



AGED CARE COMMISSIONER

ANNUAL REPORT

1 JULY 2007 – 30 JUNE 2008



Australian Government

Office of the Aged Care Commissioner
Level 4, 12-20 Flinders Lane, MELBOURNE VIC 3000
Locked Bag 3, Collins Street East. VIC 8003
Tel: 1800 500 294, (03) 9665 8033, Fax: (03) 9663 7369
ABN: 83 605 426 759

The Hon Justine Elliot MP
Minister for Ageing
Parliament House
CANBERRA ACT 2600

Dear Minister

I hereby submit my Annual Report pursuant to my obligations under section 95A-12 of the *Aged Care Act 1997*. The report includes information related to the functions of the Aged Care Commissioner during the period 1 July 2007 to 30 June 2008.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rhonda Parker'.

RHONDA PARKER
Aged Care Commissioner

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CHAPTER 1. FOREWORD AND OVERVIEW

1.1 Commissioner's Foreword

This Annual Report marks the completion of the first full year of the operation of the Office of the Aged Care Commissioner (the Office) and the new arrangements prescribed by the changes to the *Aged Care Act 1997* (the Act) in May of last year.

It has been a busy year.

While the staff numbers are still small, they nevertheless have doubled in this reporting period. Extra office space had to be negotiated to accommodate the increased staff. New staff had to be trained and supported. New procedures had to be developed, applied, critiqued, improved, increased in sophistication. The jurisdiction outlined in the Act had to be interpreted, applied, and defended. Relationships with key stakeholders had to be established and nurtured. A new website had to be developed. Travel, when required in an investigation, was undertaken by members of the investigation team to wherever necessary across this vast country. A data management system had to be designed, developed and commissioned. Communication about the work of the Office through publications, comment pieces and conference addresses had to be prepared. Independent legal expertise had to be sourced and contracted.

All the while, as these requirements of a new regime were being established, a steady stream of cases arrived in the Office; firstly appeals against decisions of the Complaints Investigation Scheme (the Scheme), then, as parties chose to access the new provisions of the Act, approved providers and care recipients or their representatives lodged complaints to be investigated – complaints against the Secretary's processes, and complaints against the Aged Care Standards and Accreditation Agency (the Agency) or the conduct of an Agency assessor.

The workload has been steady and, during certain periods, difficult to manage with timeliness. I acknowledged to the sector that the timeliness with which we were able to respond to the caseload was a significant challenge in the first six months and I asked forbearance. Where delays were able to be predicted, we advised the parties involved.

With a national staff of eight, it has certainly been a year of challenge and industry.

This annual report details the work undertaken throughout the reporting period. While the core business of this Office is to examine administrative process and to ensure fairness in resolving complaints, the real motivation is to contribute to the quality of care and the provision of dignity and respect to all older Australians who receive an aged care service funded, at least in part, by the Federal Government. The work of this Office is dedicated to that end. It is also dedicated to the work of the many outstanding individuals in the aged care industry who seek to provide compassionate, professional care of the highest standard.

I'd like to thank the aged care providers, the peak body representatives and the consumer advocacy groups for the communication and rapport established throughout the year. We do not always agree, but I'm pleased to report that we are always able to discuss different points of view with respect and openness.

I'd like to thank the management and officers in the Office of Aged Care Quality and Compliance, (OACQC), the Scheme and the Agency for their involvement in the continuing evolution of the relationship between this Office and its role and their own role under the Act and the *Investigation Principles 2007* (the Principles).

I'd like to thank Professor Robin Creyke, Graeme Johnson and Rui de Lemos for the legal advice they have provided to this Office over the year. I'd also like to thank Professor John McMillan, the Commonwealth Ombudsman, for his advice and support to me and the work of this Office in its formative year.

I'd like to particularly acknowledge the work of my staff in the year that has just concluded. There was not a component of the work that did not grow as well as change. I'd like to pay tribute to the professionalism and dedication of each member of the team. I'm grateful for their work ethic, support and commitment to the shared vision and values of this Office.

Finally, I'd like to express my gratitude to the Minister, the Hon Justine Elliot, and the staff of her office for the support of the work of this Office. It has been appreciated.

I look forward to a coming year of consolidation and evolution of the role and functioning of this Office.

I've always felt a sense of privilege in working with older people, and this role continues that view. As the work and role of this Office evolves, may it be an effective driver of quality, along with others in the sector, so that older Australians receive the quality of care they deserve and which the community expects them to receive.

1.2 Overview

Internationally ageing populations are presenting numerous challenges to all levels of society. Along with the challenges come opportunities to develop new programs designed to meet the increasing need and enhance the lives of older people. While Australia is not the most rapidly ageing society, Australian Bureau of Statistics figures predict that 25 per cent of the population will be over 65 by 2056. The fastest growing sub-population is the group aged over 80 years. The number of people in this group will almost double in the next 20 years.

While disability and chronic illness are prevalent in older populations, many older people report a positive view of their health status. By far the majority of older people remain independent and continue to contribute to society in meaningful ways. Nevertheless, one in every four older people access some element of the aged care services available today (for the purposes of this document 'older' refers to those over 65 years of age). Wherever possible older people are supported in their choice to remain living in the community and are often assisted by informal caregivers (family and friends). While most people would prefer to stay in their own home it is important to recognise that, as the result of population changes, the number of older persons who do not have the support or who are unable to stay in their own home will continue to increase.

The *Aged Care Act 1997* (the Act) and the *Investigation Principles 2007* (the Principles) provide a package of measures designed to improve the quality of care and services in Australia's aged care service system. A proportion of older people receive community services through government-funded programs such as the Home and Community Care Program (HACC), Linkages, Community Aged Care Packages (CACPs) and the Extended Care at Home (EACH) program.

There are multiple reasons why some older people seek admission to residential aged care. Entitlement to residential care (either high care, low care or respite services), or a community-based service such as the EACH program and CACPs, is determined by Aged Care Assessment Teams (ACATs). A person must be assessed as eligible for any of these services before a subsidy is provided by the Australian Government.

In its 2007 report *Older Australia at a Glance*, the Australian Institute of Health and Welfare shows that the age and number of residents requiring high level care is increasing. The report also reveals that individuals are staying longer in residential aged care and at 30 June 2006, 21 per cent of residents had a length of stay of five years and over. This fact, together with the vulnerability of this population, differentiates this group from other health care users.

The Australian Government provides recurrent funding for each resident admitted to a residential care setting. The funding is formulated on a needs-based model, where the individual care needs of residents are comprehensively assessed. Approved providers must also satisfy accreditation requirements in order to receive government funding. The responsibility for assessing aged care services against the Accreditation Standards (the Standards) lies with the Aged Care Standards and Accreditation Agency (the Agency).

As part of the accreditation arrangements, aged care services are required to establish and maintain an internal system for dealing with comments or complaints from residents and/or their family and friends. In addition, the right to complain about any aspect of care or services is prescribed within the *Charter of Resident Rights and Responsibilities*.

Anyone experiencing difficulties with care and accommodation issues is encouraged to approach the service provider in the first instance and many complaints are resolved at this level. However, for a variety of reasons, some people prefer to access a complaints system external to that offered by the service provider. A national Complaints Resolution Scheme was established on 1 October 1997 to assist people who expressed concern about any aspect of the care or services provided by residential aged care services, CACPs and flexible care services.

On 1 May 2007 the complaint scheme changed from a model based on alternative dispute handling principles to one based on investigation. The Complaints Resolution Scheme became the Complaints Investigation Scheme (the Scheme). The changes were designed to improve the efficiency and effectiveness of complaint handling and introduced the concept of a Notice of Required Action (NRA) as a remedial and enforceable step prior to consideration of sanctions.

An NRA outlines the steps an approved provider must take to conform to the legislation and the timeframe necessary for the remedial steps to be taken to address any identified deficiencies in meeting their responsibilities.

Like its forerunner, the Scheme allows anyone to make a complaint about any issue that affects a person who is, or was, eligible to receive aged care services funded by the Australian Government and that may be a breach of an approved provider's legislative responsibility. Complaints to the Scheme can be made orally or in writing and can be dealt with on an open, confidential or anonymous basis.

The new legislation also established the role of Aged Care Commissioner (the Commissioner). Unlike its predecessor the Commissioner for Complaints, this role does not encompass responsibility for overseeing of the Commonwealth's complaint handling system.

CHAPTER 2. ABOUT THE OFFICE

2.1 Aged Care Commissioner's Role and Functions

The Commissioner holds a statutory appointment and is independent of the Department of Health and Ageing (the Department) and the Agency.

