



# AGED CARE COMMISSIONER

ANNUAL REPORT  
1 JULY 2011 – 30 JUNE 2012







## Australian Government

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The Hon Mark Butler MP  
Minister for Mental Health and 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 2011 to 30 June 2012.

Yours sincerely

A handwritten signature in black ink, appearing to read 'RAE LAMB', with a small flourish at the end.

**RAE LAMB**  
Aged Care Commissioner



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## COMMISSIONER'S FOREWORD

This is my first annual report since the changes to the Aged Care Complaints Scheme (the Scheme) on 1 September 2011.

It provides a great opportunity to reflect on the differences between the 'old' and 'new' worlds for addressing aged care complaints, and how the change has affected aged care providers and service users, as seen in the cases that come to us.

Certainly the data in this report reflect some fundamental changes in the nature and number of complaints to the Office of the Aged Care Commissioner (the office) since the Scheme's focus shifted from investigation to resolution.

One thing that has not changed is that at the heart of every aged care complaint is someone who is, or was, receiving care. Most often the complainant is a family member who cares deeply about the care recipient. In the complexities of dealing with complaints and managing sometimes difficult interpersonal dynamics, it is important not to lose sight of this.

Another constant is our commitment to providing independent oversight of the Scheme and the Aged Care Standards and Accreditation Agency Limited (the Agency), adding value to the process and doing our best to ensure that complaints make a positive difference to the quality of aged care in Australia.

Making a difference is important to us. It is a good day at the office when we see our recommendations implemented by the Scheme or the Agency.

As Aged Care Commissioner (the Commissioner), my role in relation to examining complaints about the conduct of the Agency and its assessors is unchanged. Once again, there have been no recommendations relating to the Agency this year.

However, there are many examples of improvements reported by the Scheme as a result of our recommendations. These include a further complaints resolution process for people with serious unresolved concerns, and action taken to improve aspects of the complaints resolution process such as improving communication with complainants and record keeping and ensuring people are given natural justice. We have also seen an approved provider undertake root cause analysis of an incident and implement service improvement following comment in one of our reports regarding the standard of the internal investigation.

### The "old world"

Prior to 1 September 2011, the Scheme dealt with most complaints about Commonwealth subsidised aged care services by investigating whether care providers had breached their legal responsibilities and, if so, requiring action to address the breaches.

When complainants or approved providers asked the Commissioner to examine 'breach' or 'no breach' decisions by the Scheme, my role involved examining the information about the care in question; determining whether I agreed with the Scheme's decision and recommending it be confirmed, varied, or changed,

## The “new world”

Now there is greater focus on resolution. The Scheme has a wider range of tools for achieving this. There are two decisions I am asked, as Commissioner, to independently examine; either to take no further action on a complaint or to end a resolution process on any of eight different grounds. If I find reason to disagree with the decision I can recommend that there be a new resolution process and specify matters the Scheme should take into account.

Sometimes the Scheme’s decision to “close” a complaint involves a finding as to whether or not the approved provider has met its responsibilities in providing care and/or taken appropriate action to remedy any failings. In those cases I still need to consider whether I agree with the Scheme’s assessment in relation to the care issues and the adequacy of any remedial action.

However, more commonly, the cases we see now have been concluded by the Scheme without formal findings in relation to the standard of care. In these cases, the question for me, as Commissioner, is more about the complaints process. For instance, it can be a question of whether I agree with the Scheme that all the complaint issues have been resolved or that further action is not warranted under the circumstances.

## Impact of the changes

Fewer people have complained to our office about the Scheme’s decisions and processes this year. This trend is welcome if it reflects greater satisfaction with the Scheme’s complaint process and outcomes since the 1 September changes; however it is too soon to be sure.

It also appears that aged care providers may be happier with the new process than members of the public. Since 1 September 2011 no providers have asked me to examine a decision by the Scheme and only one has complained about the Scheme’s process. While it is not unusual for our office to receive fewer complaints from care providers than care recipients and their families, the silence from providers is noteworthy.

All complaints continue to be complex. Unfortunately, by the time matters reach us, relationships between the parties have invariably broken down. There can be complicated family relationships and other parties involved such as guardians. All of this means the issues may have become entrenched. We are managing complaints with fewer delays than previously, but improving our timeframes, particularly for concluding process complaints, will continue to be a priority.

## Further changes ahead

In late April the Government responded to the Productivity Commission’s report ‘Caring for Older Australians’. While public attention has focused on the reform to aged care delivery and funding, the Government has also unveiled plans to increase the power of this office. It has announced that from 1 July 2013 the Commissioner will be able to direct the Scheme to undertake a new complaints resolution process.



Currently the Commissioner's powers are recommendatory. While in practice most recommendations are accepted and acted on, the Scheme can reject them. The proposed changes remove that discretion.

The changes will also require the Scheme to take into account any matter identified by the Commissioner as part of a direction to undertake a new process. Further, it is proposed that the Scheme will be required to provide the Commissioner with a copy of its draft decision following the resolution process and be required to take into account any additional comment from the Commissioner. If the Commissioner is dissatisfied with the response of the Scheme, they will have the power to make a special report to the Minister for Mental Health and Ageing.

It will mean that people coming to this office can be confident that if their complaint about the Scheme's decision is upheld, they will have their complaint revisited by the Scheme. The Commissioner will have more than one opportunity to independently influence the outcome and be able to take action if dissatisfied.

## Acknowledgements

My ability as Commissioner to make a difference depends on the quality of the work done by staff. Thanks are due once again to all of my team for their continuing professionalism, dedication and hard work. In particular, I acknowledge the significant contribution of Jennifer Theisinger who retired as Director of this office in November after leading it from its inception. I am grateful too for the high quality advice and professional support consistently provided by the staff from the Australian Government Solicitor.

In particular, thanks are due to staff for the professional and patient way they have managed the transition and accommodated the additional work associated with updating systems, processes, protocols and documents to adapt to the changes this year.

Opportunities to engage with consumers, advocates, carers, approved providers and others in the aged care arena have also been much appreciated this year. So have the cooperative and constructive relationships with the Department of Health and Ageing, the Aged Care Standards and Accreditation Agency Limited and the Office of the Commonwealth Ombudsman. These relationships continue to assist us to fulfil our separate, and very different, roles with the common aim of ensuring high quality aged care services and prompt and appropriate resolution when concerns are raised.

**Rae Lamb**  
**Aged Care Commissioner**

## MISSION

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.

## Vision

To be recognised as a leader in complaints management and in fostering excellence in public administration.

## ABOUT THE OFFICE

The Aged Care Commissioner (the Commissioner) is appointed under Part 6.6 of the *Aged Care Act 1997* (the Act). The Commissioner is appointed by, and is responsible to, the Minister for Mental Health and Ageing. Aged Care Commissioners are appointed for terms of up to three years. The current Commissioner, Ms Rae Lamb was appointed on 5 January 2011. Her term will expire on 4 January 2014.

The Commissioner's functions are set out in Part 6.6 of the Act and the *Complaints Principles 2011* (the Complaints Principles). The Complaints Principles replaced the *Investigation Principles 2007* (the Investigation Principles) on 1 September 2011.

The Commissioner's primary function is to address complaints lodged against the Scheme and the Aged Care Standards and Accreditation Agency Limited (the Agency).

There are in essence four types of complaints which may be made to the Commissioner. The Commissioner can examine complaints about:

- certain *decisions* made by the Scheme (decision complaints)<sup>1</sup>
- the *processes* adopted by the Scheme in addressing a complaint (process complaints)
- the *conduct* of the Agency assessors when conducting a support/assessment visit or an audit
- the *conduct* of the Agency in relation to its responsibilities under the *Accreditation Grant Principles 1999* or the *Accreditation Grant Principles 2011* (collectively, the Accreditation Grant Principles)

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<sup>1</sup> Decisions are made by 'Delegates' acting under the delegation of the Secretary of the Department of Health and Ageing

The Commissioner may also conduct examinations in the absence of a complaint. These are known as own initiative examinations and can involve examination of a single issue or a number of issues.

Upon finalisation of an examination, the Commissioner makes recommendations to the Secretary of the Department of Health and Ageing (the Department) or the Agency. Currently the Commissioner may only *recommend* that a course of action be taken by either the Agency or the Department. As noted in the Commissioner's Foreword, however, this is set to change in July 2013 whereupon the Commissioner's powers in relation to the Scheme will become directive.

Complaints can be made to the Commissioner orally or in writing and the Commissioner must decide within 14 days of receiving complaints whether she will examine them.

Where the complaint is about a Scheme decision (decision complaint) it must be lodged no more than 28 days from the date the complainant receives the written decision. If the Commissioner decides to examine the complaint, the Commissioner has to complete her examination within 60 days of accepting it.

Where a complaint is about the Scheme's process (process complaint) or about the conduct of the Agency or its assessors (conduct complaint) it must be lodged within 12 months of the matters complained about.

The Commissioner has no discretion to extend these timeframes.

## **Budget and Staff**

The budget for 2011-2012 was \$1.5 million and was allocated by the Department<sup>2</sup>. The Commissioner's salary (which is set by the Remuneration Tribunal) and all staff salaries are included in the budget allocation.

Eleven people work in the office (including the Commissioner). The office's work is coordinated by the senior management team consisting of the Commissioner, the Director and the Investigations Manager. The investigations team consisting of five senior investigations officers report to the Investigations Manager. The Communications Officer, Office Manager and Administration Officer report to the Director.

The office is supported by legal practitioners employed by the Australian Government Solicitor (AGS) who attend the office two days a week to provide independent legal advice.

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<sup>2</sup> The Commissioner's budget is part of the budget for the Department's Ageing and Aged Care Division and is monitored and reported on by the Department.

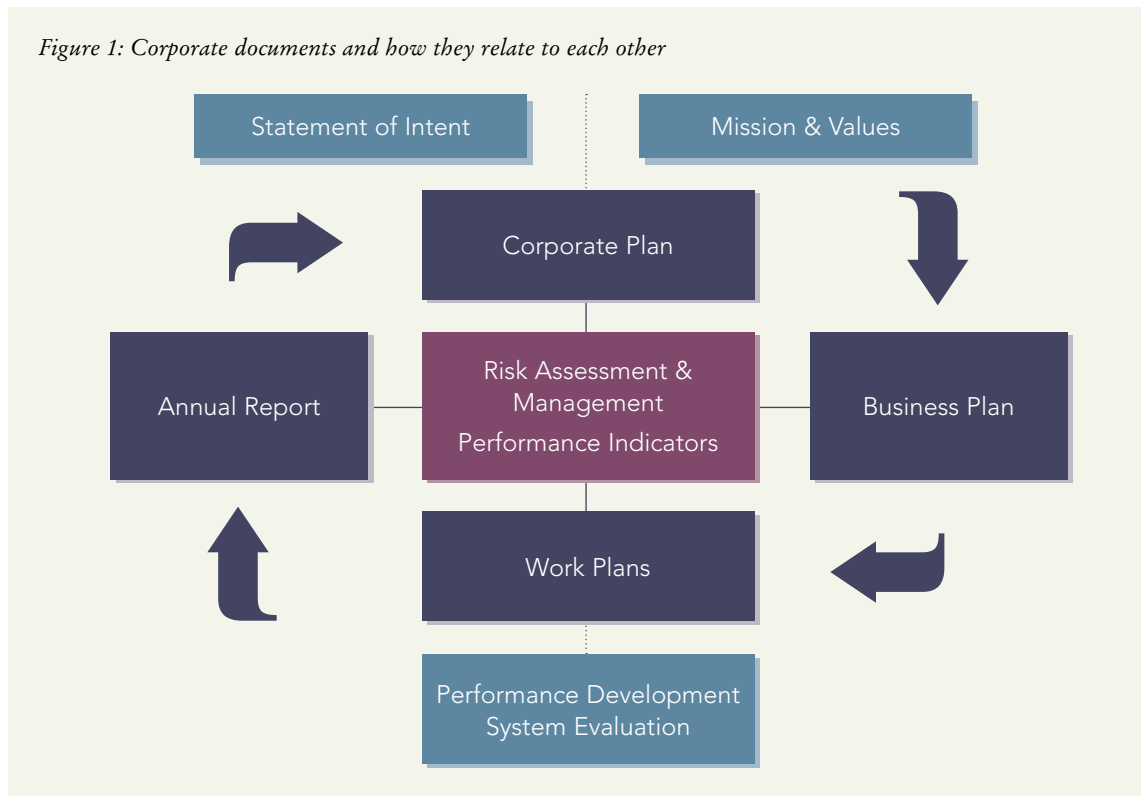
## Guiding Documents

The Commissioner's commitment to best practice is reflected in a series of policy documents and various plans developed to guide the office and support the Commissioner's primary purpose of improving Commonwealth subsidised aged care.

