



Rehabilitation Studies Unit  
The University of Sydney



# The Impact of Legislation on Health Services in Australia

N.Monaghan<sup>1</sup>, I.Cameron<sup>1</sup>

<sup>1</sup>Rehabilitation Studies Unit, Faculty of Medicine, The University of Sydney

---

Funded by a NHMRC program grant – Transition Care: Innovation and Evidence (TIE)



Rehabilitation Studies Unit  
The University of Sydney



Presentation  
Menzies Centre for Health Policy  
4th Annual Emerging Health Policy  
Research Conference

19 August 2009  
Sydney

---



**Age discrimination** can directly influence the quality of health care that older people receive (Gunderson et al, 2005).

Greater choice and control for older people should be key components of measures to reduce ageism in health care.



# **How legislation impacts older people receiving health care**



# Topics

- benefits of effective complaints processes
- existing law governing complaints in New South Wales
- effect of law reform on complaints within another jurisdiction
- current levels of complaint about health care services



# Other legislation relevant to older people...

The **Age Discrimination Act 2004** (Cth) was enacted as a catalyst for attitudinal change and to address individual cases of age discrimination throughout Australia (AHRC 2007).

*"Ageing is like climbing a mountain. You get out of breath but you have a magnificent view"*

*(Ingmar Bergman)*





**...but there are crises and risks**



Health services are an essential component in restoring function to older people but...





# Pressure to Ration Health Services

Increases in - the numbers of “old old”  
- health costs  
- frequency of dementia ,  
Abbey (2003).

Global financial crisis is expected to exacerbate these pressures, Marmot & Bell (2009).



## Standard of Care.

A duty to provide fair and equitable treatment

A standard of care must be met.

When things go wrong...  
what can an older person do?



## **Breach of Care**

can a client lodge a complaint



## Complaints – the Good News

A measure of the ethical provision of Health services is the ability of clients to lodge complaints.

The complaint process can also be a means of improving accountability and identifying shortcomings in the provision of services.



## Complaints and the Law

The legislation governing complaints about health care should apply equally for all members of society including older people.



## Accessing the Complaints Process

However lodging a health care complaint can be difficult for a complainant, especially for some vulnerable groups Peters (2008).

Older people often lack the energy to be forthright advocates for their own interests, especially when they need Health services.



## Materials and Methods

This presentation considers the impact of New South Wales legislation on older people's ability to lodge a complaint about their health care.

The statutory provisions affecting existing mechanisms for lodging a complaint about a health practitioner or service were analysed with a view to increasing access for older people.



## Results

- i. Avenues for lodging a complaint
- ii. Legislative issues
- ii. Impact on older people
- iii. Possible improvements
- iv. Opportunities for change
- v. Time for change



## Results

### i. Avenues for lodging a complaint

In New South Wales, Australia, avenues for lodging a complaint are provided via

- the Health Care Complaints Act 1993,
- the Medical Practice Act 1992
- and/or **any one or more** of the other

11 health registration Acts (Public Health Act 1991 s10AA).



Under s10AA of the Public Health Act  
**"health registration Act"** means any of the following Acts:

1. *Chiropractors Act 2001*
2. *Dental Technicians Registration Act 1975*
3. *Dental Practice Act 2001*
4. *Medical Practice Act 1992*
5. *Nurses and Midwives Act 1991*
6. *Optical Dispensers Act 1963*
7. *Optometrists Act 2002*
8. *Osteopaths Act 2001*
9. *Pharmacy Act 1964*
10. *Physiotherapists Act 2001*
11. *Podiatrists Act 2003*
12. *Psychologists Act 2001.*



Additional statutes involved include the Disability Act and the Public Health Act.

The avenues for complaint are characterised by *legislative complexity*

Only two statutes, the Medical Practice Act and the Nurses and Midwives Act 1991, contain provisions relating to performance assessment (Health Care Complaints Act s13).



## ii. Legislative Issues

Older people are *disproportionately disadvantaged* by legislative complexity

Their increased likelihood of multiple co-morbidities means that more than one of the health registration Acts could be important in their complaints.



## **Disproportionate impact**

example:

older man undergoing dental surgery.

After surgery he suffered severe pain which went untreated for a prolonged period

until his carer made representations on his behalf to nursing and medical staff.



### **iii. Possible Solutions**

However these statutes contain parallel provisions

Therefore simplification of the legislation relating to standards in the provision of services is feasible.



### **iii. Possible Solutions**

#### **a. Simplify and Rationalise the Legislation**

An example of simplification would be the consolidation of the current 12 health registration Acts into at most two statutes.



Add performance provisions for all practitioners



## iii. Possible Solutions

b. Ensure Access to the Complaints process

Legislative Improvement can **Enhance  
Access to Complaint Mechanisms**

example...

Residential Aged Care from the  
Commonwealth jurisdiction...



Under the previous Complaints Resolution Scheme (CRS) 1,260 complaints were received during the 2005/06 financial year

CRS was limited in its powers under the legislation to only accept **substantiated** complaints



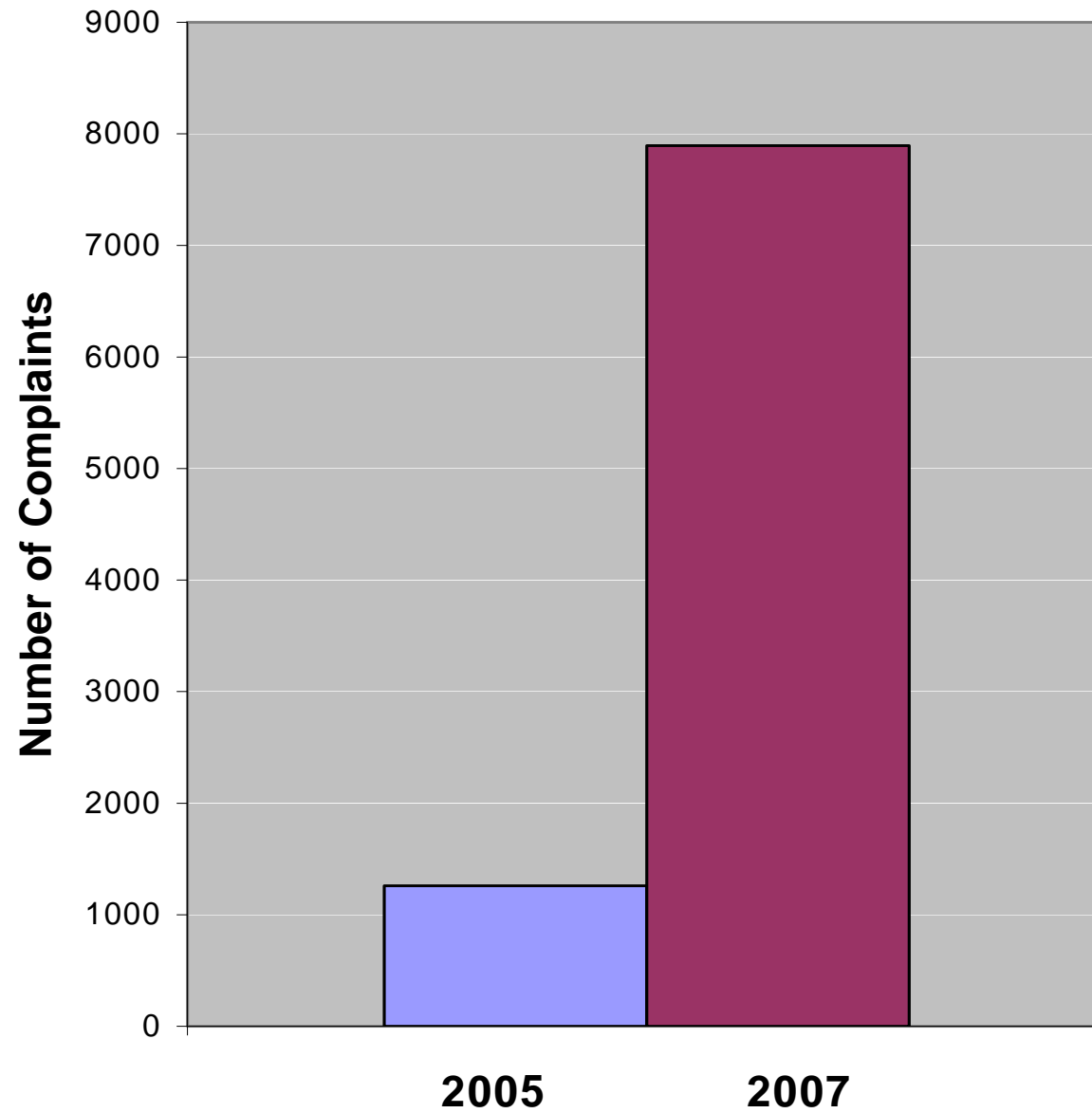
replaced by the  
Complaints Investigation Scheme (CIS)

which can accept complaints about  
**potential breach** of approved providers'  
responsibilities



The “new” Complaints Investigation Scheme (CIS) handled 3,947 cases in just 6 months - July to December 2007,  
Office of Aged Care Quality and Compliance (2007).

These included 418 reportable assaults.





## Tip of the Complaint Iceberg?

A more equitable complaint mechanism  
could result in many more Health complaints



## **iv. Opportunities for Change**

A Parliamentary Inquiry,

“The Operation of the Health Care Complaints Act 1993 (Inquiry)” will be seeking further submissions late 2009/2010.



## iv. Opportunities for change

The Inquiry's first particular term of reference is the identification and removal of *any unnecessary complexities* in the New South Wales health care complaints system;



## Other Countries

The UK Department of Health intends to introduce a new unified complaints system for health and social care, to make it easier for people to complain when things go wrong.



## Conclusion

Legislative rationalisation could assist older people to enforce their rights to equitable health care.

Rationalisation could also provide an opportunity to improve the legislation – for example to incorporate performance clauses more generally.



## Conclusion

Complaint mechanisms  
are affected by legislative complexity.

This complexity greatly impacts on older  
people.



## **Conclusion**

Simplification and rationalisation of the statutes is feasible

The current Parliamentary Enquiry indicates that an opportunity for change is available now



## References/Literature Cited

Abbey, J. (2003) Is Health of older people worthwhile? Keynote address at 13th National Conference of the Australasian Health Nurses' Association. *Journal of the Australasian Health Nurses' Association* 6(4):17-20.

Ellison, S, Schetzer, L, Mullins, J, Perry, J & Wong, K, The legal needs of older people in NSW, Law and Justice Foundation of NSW, Sydney, 2004 Ch 5. Health

Gunderson A, Tomkowiak J, Menachemi N, Brooks R. Rural physicians' attitudes toward the elderly: evidence of ageism? 2005 Jul-Sep;14(3):167-76.

Health Care Complaints Commission Annual Report for 2001–2002 (Health Care Complaints Commission, *The Complaint Guide*, p. 7)

Marmot, M & Bell, R (2009) How will the financial crisis affect health? *BMJ* 2009:338:b1314

Peters, A (2008) Council of Social Service of New South Wales. Comment on the Consultation Paper *Proposed Arrangements for handing complaints, and dealing with performance, health and conduct matters*.

<http://www.nhwt.gov.au/documents/National%20Registration%20and%20Accreditation/Proposed%20Complaints%20Arrangements/Council%20of%20Social%20Service%20of%20New%20South%20Wales.pdf>

Accessed 8 May 2009.

Parliament of New South Wales (2009) Operation of the Health Care Complaints Act 1993 (Inquiry)

<http://www.parliament.nsw.gov.au/prod/PARLMENT/committee.nsf/0/0444B0670BE451F7CA2574EB002C825F>

Accessed 26 May 2009.

Report on the Operation of the Office of Aged Care Quality and Compliance

1 July to 31 December 2007 <http://www.health.gov.au/internet/main/publishing.nsf/Content/9DDD72ER>