The Commissioner's functions are set out in Part 6 of the *Aged Care Act 1997* (the Act), section 95A (2) as follows:

- (a) *to examine decisions that are made by the Secretary under the Investigation Principles and are identified by those Principles as being examinable by the Aged Care Commissioner, and make recommendations to the Secretary arising from the examination;*
- (b) *to examine complaints made to the Aged Care Commissioner about the Secretary's processes for handling matters under the Investigation Principles, and make recommendations to the Secretary arising from the examination;*
- (c) *to examine on the Commissioner's own initiative, the Secretary's processes for handling matters under the Investigation Principles and make recommendations to the Secretary arising from the examination;*
- (d) *to examine complaints made to the Aged Care Commissioner about:*
 - (i) *the conduct of and accreditation body relating to its responsibilities under the Accreditation Grant Principles; or*
 - (ii) *the conduct of a person carrying out an audit, or making a support contact, under those Principles;*

(but not a complaint about the merits of a decision under those Principles) and make recommendations to the accreditation body concerned arising from the examination.
- (e) *to examine, on the Aged Care Commissioner's own initiative:*
 - (i) *the conduct of an accreditation body relating to its responsibilities under the Accreditation grant Principles; and*
 - (ii) *the conduct of persons carrying our audits, or making support contacts, under those Principles;*

and make recommendations to the accreditation body concerned arising from the examination.
- (f) *to advise the Minister, at the Minister's request, about matters relating to any of paragraphs (a),(b),(c), (d) and (e);*
- (g) *the functions (if any) specified in the Investigation Principles.*

2.1.1 Examinable Decisions

An aggrieved person or relevant provider who is dissatisfied about a 'relevant decision' may, within 14 days after being told by the Secretary about the decision, apply to the Commissioner for examination of the decision.

An aggrieved person means a care recipient of the relevant provider, or his or her representative, to whom a matter under investigation relates (Type A informant). For the investigation process the relevant provider means the approved provider to which the investigation relates.

A care recipient or representative may, within 14 days of being notified of the relevant decision, seek internal review by the Commissioner. Section 16A.21 of the Principles identifies relevant decisions as:

- A decision by the Secretary to cease investigating a matter.
- A decision by the Secretary that there has not been a breach of the approved provider's responsibilities.
- A decision by the Secretary not to issue an NRA.
- The terms/conditions of an NRA.

An approved provider may, within 14 days of being notified of the relevant decision, seek reconsideration by the Commissioner. Section 16A.22 of the Principles identifies relevant decisions as:

- A decision by the Secretary that there has been a breach of the approved provider's responsibilities.
- A decision by the Secretary to issue an NRA.
- A decision setting, adding or varying the conditions of an NRA.

2.1.2 Annual Report

Section 95A-12 of the Act relates to the provision of an Annual Report and states:

(1) The Aged Care Commissioner must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the Aged Care Commissioner's operations during the year.

2.2 The Office of the Aged Care Commissioner

The Office of the Aged Care Commissioner (the Office) has developed vision and mission statements. The vision for the Office is: *To be recognised as a leader in complaints management and in fostering excellence in public administration.* The mission statement is: *In collaboration with others, promote continuous improvement in the quality of aged care services for older Australians through leadership in complaint handling, by fostering excellence in public administration and delivering a service that is characterised by fairness, impartiality and balance.* This statement is designed to acknowledge and value the contribution of others and aims to reflect the commitment to professionalism of Office staff in the performance of all functions.

During the year the Office developed a range of policy documents to support its business processes and practices. These include:

- Service Charter
- Corporate Plan
- Business Plan
- Procedures Manual
- Risk Management Strategy
- Internal Complaints Mechanism
- Performance Indicators.

The Office has also developed satisfaction surveys for distribution and analysis from 1 July 2008.

The business processes and practices of the Office are guided by international complaints handling standards and are directed by best practice processes outlined by the Commonwealth and other Ombudsmen and Health Service Commissioners. The primary goal for the Office is to examine appeals and complaints in a thorough, objective, unbiased, transparent and timely manner and to support all recommendations and/or decisions with an explanation and sound reasons. A second aim is to continue to contribute to improving the quality of administrative practice and decision making. It is hoped that in doing these things the Office will continue to have a positive influence on the delivery of quality aged care services across Australia.

Towards the latter part of the financial year the Office expanded its existing premises to accommodate additional staff. To ensure maximum accessibility the Office maintains a free-call telephone number, 1800 500 294. The Office is located at Level 4, 12-20 Flinders Lane Melbourne and is open between 9-5 each weekday, except public holidays. The postal address is Locked Bag 3, Collins Street East, Vic 8003.

2.2.1 Budget

A budget of \$1.4M was allocated for the 2007-2008 financial year to support the establishment and operation of the Office. The salary for the Commissioner is set by the Remuneration Tribunal and is included in the \$907,000 allocation to meet salaries and on-costs. The allocation for operational costs included an amount for one off costs to meet the expenditure associated with the development of a website and database.

2.2.2 Service Charter

As a client focussed, open and accountable entity the Office has published its Service Charter. The charter includes key information about the service delivery approach of the Office and provides a clear statement about the responsibilities and standards of service the community can expect from it.

The charter is a 'living document' that will be reviewed and will evolve as there are changes to the Office and/or the legislation. While some individual commitments in the charter have legislative links, the document is not intended to present legally enforceable rights or responsibilities.

2.2.3 Staffing

During the year staffing numbers increased from four to eight with the addition of an administrative assistant and three senior investigators. Two of the investigator positions only became operational in April 2008. A panel of external legal advisors was established to provide independent legal counsel on a contractual basis.

2.2.4 Website

The website of the Office became operational in February 2008 and was formally launched by Professor John McMillan, Commonwealth Ombudsman, on 12 March 2008. The website is intended to be a user friendly and practical resource for people who access the site, explaining what we do and how we do it. Visitors to the site are able to make an on-line complaint about the processes used by the Scheme; the conduct of the Agency, or, the conduct of persons carrying out site visits or making a support contact under the *Accreditation Grant Principles 1999*. The website is an important avenue for the provision of information to the public and links to other organisations to assist the reader. A range of brochures and fact sheets, which present consumer friendly information and an online complaint form are also available on the website which can be located at www.agedcarecommissioner.net.au.

2.2.5 Activities and Achievements

The Office is gradually establishing a public profile and presence with a range of stakeholders. During the reporting period the Commissioner was invited to speak at six conferences and has continued to meet with stakeholders in each State/Territory.

The Minister met with the Commissioner, the Sex Discrimination Commissioner and Commissioner responsible for Aged Discrimination, and the Ambassador for Ageing to discuss and expand on the Government's agenda for ageing in Australia.

As part of ongoing improvement and accountability processes the Office has established a comprehensive quality assurance system. The system includes: data analysis and reporting, post case conferencing, key performance indicators, satisfaction surveys and focus groups.

The Office developed and delivered an orientation program for new staff members. The procedure manual, developed to assist staff to understand and meet all legislative requirements, is currently being revised in order to ensure consistency alongside the development of the case management database.

During the reporting period the Office established and signed protocols designed to outline cooperative working relationships with other organisations.

Detailed specifications for the development of a case management system have been prepared and it is anticipated work will begin in the first half of the next financial year.

During the reporting period the Office received a significant number of contacts from older people who required assistance to manage lifestyle issues that did not fall within the Commissioner's remit. These issues ranged in complexity from a straightforward concern about telephone or newspaper services to serious concerns such as hospital treatment, funeral services, Medicare billing and domestic abuse. These callers were redirected to the appropriate service where possible.

The Office produced and distributed two explanatory brochures, *Service Charter* and *Our Role and How We Can Help*, to all aged care services throughout Australia. The brochures were well received and the Office dealt with a number of requests for additional material.

CHAPTER 3. RELATIONSHIPS

In 2007 the Australian Government introduced legislation to establish the role and functions of the Commissioner. The legislative basis for the Scheme and the Commissioner is contained in the Act and the Principles. The Commissioner was appointed by and is responsible to the Minister. The Commissioner's current appointment concludes on 30 April 2010.

As an independent statutory office holder the Commissioner sought to establish sound working relationships with a range of stakeholders and held a number of meetings with peer groups and individuals. These meetings have included:

- The Commonwealth Ombudsman
- Health Service Commissioners
- Advocacy Services
- Industry Organisations
- Elder Abuse Prevention Association
- Sex Discrimination Commissioner and Commissioner responsible for Aged Discrimination

Following the establishment of the Office and after a period of consultation and negotiation the Commissioner signed protocols with the:

- Commonwealth Ombudsman on 18 October 2007.
- Aged Care Standards and Accreditation Agency Ltd on 24 January 2008.
- Department of Health and Ageing on 27 June 2008.

There are a number of factors which determine the working relationship, and its parameters, between the Office and other organisations. The Office, the Scheme and the Agency each have a role in promoting high quality care within the aged care service system and all strive to improve the lives of older people accessing care and services.

While it is important to understand and even accept that the independent umpire or consumer watchdog role will not always be popular, this Office believes it is important and beneficial to establish and maintain a cooperative relationship and improve interagency rapport. While each organisation is divided by loyalties as they try to serve the interests of the agency and the staff they employ, as well as the interests of the public to which they have a social responsibility, the Office looks forward to continuing to build a working environment based on mutual respect, commitment and trust.

A guiding principle in the work of the Office is to be impartial and even-handed in the management of each appeal and complaint that comes to the Office. It is imperative to balance the inherent conflicts around the Commissioner's responsibilities to maintain and administer the rights of consumers and form impartial opinions on any breaches of those rights in the examination of complaints about the processes adopted by either the Scheme or the Agency. This is essential if the integrity of the Commissioner's findings and recommendations are to be respected by government, organisations and the general public.

3.1 Office of Aged Care Quality and Compliance

While the Commissioner does not have an overseeing or determinative role, through its recommendations, the Office aims to improve systems in a practical way that engages both approved providers and the Scheme.

The Office of Aged Care Quality and Compliance (OACQC) in Canberra is responsible for the overall management of the Scheme. Complaints staff are located within each state/territory office and are therefore responsible to State Managers on a day to day basis. During the development of the protocols meetings with QACQC staff in central office were held on a regular basis. The Commissioner met separately with State Managers in six states during the financial year. The Victorian State Office invited the Commissioner's staff to present an overview of the Commissioner's role, responsibilities and investigation processes. It is anticipated that the benefits from this exchange will be replicated in other state branches.

3.1.1 The Complaints Investigation Scheme

The Scheme is a free service that accepts oral and written complaints regarding Australian Government subsidised aged residential care services, flexible services and CACPs. The Scheme is available to anyone who wishes to provide information (by way of a complaint or otherwise) in relation to anything that may be a possible breach of the approved provider's responsibilities under the Act or the Principles.

The Scheme has the power to investigate concerns raised and to take action where an approved provider has breached its responsibilities. The investigation process has a number of steps or decision points; however, in practice many of the steps may be undertaken concurrently or in very quick succession.

Information may be provided to the Scheme confidentially or anonymously if required, although this may limit the investigation process and capacity. Information provided to the Scheme often involves more than one issue. The Scheme is able to refer some issues if it is decided that the matter could be more appropriately managed by another statutory body such as police, medical and nursing registration boards, Health Services Commissioners etc.

After investigation the Scheme will decide whether the approved provider has met its responsibilities under the Act and Principles. In the event that a breach is identified the Scheme may decide to issue an NRA or it may determine that the breach has been remedied.

The legislation permits the Commissioner to examine certain decisions made by the Secretary's delegate. In reviewing decisions the evidence and all reasonable inferences deducible from them are considered in the light of the Scheme's findings and the appropriate legislation. The Commissioner will recommend the original decision be confirmed if that decision is supported by substantial evidence, that is, evidence that a reasonable person might accept as adequate to support the conclusion, given the legislation. The Commissioner will recommend the original decision be varied where some aspect of the decision cannot be supported or where additional breaches are found. A recommendation to set aside a decision is made where the Commissioner is

convinced that a fair minded person, with the same facts before them, could not have reached the same conclusions as those arrived at originally.

There are also occasions when, during the review of an examinable decision, issues related to the matter under review arise where comment is warranted and needs to be brought to the attention of the Scheme. These issues may relate to administrative procedures or the investigation itself. These matters are reported in the final report to the Department under a section titled 'Related Issues'. The recommendations made in the related issues report are intended to inform management, improve processes and assist learning.

The Office sought to have a formal feedback and monitoring process to the matters raised in reports outlined in the protocols with OACQC. However, this was not supported. The purpose of monitoring responses was to inform the work of the Office, assist in assessing the effectiveness of its work and the rate at which the advice and/or recommendations were being responded to or implemented. The Commissioner received feedback on the related issues observations and recommendations in only three of 16 cases. To improve the rate of feedback and the capacity to assess effectiveness, the Commissioner will instigate a formal follow-up procedure in the new financial year.

3.2 The Aged Care Standards and Accreditation Agency

The Agency is an independent company limited by guarantee and established under the *Corporations Act 2001* and the *Commonwealth Authorities and Companies Act 1997*. The Agency has been appointed by the Department as the accreditation body under the *Aged Care Act 1997*.

The core functions of the Agency are to manage the residential aged care accreditation process using the Accreditation Standards; promote high quality care and assist industry to improve service quality by identifying best practice, and providing information, education and training; assess and strategically manage services working towards accreditation; and liaise with the Department about services that do not comply with the relevant Standards.

Approved providers wishing to appeal accreditation decisions made by the Agency must apply to the Australian Administrative Tribunal (AAT). Separately, the Commissioner is authorised to examine complaints about the conduct of the accreditation body relating to its responsibilities under the *Accreditation Grant Principles 1999* and complaints about the conduct of a person conducting an audit or making a support contact.

Notwithstanding the legislation and established protocols there was considerable discussion with the Agency as to the Parliament's intention in using the word "conduct", whether the Commissioner has authority to interview or speak with Agency staff, and whether the Commissioner needs to be provided with all documents relating to a complaint or only those documents the Agency considers relevant.

At the outset the Agency thought that a significant number of approved providers may lodge complaints with the Commissioner but this has not been the case. Reasons for this are unclear.

CHAPTER 4. PERFORMANCE AND STATISTICS

Annual report

Section 95A-12 of the Aged Care Act 1997 states

- (1) *The Aged Care Commissioner must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament a report on the Aged Care Commissioner's operations during that year.*
- (2) *The Aged Care Commissioner must include in the report:*
 - (a) *the number of decisions made by the Secretary under the Investigation Principles that the Aged Care Commissioner examined during the financial year; and*
 - (b) *the number of complaints about the following matters (examinable complaints) that were made to the Aged Care Commissioner during the financial year:*
 - (i) *the Secretary's processes for handling matters under the Investigation Principles;*
 - (ii) *the conduct of an accreditation body relating to its responsibilities under the Accreditation grant Principles;*
 - (iii) *the conduct of a person carrying out an audit, or making a support contact, under those Principles; and*
 - (c) *the number of examinable complaints that the Aged Care Commissioner started to examine during the financial year; and*
 - (d) *the number of examinable complaints that the Aged Care Commissioner finished examining during the financial year; and*
 - (e) *a summary of the nature of the examinations made by the Aged Care Commissioner during the financial year of examinable complaints; and*
 - (f) *the number of examinations made by the Aged Care Commissioner on his or her own initiative during the financial year; and*
 - (g) *a summary of the nature of examinations made by the Aged Care Commissioner on his or her own initiative during the financial year; and*
 - (h) *the number of requests for advice the Minister made to the Aged Care Commissioner during the financial year; and*
 - (i) *a summary of the nature of those requests; and*
 - (j) *a summary of the nature of advice given by the Aged Care Commissioner to the Minister during the financial year in response to requests by the Minister; and*
 - (k) *any other information required by the Investigation Principles to be included in the report.*

The Commissioner is able to examine, on appeal, relevant decisions made by the Scheme and to receive and examine complaints about the Secretary's processes for handling matters under the Principles or the conduct of an accreditation body about a matter that occurred on or after 1 May 2007. The statistics reported here therefore relate to the period 1 July 2007-30 June 2008.

4.1 Examinable Decisions

Applications asking the Commissioner to examine a relevant decision necessarily apply to decisions made by the Scheme under the Principles. The legislation is prescriptive in relation to a 14 day time frame. The Commissioner does not have discretion to waive this requirement; therefore, the Commissioner is unable to lawfully accept applications that fall outside that period.

During the reporting period the Commissioner received a total of 134 appeals. Of these 63 per cent were lodged by care recipients or their representatives and 37 per cent by approved providers. In three cases originating in Victoria, the Commissioner received an appeal on the same decision of the Scheme from both the approved provider and the informant.

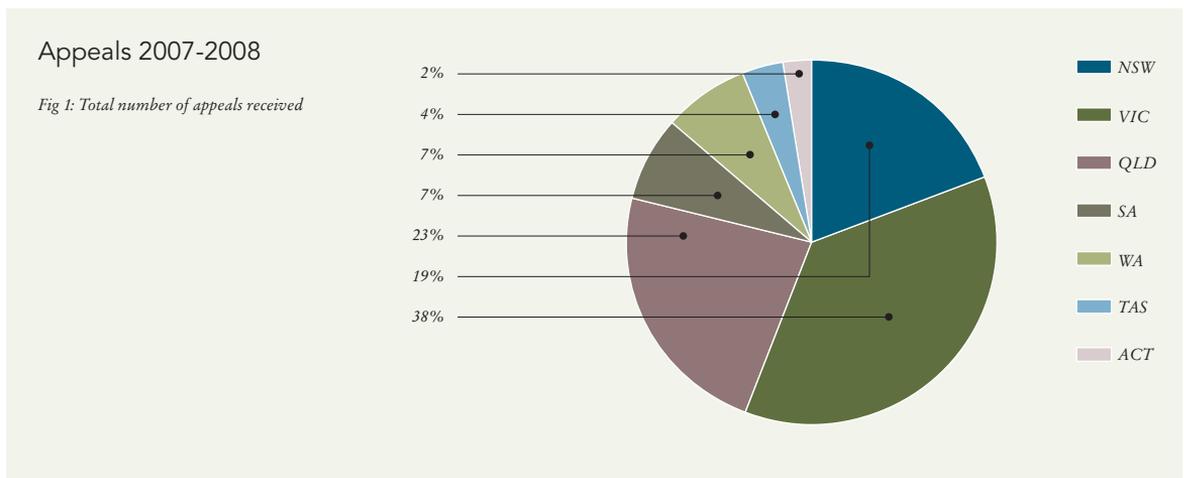
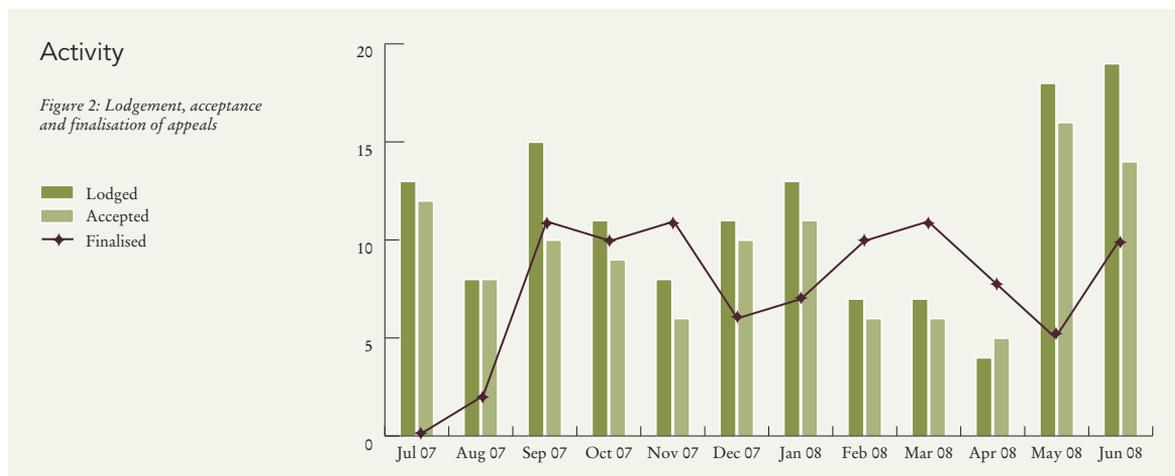


Figure 1 shows that thirty-eight per cent of the total number of appeals originated in Victoria; 23 per cent from Queensland and 19 per cent from New South Wales. Seven per cent of appeals originated from complaints lodged in South Australia and Western Australia respectively. Four per cent of appeals were initiated in Tasmania and two per cent were lodged in respect of decisions made in the Australian Capital Territory. During the financial year there were no appeals in relation to decisions made in the Northern Territory. Eight per cent of all applications were received outside the legislative timeframe.

Figure 2 shows the level of activity in relation to the management of appeals. The graph shows the number of appeals lodged, accepted and finalised each month. At the end of the reporting period the examination of 23 appeals was underway and these cases are due to be finalised in July and August 2008. While the graph excludes activity around the appeals that were not able to be progressed by the Commissioner, it should be noted that there is a degree of action required in the assessment of the application, subsequent correspondence and reporting of these matters.



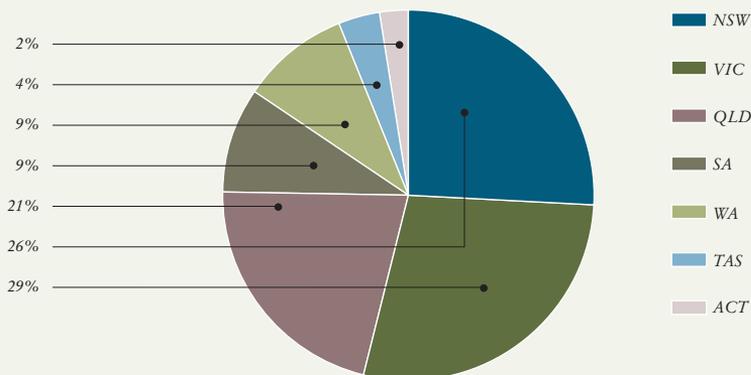
The legislation allows care recipients and/or their representatives (Type A informants) to appeal relevant examinable decisions.

Care recipients or their representatives are able to appeal a decision:

- that the provider has not breached its responsibilities
- not to issue an NRA
- the terms and conditions of an NRA
- to cease investigating a complaint.

Appeals 2007-2008

Figure 3: Total number of appeals from informants



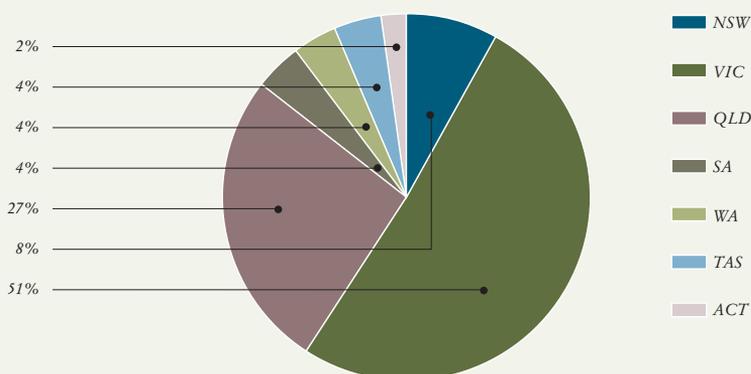
Twenty-nine per cent of appeals lodged by informants were in relation to decisions made in Victoria. Twenty-six per cent of appeals came from New South Wales and 21 per cent originated in Queensland. South Australian and Western Australian informants each lodged nine per cent of appeals, four per cent came from Tasmania and two per cent of appeals related to decisions made in the Australian Capital Territory.

Nine per cent of the applications from informants (nine) were received outside the legislative timeframe. Two per cent of applications (two) related to matters outside the Commissioner's jurisdiction and three per cent of appeals were lodged by type B informants which the Commissioner was unable to deal with.

The majority of informants (97 per cent) whose application was accepted appealed the Scheme's decision not to find the approved provider in breach of its responsibilities. Three per cent of applications from informants appealed the Scheme's decision not to issue an NRA.

Appeals 2007-2008

Figure 4: Total number of applications from approved providers



Approved providers are able to appeal decisions:

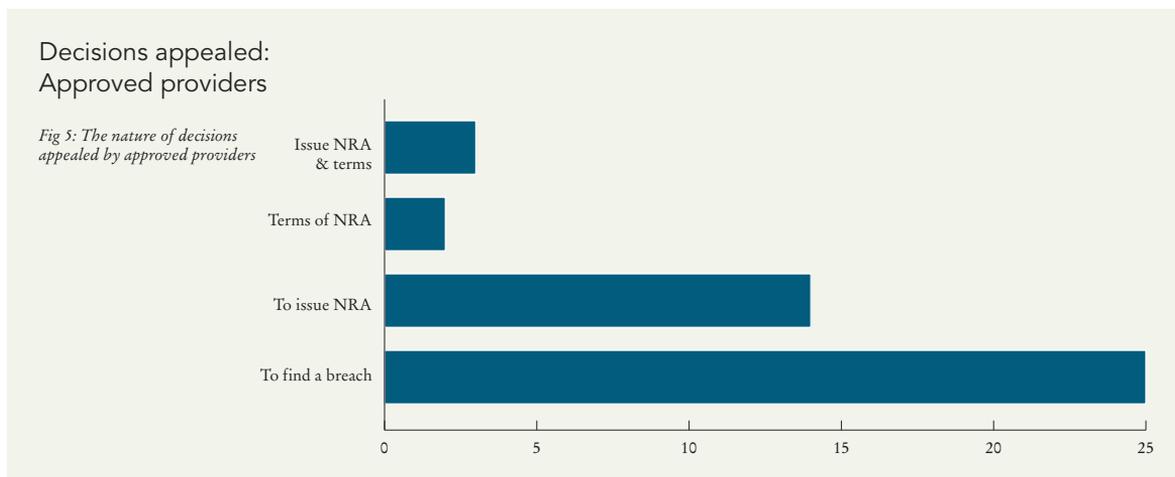
- that the provider is in breach of its responsibilities
- to issue an NRA
- the terms and conditions of an NRA.

Over half the number of appeals lodged (51 per cent) related to decisions made in Victoria. Twenty-seven per cent of appeals from approved providers originated in Queensland and eight per cent came from New South Wales. Four per cent of applications came from South Australia, Western Australia and Tasmania respectively; two per cent related to decisions made in the Australian Capital Territory.

Seven per cent of applications from approved providers (three) were received outside the legislative timeframe and one appeal was withdrawn.

A total of 91 appeals were finalised during the reporting period. The average number of days to finalise these matters was 52 days. Taken separately, the average number of days to finalise 55 applications received from informants, including two matters which were conciliated, was 53 days and the average number of days to finalise 36 applications from approved providers, including one matter which was conciliated, was 50 days.

The majority of providers (56 per cent) whose applications were accepted appealed the Scheme's decision to find the provider in breach of its responsibilities. Thirty-two per cent of providers appealed the decision to issue an NRA, five per cent of applications related to the terms and conditions of the NRA and seven per cent of providers appealed both the issuing of an NRA and its terms and conditions.

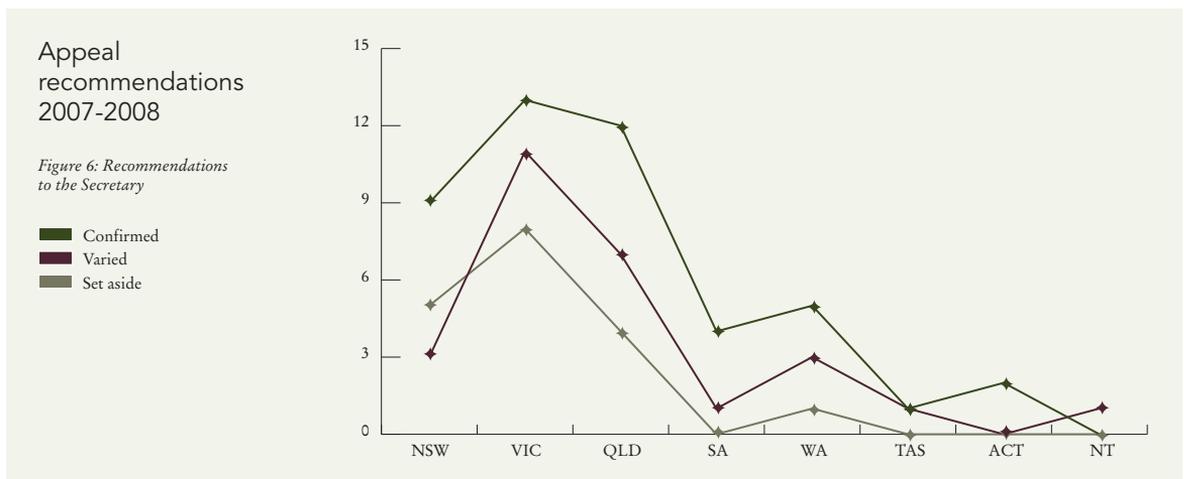


4.1.1 Commissioner's Recommendations

The Commissioner does not have determinative powers but is required to provide a recommendation to the Secretary after examining the appeal against the decision made by the Scheme.

Of the 91 appeals finalised during the reporting period the Commissioner recommended that the Scheme's decision be confirmed in 50 per cent of cases (46). In 30 per cent of cases (27) the Commissioner recommended that the original decision be varied and in 20 per cent of cases (17) the Commissioner recommended that the original decision be set aside. Three appeals in relation to cases originating in Victoria were appealed by both the approved provider and the informant. In each of these cases the recommendation was to vary the decision.

The following graph shows the breakdown of recommendations relevant to each jurisdiction.



4.1.2 Reconsiderations

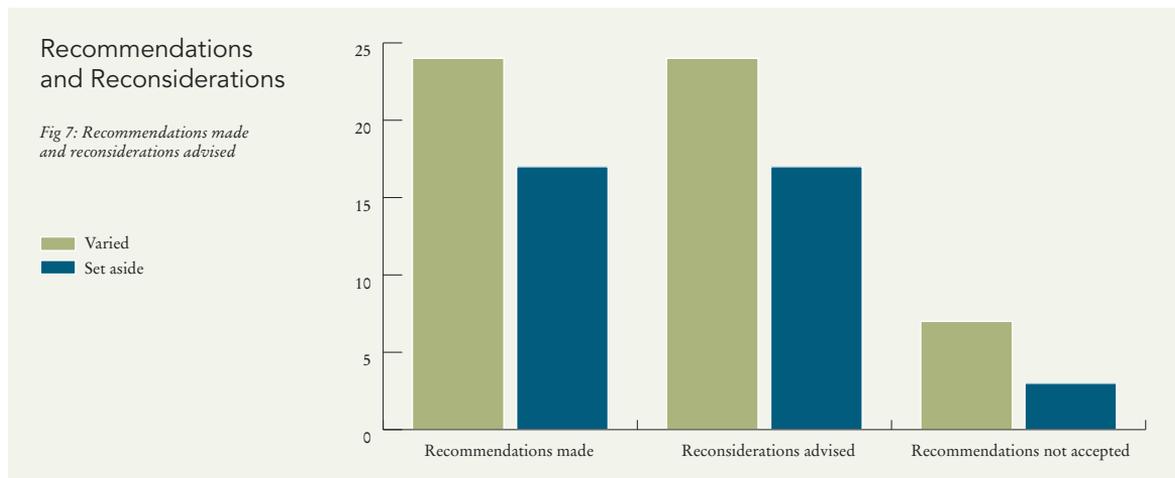
The Secretary is required to advise the appellant of the reconsideration decision within 14 days after receiving the Commissioner's recommendations. The legislation also requires the Secretary to advise the Commissioner of all decisions made on reconsideration.

During the reporting period the Commissioner received advice in relation to 76 reconsideration decisions or 86 per cent of the Commissioner's recommendations. Of this overall number, ten recommendations (13 per cent) were not accepted. That is, in seven cases where the Commissioner recommended that the decision be varied and three cases where the recommendation was to set aside the original decision, the delegate did not accept the recommendation. The average number of days to receive notification of reconsideration decisions was 27 days.

Taken separately and allowing for the three duplicated Victorian cases the Commissioner received advice of the Scheme's reconsideration in all 24 cases where the recommendation was to vary the decision. The Scheme did not accept the recommendations in seven matters (29 per cent); three in Victoria, one in New South Wales and three in Queensland. The Commissioner received advice of the reconsideration decision in relation to the 17 recommendations to set aside the original

decision. In these matters the Scheme did not accept three recommendations (17 per cent); one each in Victoria, New South Wales and Queensland.

Figure 7 shows in the 41 reconsiderations advised in relation to recommendations to set aside or vary a decision the Scheme did not accept the Commissioner’s recommendation in relation to ten cases (24 per cent).



4.1.3 Related Issues

During the examination of an appeal, process issues that are not directly part of the appeal process are identified as matters that should be brought to the attention of the Secretary. Throughout the reporting period the Commissioner raised related issues on 16 occasions. The matters raised by the Commissioner were predominantly associated with administrative practices and included recommendations in relation to:

- Natural justice
- Statement of reasons
- Record keeping
- Referencing legislation
- Investigative practices.

The Commissioner received three written responses in relation to related issues. This advice was that the Commissioner’s recommendations had been accepted.

4.2 Complaints

During the reporting period the Commissioner received a total of 22 complaints. The average number of days to conclude the nine cases finalised was 74 days.

Delays in the management of complaints were evident during the first few months of operation. This was primarily due to difficulties encountered in the recruitment of additional staff. However, the Office is restricted in conducting a thorough and efficient investigation if organisations don’t

respond to requests for information and documents in a timely way. The Commissioner does not have a capacity to require staff participation in interviews or organisations to produce documents. In a small number of instances an investigation was hindered by challenges to the Commissioner's capacity to act and by a significant delay in obtaining information and documents.

4.2.1 Office of Aged Care Quality and Compliance

Eighteen complaints were lodged in relation to the Secretary's processes for handing complaints under the Principles. Ten of the 18 complaints were lodged concurrently with an appeal. In a situation where an appeal and complaint are lodged at the same time the Office has adopted a guiding principle whereby the complaint will be accepted and managed after the appeal has been finalised. The Commissioner advised OACQC of receipt of 14 cases during the reporting period.

Seven cases were finalised. Of this number two matters were conciliated – one in New South Wales and one in Victoria; one case in Queensland was closed because of an inability to contact the complainant and four cases were finalised following an investigation. The average number of days taken to finalise these seven cases was 92 days.

The Commissioner made recommendations in relation to three investigations. The recommendations related to administrative processes and included:

- The Scheme should provide a finalisation letter to people lodging a compulsory report, outlining reasons for any decision in relation to the report.
- The tape recording of interviews conducted with Departmental staff.
- Ensure finalisation letters are sent to relevant parties and that they are advised of their appeal rights.
- The Scheme should obtain documentary evidence to support conclusions that an approved provider has an effective policy or procedure in place.

4.2.2 The Aged Care Standards and Accreditation Agency

Four complaints received related to the Agency. One of these complaints comprised two elements and related to the conduct of the accreditation body and the conduct of a person carrying out a support contact. One complaint was finalised by conciliation after 23 days and one was withdrawn.

4.3 Own Motion Investigations

The Commissioner did not initiate any own motion examinations during this reporting period.

4.4 Requests from the Minister

No requests were received during this reporting period.

CHAPTER 5. TRENDS AND ISSUES

5.1 Trends

The trends shown in this section relate only to the current reporting period as the Office has been operational for a total of fourteen months. Nonetheless, the monitoring of trends and issues is important not only to identify matters which give rise to concern and identify where improvements can be made but also because such analysis can bring about a better deployment of resources, generate educational opportunities and lead to more informed decision making.

5.1.1 Appeals

During the year the Commissioner received a total of 134 applications to examine a decision made by the Scheme. Figure 8 depicts the number of appeals received each month and demonstrates an increase in the numbers received towards the end of the financial year. As the number of complaints received by the Scheme is unknown it is unclear whether this relates to an increase in matters finalised by the Scheme during this period or whether the Commissioner's role is becoming better understood.

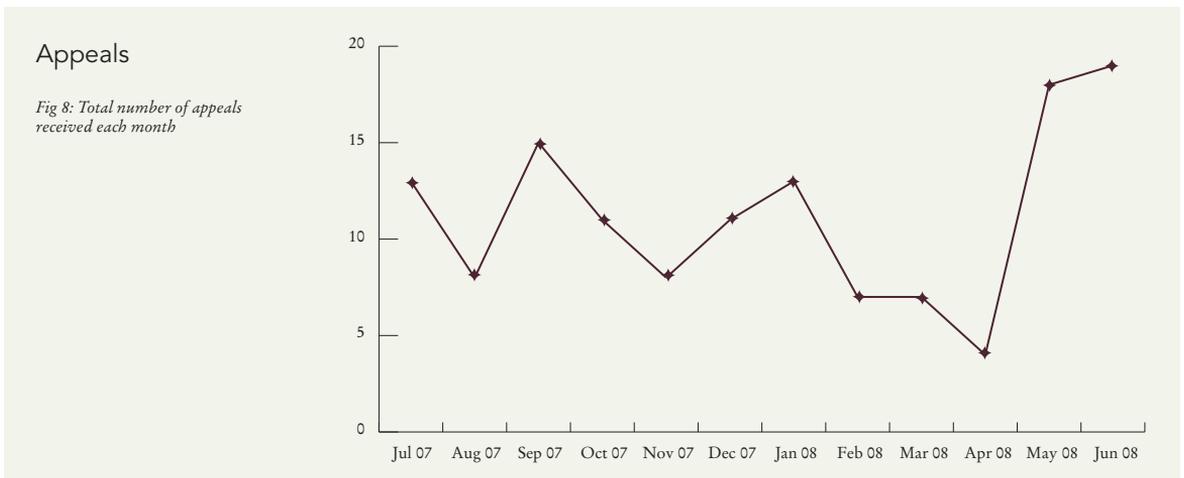
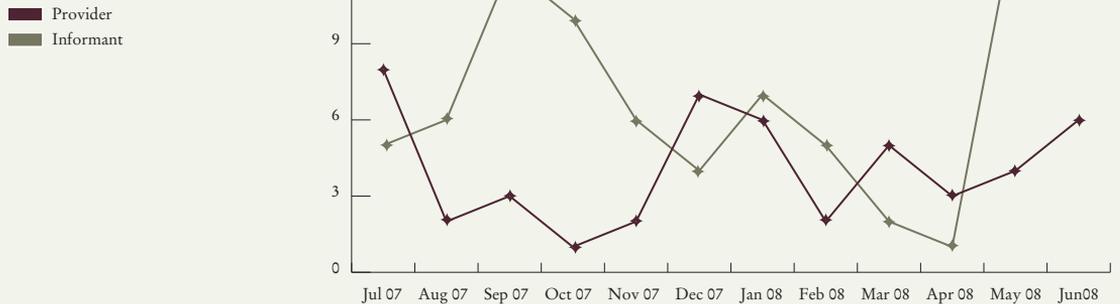


Figure 9 shows a breakdown of the number of appeals lodged by approved providers and informants each month and shows that in July, December in March the majority of appeals were lodged by providers. The graph also demonstrates an increase in the number of appeals towards the end of the financial year. It is unclear whether this increase reflects an increase in the number of complaints finalised by the Scheme in this period or a better understanding of the appeal rights and/or the Commissioner's role and functions.

Appeals

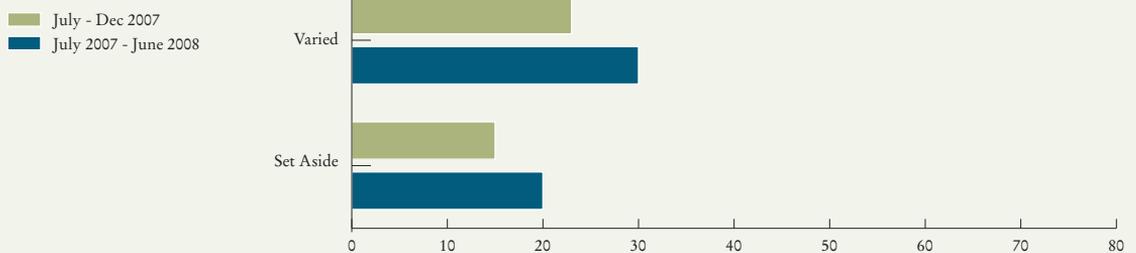
Figure 9: Appeals lodged by approved providers and informants each month



After reviewing an examinable decision the Commissioner must provide a recommendation to the Secretary. Figure 10 shows that in the first half of the financial year the trend was for a higher percentage of recommendations to confirm the original decision (62 per cent). Over the entire reporting period the percentage of recommendations to confirm the original decision was 50 per cent, 30 per cent of recommendations were to vary the original decision and 20 per cent of recommendations were to set the original decision aside and make a new decision.

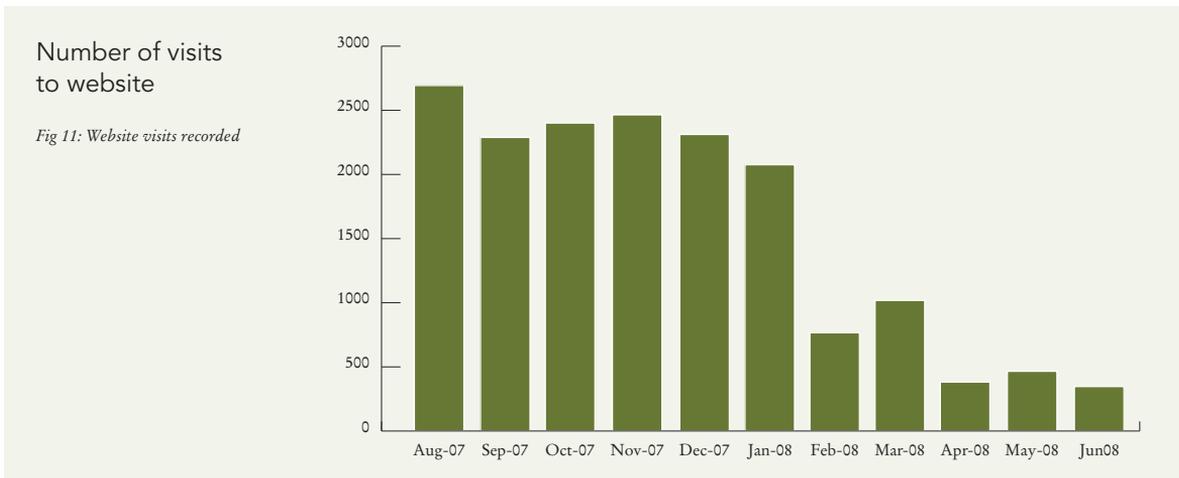
Recommendations

Fig 10: Percentage of recommendations over time

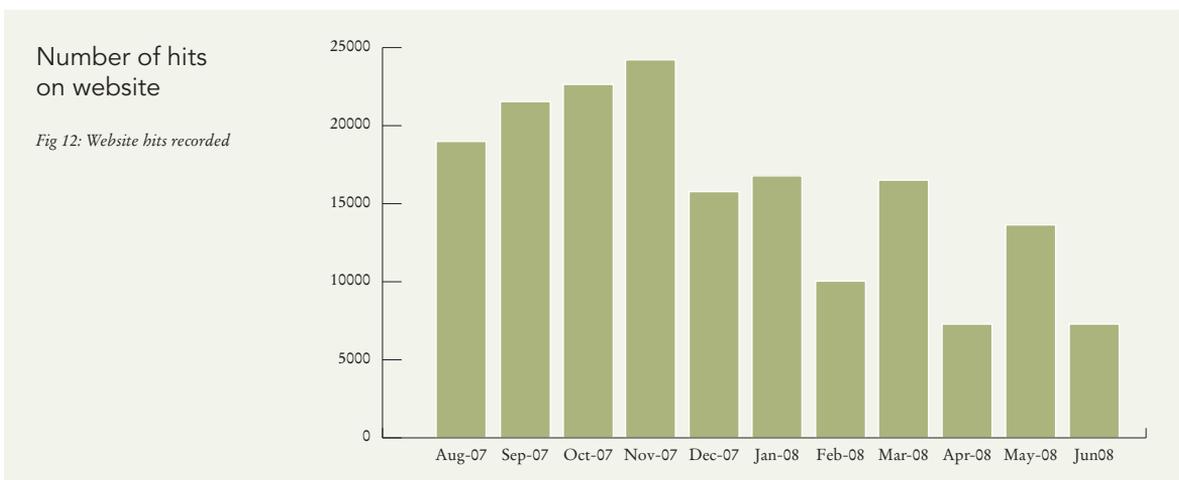


5.1.2 Website

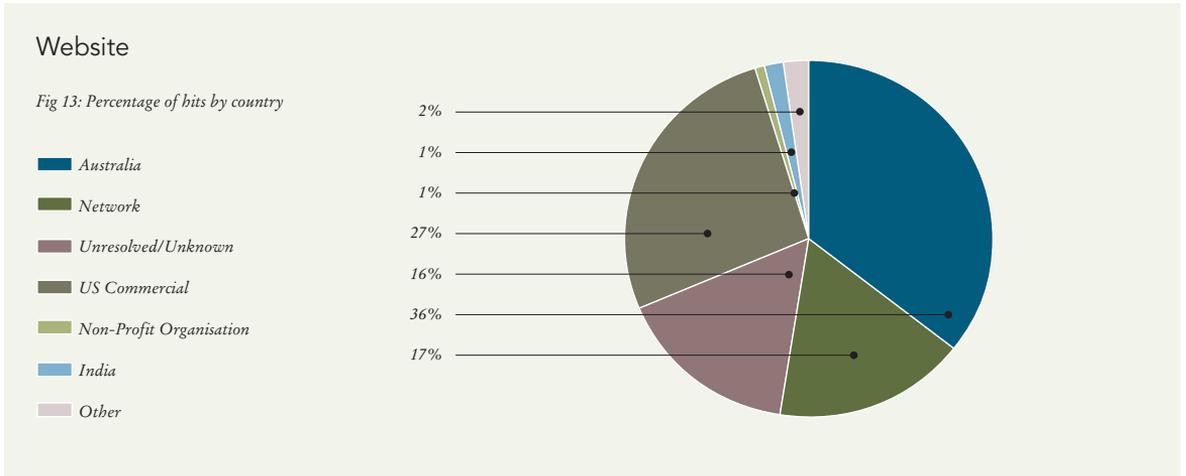
The website of the Office of the Commissioner for Complaints was redesigned and the new website for the Office of the Aged Care Commissioner became operational in February 2008. Statistics for July 2007 are unavailable however the statistics gathered demonstrate that the website received a total of 17216 visits between 1 August 2007 and 30 June 2008; or 2979 visits between 1 February and 30 June 2008 (Figure 11). The data reflect a reduction in the number of visits from February. An analysis of this data confirmed that figures attributed to the website of the Commission for Complaints were inflated because of the level of spam received. Therefore the figures reported after February are more likely to be an accurate reflection of the number of people visiting the site.



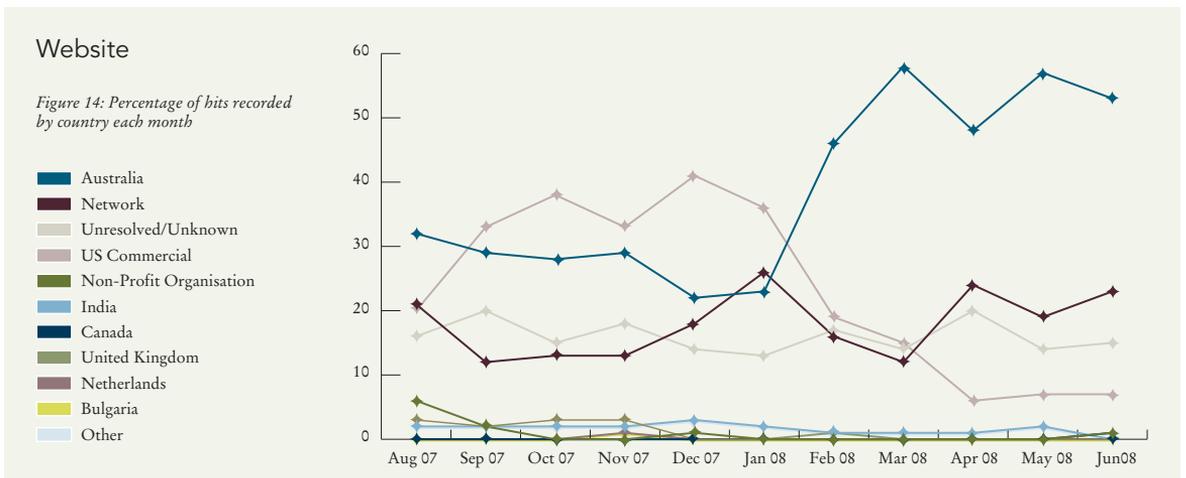
Data collected also captures the number of hits on the website. This is a measurement of the amount of information downloaded from the site. The data again show a changing pattern in hits from the site with an increase in activity in March when the site was formally launched.



The data also show a changing pattern when analysing which countries are actually visiting the website. Current data show a reduction in the number of visitors to the site from India and USA; again this is thought to be linked to the level of spam received in the past.



Previously, between 22–32 per cent of hits to the site were from Australia. Figures collated after the relaunch of the website show a much higher level of activity from Australia. This statistic is currently running at 36 per cent and the increase in activity is clearly demonstrated in Figure 13. Conversely the down turn in activity from the USA is also evident.



5.2 Issues

5.2.1 Accommodation Bond Payments

During the year the Office examined a number of appeals in relation to admission to residential care and the payment of accommodation bonds. The legislation in relation to these matters is complex and while this Office has dealt with a relatively small sample it would appear that the requirement to pay bonds is sometimes a vexed issue that is often not well understood by all parties. Most families are actively involved in decisions to seek entry to residential care, in the selection of the facility and the payment of bond. This matter was also raised during the focus groups. Consumers indicated it was difficult to obtain information, particularly from ACAT services and found the five step entry plan to residential care inadequate in terms of answering questions they had about bond payments.

5.2.2 Statement of Reasons

The overwhelming majority of complaints across all industries arise from a lack of or a breakdown in communication. This can also be the case in the lodgement of appeals or complaints to this Office. The legislation requires the Secretary to give a relevant approved provider written notification of any breach of its responsibilities and to give a statement of reasons to a care recipient or their representative for the decisions made. A statement of reasons is important on a number of grounds; it:

- Provides an opportunity for decisions to be properly explained and defended.
- Assists persons affected by the decision to decide whether to exercise rights of review or appeal.
- Improves the quality of decision making.
- Promotes confidence in the administrative process.
- Assists in the review of decisions.

In a number of cases examined by this Office the statement of reasons provided by the Scheme was minimal and often did not address all issues investigated. In some cases no statement of reasons was provided.

A statement of reasons should be constructed as part of the decision making process. It should clearly set out the decisions made and must go further than merely expressing conclusions. A statement of reasons should contain the findings on material questions of fact and refer to the evidence or any other material on which those findings were based, giving the real reasons for the decisions. This might require reference to legislation and any relevant policy statements, guidelines or practices which were taken into account in arriving at the decision.

5.2.3 Natural Justice

It is obvious from the applications to review decisions that some providers are unaware of the nature of the complaint and/or unaware of a likely decision until after that decision is made.

It is essential that all decision makers understand the legal and administrative framework in which their decisions should be made, including the requirement that decisions are made in accordance with the principles of natural justice. There are two major rules of natural justice. The first of these is the 'hearing rule' which is that a person who may be affected by a proposed decision must be given an opportunity to express their views to the decision maker. The second rule is the 'bias rule' which states that a decision maker must be impartial and must have no personal stake in the issue to be decided.

In one way or another, decisions directly affect the rights and interests of the parties involved in any type of grievance. While the 'hearing rule' does not provide a standard set of procedures it is necessary to ensure that any adverse or prejudicial information is disclosed and the person is given an opportunity to present their viewpoint and any additional information, prior to any adverse decision being made.

CHAPTER 6. QUALITY ASSURANCE

The development, implementation, management and reporting of quality assurance activities takes time and effort, however the overall benefits are significant. We believe that a comprehensive quality assurance program will demonstrate accountability and assist in meeting our desire for continuous improvement. The program developed utilises broad systemic approaches supported by other measures, including policy and procedural documents, which provide for and enhance best practice.

6.1 Performance Indicators

A suite of 11 performance indicators, with subsets, were developed in May 2007. The indicators are numerical measures, expressed as a percentage, and are designed to describe important and useful information about the performance of the Office and to demonstrate whether the Office is achieving its overall objectives and meeting set targets.

It should be noted that the processes in the Office have been refined during the year and the indicators are to be reviewed in the new financial year based on a number of trends and issues which have become apparent after the first 12 months of operation.

The case management and reporting system for the Office is yet to be developed; however, where feasible, staff have endeavoured to collate data in relation to the indicators in excel spread sheets.

Indicator 1 measures the provision of an acknowledgement letter to people contacting the Office to lodge an appeal or complaint. The acknowledgement letter is to be provided within three working days after the initial contact and the 100 per cent of contacts across Australia were sent an acknowledgement letter within the stipulated timeframe.

Indicator 2 measures the time between receipt of the appeal or complaint and the time taken to inform the appellant or complainant of the acceptance of their matter. This contact should be made within 14 days following the receipt of an appeal or complaint. This indicator has not been collected and will be reviewed in the new reporting period. The early advices given by the Office will change in the new reporting period.

Indicator 3 relates to the development of an investigation matrix. The matrix is to identify the issues, potential breach(s) where evidence might be found, the avenues of inquiry and timelines for follow-up as appropriate. The matrix is to be developed within 14 days of the acceptance of the appeal or complaint and the expected target is 100 per cent. During the reporting period the target was met in 100 per cent of accepted cases.

Indicator 4 measures the time between the acceptance of a complaint and finalisation of that complaint. Complaints should be resolved and finalised in accordance with the assessed complexity measure, that is, between three and 60 days. The target set is 70 per cent. Two complaints were conciliated with the Scheme within three days. One complaint was conciliated with the Agency in 23 days. Therefore the target was met in 75 per cent of conciliated cases. The average number of days taken to finalise complaints was 80 days therefore the target was not met in relation to complex complaints.

Indicator 5 – Part A – measures the time between the receipt of an appeal and a documented finalisation date and provision of a recommendation to the Secretary recorded within 60 days. This indicator is based on a legislative requirement to provide the Secretary with a recommendation. The target was met in 100 per cent of cases.

Part B of Indicator 5 measures the time between receipt of an appeal and provision of a report to the Secretary about a refusal to examine a decision under 16A.24(3) of the Principles. The Commissioner did not refuse to examine any decisions under subsection 3.

Indicator 6 is based on the rationale that appellants and complainants should receive timely feedback regarding the finalisation of an appeal or complaint. The indicator measures the number of written contacts made within seven working days of finalisation (a) in relation to appeals; and (b) in relation to complaints. The target for each indicator is 90 per cent. Both targets were met in 100 per cent of cases.

Indicator 7 measures the number of investigation reports provided to (a) OACQC and (b) the Agency within seven working days from the date the Commissioner's investigation of a complaint is finalised. The target set is 100 per cent. Five cases were finalised following an examination of the Secretary's processes for handling a complaint. The target was met in all cases. No complaints about the accreditation body were finalised during the reporting period.

Indicator 8 is in three parts. While any achievement in relation to this indicator is somewhat outside the control of the Office it was considered that a response to the Commissioner's recommendations was a valid quality assurance measure and a marker of the effectiveness of the Office.

Part A measures the number of reconsideration decisions made by the Secretary that correspond with the Commissioner's recommendation to confirm, vary or set aside the original decision shown as a percentage of cases finalised. The target set is 100 per cent. During the reporting period the Commissioner received advice in relation to 76 reconsideration decisions. Of this number, ten recommendations (7.6 per cent) were not accepted. Therefore the target was not met.

Part B of the indicator also measures the number of recommendations implemented, or not implemented, by the Secretary following an investigation of a complaint and provision of a report which includes recommendations. Five cases were finalised, three included recommendations; two in Victoria and one in New South Wales. The Commissioner received correspondence from the Victorian State Office relating to recommendations in two complaints finalised advising that a recommendation in relation to the taping of interviews would be discussed and accepting all other recommendations made. Correspondence from New South Wales in response to a preliminary draft report included advice in relation to the recommendations in that document. The recommendations were accepted.

Part C measures the number of recommendations implemented, or not implemented, by the Agency following an investigation of a complaint and provision of a report which includes recommendations. No complaints about the conduct of the Agency were finalised during the reporting period.

Indicator 9 measures the number of post case conferences conducted after a complaint or appeal has been finalised. The intention is to critically review the management of a case once finalised and to identify any areas for improvement. The target set is 70 per cent. All finalised complaints have been the subject of a post case conference. Forty-one finalised appeals (45 per cent) were discussed at a post case conference. The indicator was met in 48 per cent of finalised cases.

Indicator 10 and Indicator 11 measure the number of satisfaction surveys returned from complainants and appellants respectively. Satisfaction surveys are being introduced from the beginning of the 2008-2009 financial year.

6.2 Focus Groups

During April and May 2008 the Office conducted consumer and approved provider focus groups. The purpose of the focus groups was to receive stakeholder feedback on the processes adopted by this Office and any possibilities for development as part of our commitment to continuous improvement.

Issues raised included the limited awareness of the role of the Commissioner, the confusion regarding the role of the Office and its independence of the Department, and the difficulty encountered by care recipients and their families in accessing information.

Feedback relative to this Office will be carefully considered and used as part of our commitment to continuous improvement.

6.3 Assessment AS and ISO Complaint Handling Standards.

As one year has passed since the establishment of the Office it was considered appropriate and timely to assess the achievements of the Office against prescribed national and international standards. This assessment was carried out during June 2008 as part of our quality assurance program.

While it is appropriate to acknowledge the range of skills and experience within the Office, it was considered important to measure performance as a whole when assessing adherence to and conformity with the established standards. It should also be recognised that at a time when staffing numbers are small it is easier to ensure a consistent approach; conversely, there is less capacity to produce and review policy, procedural and other documents.

The *Australian Complaint Handling Standard* [AS 4269-1995] was prepared by Committee OB/9, Complaint Handling. The Standard was approved on behalf of the Council of Standards Australia and published on 5 February 1995. The standard sets out the essential elements for the management of complaints from inception to satisfaction or final determination, as the case may be, irrespective of the size of the organisation receiving the complaint. The purpose of the standard is to provide a complaints handling framework for the complainants as well as complaint recipients.

The International Organisation for Standardisation (ISO) is a world wide federation of national standards bodies. The work of preparing international standards is carried out through ISO technical committees. The ISO has developed a standard for complaints handling. *ISO10002 – Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organisations*, which was released in July 2004. This standard has been developed partly in response to the evolution of e-commerce which increasingly transcends geographic boundaries.

Standards Australia has a policy of harmonisation between local and international standards where possible and appropriate. The relevant committee of Standards Australia has indicated that ISO10002 is likely to be adopted to replace AS4269.

The standards are specific to complaint handling; however, the Commissioner's role and functions relate to the management of appeals and complaints. The processes adopted by this Office for dealing with these examinations are similar and therefore the elements/principles were amended internally to refer to both situations. The assessment indicates that the Office does not fully meet all standards. These gaps would be addressed through amendments to the Act and Principles and through continual improvement processes. The Office has a commitment to review its achievements against these Standards on a regular basis.

6.4 Post Case Conferences

The Office has established a best practice initiative whereby the management of cases is critically reviewed post finalisation and the sending out of decisions to the parties. Using a systematic approach the intent is to build quality into each level of work, including the decision making process, by identifying any areas for improvement and/or barriers to the implementation of best practice procedures.

This initiative assists in ensuring consistency and conformity with office procedures and the legislation. Post case conferencing also assists participants in the recognition of trends and issues; not only those facing office staff, but also those issues confronting approved providers and their staff, as well as users of aged care services and their representatives.

Conferences involving the senior management team occur on a weekly basis. In the new financial year the senior investigators will be involved in this process on a monthly basis.

Glossary

AAT	Australian Administrative Tribunal
ACAT	Aged Care Assessment Team
Act	<i>Aged Care Act 1997</i>
Agency	Aged Care Standards and Accreditation Agency Ltd
CACP's	Community Aged Care Packages
Commissioner	Aged Care Commissioner
Department	Department of Health and Ageing
EACH	Extended Aged Care at Home
Minister	The Hon. Justine Elliott MP,
NRA	Notice of Required Action
MPS	Multi Purpose Service
OACQC	Office of Aged Care Quality and Compliance
Office	Office of the Aged Care Commissioner
Principles	<i>Investigation Principles 2007</i>
RCS	Resident Classification System
Scheme	Complaints Investigation Scheme
Secretary	Secretary, Department of Health and Ageing
Standards	Accreditation Standards in Schedule 2 to the <i>Quality of Care Principles 1997</i> made under the Act

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Aged Care Commissioner

Post to:
Locked Bag 3
Collins Street East VIC 8003

Telephone:
Freecall 1800 500 294
03 9665 8033

Facsimile:
03 9663 7369