

Submission
No 74

INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Name: Name suppressed

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Partially Confidential

The Hon. Greg Donnelly and Committee,
Inquiry into Elder Abuse

Dear Committee,

The incarceration and looting of
A case study submission how hospitals & courts are being used for elder abuse and inheritance schemes.

Opening statement

The NSW government has attempted to protect some of the most important human and civil rights in Acts like the *Health Records and Information Privacy Act* schedule 1, the *Guardianship Act* s.33a and s.40, and the *Crimes Act* s.307A s.307B s.307C. But these laws are too often being ignored by social workers, hospital and Tribunal staff illegally acting on false information from a third person who is seeking control. The elderly are at special risk of this because social workers and tribunals are more willing to believe unsubstantiated stories that older persons are demented, aggressive, or in social need of being medically restrained and/or put into nursing homes (insane asylums).

Perpetrators giving a false medical history and making unauthorised requests for elderly people are too often able to cause hospitals and tribunals to use drugs and physical restraints to rob the elderly person of their civil rights and use of their assets. Alleging that the victim is mentally ill or is aggressive and already lacks capacity have proven to be effective means of convincing social workers, hospitals, and tribunals that they should act without need of asking the victims for their consent or if any of the stories are true.

Victims of such assaults and their chosen carers are not normally able to access the records to prove when hospital and tribunal staff have been influenced and acting on unauthorised hearsay. That is because the staff have authority to decide who is allowed to their records. I too was denied access to my medical records and to my mother's although I was her lawful "person responsible". Guardianship staff also lied to the ADT when it asked for access, and I only got the hospital and tribunal records by happen-stance during Supreme Court litigation which I expect many perpetrators don't risk pressing.

To date neither governments nor hospitals have acknowledged the problem of inheritance schemes. To protect people and especially the elderly from criminal and wrongful medical assault, New South Wales needs an inquiry to discover how such abuse has been happening, understand why evidence has not previously been seen, and why the current safeguards have been insufficient. This submission provides a case study and a plead asking you to voice public interest for the Court of Appeal to hear my appeal against the miscarriage of justice which my late mother and I have suffered in the Supreme Court.

Legal principles & civil rights

I draw your attention to the still unused NSW laws against this kind of manipulation by means of false or misleading application, information, or documents; NSW Crimes Act section 307A, s.307B s.307C

I draw your attention to these related statements:

"Consent to the general nature of a proposed operation, procedure, or treatment must be obtained from a patient. Failure to do this could result in legal action for assault and battery against a practitioner who performs the procedure." - *NSW Health Policy Directive PD2005_406, published 27-Jan-2005.*

"Many restrictive practices are what the law calls assault, false imprisonment or detainee.",
"False imprisonment is confining a person to a particular space, for example locking a person in a house or room or using a tray table to keep the person in a chair. " - *NSW Civil & Administrative Tribunal, Guardianship Div.*

"Doctors need to obtain implied or direct consent before they touch patients, otherwise their actions could constitute assault. To avoid legal action for assault or battery (trespass to the person), doctors and other health professionals must obtain a patient's free consent to the 'nature'

of what is proposed before they undertake any medical procedure or treatment (Chatterton v Gerson [1980] 3 WLR 1004).

This applies even where the proposed treatment would clearly benefit the person and a failure to treat may result in harm that could have been avoided. The principle applies not only to treatment but also to diagnostic and investigative procedures.

Convenience to the patient or surgeon (not having to start the operation again another day after an unusual finding) is not an exception to this rule (Murray v McMurchy [1949] 2 DLR 442). Free consent to medical treatment and experimentation is also a human rights obligation (see Article 7 International Covenant on Civil and Political Rights 7) (ICCPR).” - *Hot Topics: legal issues in plain language*, published by the Legal Information Access Centre (LIAC).
http://legalanswers.sl.nsw.gov.au/hot_topics/pdf/health_64.pdf

I draw your attention to a NSW Police assertion

http://www.police.nsw.gov.au/community_issues/domestic_and_family_violence/elder_abuse
that elder abuse frequently includes deprivation and restrictions of the personal right to self-determination, personal freedom, social contact, freedom of movement, economic and financial freedom, access to medical treatment, provision of safe and clean living conditions and access to external support networks.

Case Study: