The reality?



The Law



- Patchwork of national laws- examples from Australia, United States, India, Canada and United Kingdom
- ‘Soft Law’ represented by Universal Declaration of Human Rights, MIPAA 2002 and MIPAA 2012 Review
- A proposed United Nations Convention on the Rights of Older People

Corporations, institutions and individuals must be accountable for violations against older people.

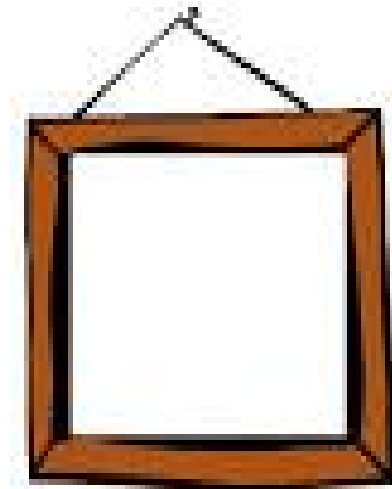
Conclusion

Violations of the privacy of older people should be **framed** as:

- breaking the law where appropriate
- elder abuse
- substandard practice

What should happen:

- complaints commissions should act
- licensing systems should be in place
- lawyers should run civil and criminal cases based on national and international legal instruments.



Final Comment

Why aren't legal systems working?



- Older people are too vulnerable to litigate
- Attorneys in different jurisdictions are not working together enough
- Attorneys are not making use of pro bono barrister resources for elder law litigation
- Complaints commissions have too much red tape
- International standards are not in place

Please stay in touch:

Ms Kim Boettcher BA.LLB.GradDipLaw(Cardiff)

KBoettcher@tars.com.au