These include:

- The Statement of Intent. This outlines the action that will be taken to meet the expectations of the Government as outlined in the Letter of Expectations from the Minister of Mental Health and Ageing.
- The Corporate Plan which provides broad strategic direction for the Commissioner's work and is supported by additional policies and plans such as the work plan and the business plan.
- Internal Key Performance Indicators. These form part of a broader quality improvement strategy and track performance on two levels; individual files and systems, and policies and structures.
- The Service Charter guides service delivery. It includes key information about the approach of the office and provides a clear statement about the standard of service the community can expect from the Commissioner and her staff. The Charter is reviewed annually. While some commitments in the Charter have a legislative basis, the document does not create legally enforceable rights or responsibilities.
- The office also has complaints and administrative procedural guidelines.

Figure 1: Corporate documents and how they relate to each other



### *Internal Complaints*

Another key corporate document is the internal complaints policy. It encourages people to raise any concerns about the office directly with us in the first instance and it sets out the process for an internal review (as noted later in this report people can also complain to the Commonwealth Ombudsman).

The office received one complaint about our process this year. The complaint was reviewed by the Director who had no previous involvement in the case and in accordance with the policy. It was resolved that the complaint of bias could not be upheld. Nonetheless the complaint and the review were useful in identifying areas to improve clarity of communication with complainants. The Director's recommendations to the Commissioner have been followed up with all staff and incorporated into the updated procedures manual.

The internal complaints policy and most other key corporate documents are scheduled for review in the new financial year. They are published on the website [www.agedcarecommissioner.net.au](http://www.agedcarecommissioner.net.au).

### **Activities**

Investigations are the primary activity for the office and they are supported by a number of other important activities including staff training and development, and post case conference reviews.

Monthly training sessions are held, involving internal and external presenters and covering topics relevant to complaints work, aged care and the public service. External presenters this year included the Age Discrimination Commissioner Susan Ryan, and trainers from the office of the Victorian Ombudsman. New workplace health and safety requirements, and security classifications and requirements, were among the matters covered by speakers from the Department of Health and Ageing. External trainers also ran a one day workshop for the Commissioner's staff on the changes to the Scheme. In January the annual staff planning day focused on reviewing and updating some internal processes and procedures in light of those changes, as well as public service responsibilities and code of conduct. The day resulted in various improvements to internal processes and resources, including the development of some useful documents by staff to assist with orientating new team members and providing information to members of the public.

Another important monthly fixture is the whole of office post-case conference where senior investigators present closed cases with a focus on what has been learned, any systemic issues or trends that are being identified, and improving internal processes. In light of the changes to the Scheme, these conferences this year were expanded to include cases that had been assessed and a decision made not to examine. The conferences are a key part of the office's quality assurance activities outlined further later in this report.

As well as meeting regularly with the Minister and the Department, the Commissioner visited various State and Territory Scheme offices and met with a wide range of individuals and industry groups including:

- Ageing Consultative Committee
- Health Service Complaints Commissioners
- Age Discrimination Commissioner
- Commonwealth Ombudsman
- Australian National Audit Office
- Aged Care Standards and Accreditation Agency Limited
- Aged Care Association Australia (ACAA)
- Aged and Community Services Australia (ACSA)
- Aged Care Advocacy – Western Australia
- Aged Care Alliance – Western Australia

The Commissioner was the invited guest speaker at meetings and conferences arranged by the Health Services Consumers Council of South Australia, ACAA Victoria, ACSA and ACSA Western Australia, ACAA Western Australia, Aged Care Queensland, COTA Western Australia and the Melbourne Rotary Club. The Commissioner also spoke at a national health complaints conference in Melbourne in November, at a Better Practice conference for aged care providers in Tasmania in March, and at the Health Services Complaints Commissioners' meeting in May.

## MANAGING RELATIONSHIPS

As a statutory office holder, the Commissioner is independent of the Department and the Agency. It is important therefore to maintain sound working relationships with these and all stakeholders. To support this, the Commissioner has formal written protocols with both the Department and the Agency. The protocols guide the day-to-day interaction between each agency and are updated as necessary to reflect legislative amendments and changes in practice. These too are published on the website.

The protocols have been updated this year to reflect the changes from the Investigation Principles to the Complaints Principles, the amendments to the Act and the Accreditation Grant Principles.

### Office of Aged Care Quality and Compliance

Within the Department, the Office of Aged Care Quality and Compliance (OACQC), based in Canberra, is responsible for the overall management of the Scheme. With the exception of Canberra, there are Scheme offices in each state and territory that are responsible to state and territory managers on a day-to-day basis. In May 2011 the Australian Capital Territory (ACT) office was closed and staff in New South Wales assumed responsibility for managing complaints originating in ACT.

The Commissioner's liaison with the Department is primarily through OACQC, in particular the Director and staff of the Scheme's review section. The constructive working relationship that exists between the Commissioner's staff, OACQC and the Scheme's review section, assists in dealing with matters in a timely and responsive manner.

The Commissioner and the Director meet regularly with OACQC senior staff to discuss trends and systemic matters. These meetings encourage a shared understanding of the various roles and responsibilities and a co-operative and professional working relationship.

### The Aged Care Standards and Accreditation Agency Limited

The Agency is an independent company limited by guarantee and is established under the *Corporations Act 2001* (Cth) and the *Commonwealth Authorities and Companies Act 1997* (Cth).

Its functions are to:

- manage the residential aged care accreditation process
- promote high quality care and assist the aged care industry to improve service quality by identifying best practice and providing information, education and training
- assess and strategically manage aged care services working towards accreditation
- liaise with the Department about services that do not comply with relevant standards

The Commissioner's liaison with the Agency is generally through the Chief Executive and General Manager. There were two meetings this year in relation to reviewing and updating the protocol. The Agency also made a formal presentation to the Commissioner's staff regarding its role and the accreditation process.

## The Commonwealth Ombudsman

Complaints about the Commissioner's administrative actions fall within the jurisdiction of the Commonwealth Ombudsman. This year the Ombudsman received eight complaints against the Commissioner. With the exception of one, which was still open at the close of the financial year, all complaints were closed without any adverse findings against the Commissioner.

## Freedom of Information

Agencies subject to the *Freedom of Information Act 1982* (FOI Act) are required by Part II of that Act to provide information to the public under the Information Publication Scheme (IPS). Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Commissioner's plan can be found on the website at **[www.agedcarecommissioner.net.au](http://www.agedcarecommissioner.net.au)**

One request for information was received by this office during this financial year under the FOI Act. This application was dealt with within the statutory time limits and other requirements and all relevant information was released to the applicant.



## PERFORMANCE AND STATISTICS

As discussed earlier, changes to the legislation came into effect on 1 September 2011. This means the statistics for the year cover complaints about the Scheme's decisions and processes under the previous Investigation Principles as well as those made subsequently under the Complaints Principles.

The Commissioner is required by legislation to report the following<sup>3</sup>:

- the number of decisions made by the Scheme that were examined by the Commissioner (decision complaints)
- the number of complaints made to the Commissioner about the Scheme's processes (process complaints)
- the number of complaints made to the Commissioner about the conduct of the Agency and/or its assessors (conduct complaints)
- the number of process and/or conduct complaints the Commissioner commenced examining
- the number of process and/or conduct complaints the Commissioner finished
- a summary of the nature of the Commissioner's examination of process and or conduct complaints
- the number of own initiative examinations conducted by the Commissioner and a summary of the nature of those examinations
- the number of requests for advice from the Minister and a summary of the nature of those requests and advice given

While these are the mandatory requirements, the Commissioner also reports on a variety of other measures in order to be fully transparent and to increase understanding of the role and activities of the office.

### Contacts and Enquiries

This year the office began formally recording all contacts and enquiries. While these telephone calls, emails and letters are about matters unrelated to the Commissioner's role and functions it is office practice to assist people wherever possible. This means staff invest significant time and effort in assisting members of the public. It is therefore important to record this work.

From 21 December 2011 (when the data recording began) until 30 June 2012, there were 235 contacts and enquires with the office that did not relate to the Commissioner's role or functions.

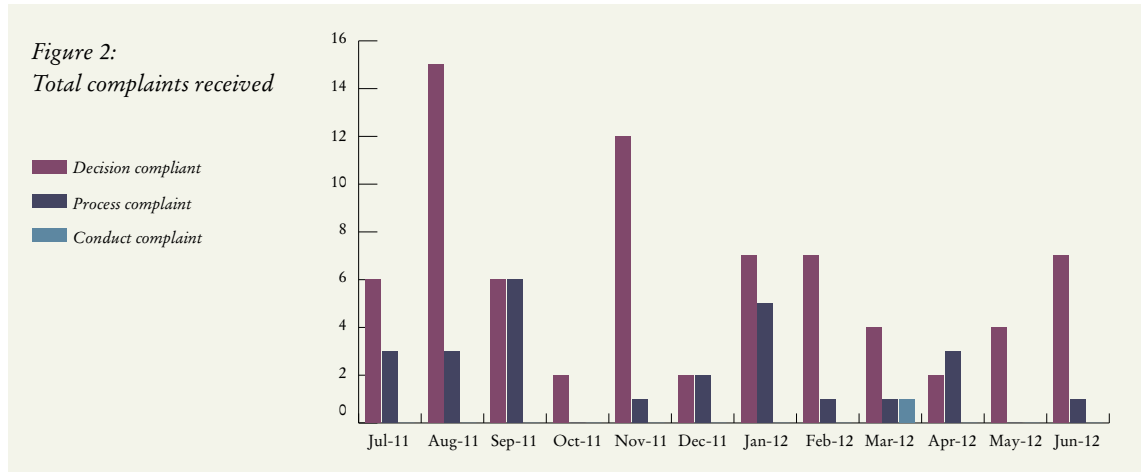
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<sup>3</sup> The formal requirements pre and post 1 September 2011 can be found at Attachment A

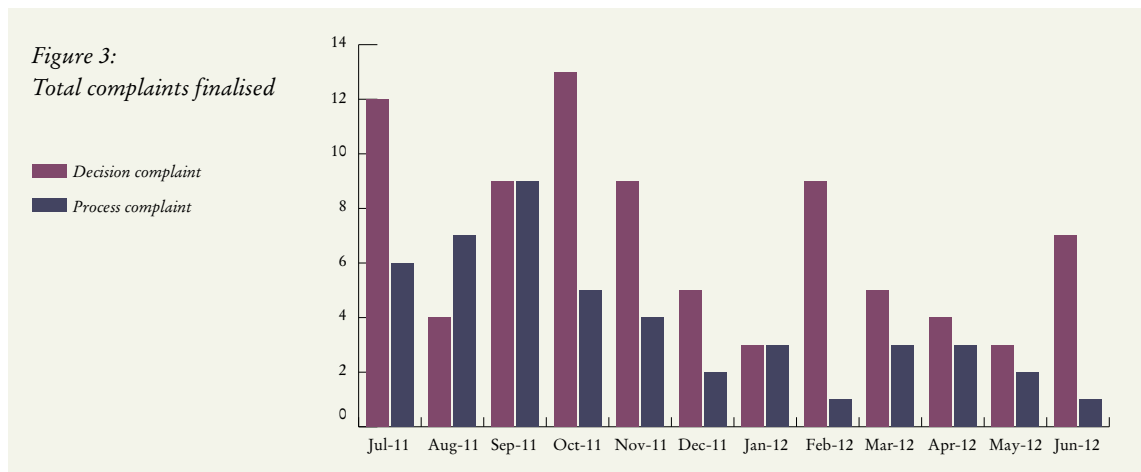
## Complaints

In total, 102 complaints were received this year. Most were complaints about the Scheme's decisions or processes. One related to the conduct of an Agency assessor.

The Commissioner and the Department exchange statistical data in relation to complaints in accordance with the protocol. Analysis of these figures shows this year about 2.4 per cent of complaints to the Scheme resulted in complaints to the Commissioner about the Scheme's decision and/or process.



In total 129 complaints were finalised this year. These were all about the Scheme's decisions and processes.



### *Assessment*

Since 1 September 2011, the Commissioner has had a legislative timeframe of 14 days following receipt of a complaint to assess it and decide whether the complaint can be accepted for examination.

In the case of complaints about the Scheme's decisions, this means the Commissioner has time to gather more information and clearly establish jurisdiction and the issues, before deciding whether to begin an examination which legislation requires to be completed within 60 days. It also assists with progression of process complaints as more information is gathered at the outset, even if the investigation is delayed while a related decision complaint is examined.

New procedures have been introduced to the office to support the new complaint assessment requirements. It took an average of nine days for the Commissioner to decide whether she could examine a complaint<sup>4</sup>. The Commissioner did not take more than 14 days to reach this decision on any complaint.

A breakdown of the types of complaints received, how they were finalised and the resulting recommendations, is detailed in the sections below.

### *Complaints about decisions (decision complaints)*

Before 1 September 2011, care recipients or their representatives could ask the Commissioner to examine the following decisions by the Scheme<sup>5</sup>:

- a decision by the Secretary not to investigate a matter relating to an approved provider's responsibilities
- a decision by the Secretary to cease investigating a matter
- a decision by the Secretary that there has been no breach of the approved provider's responsibilities
- a decision by the Secretary not to issue a Notice of Required Action (NRA)
- the terms/conditions of an NRA that directly related to the aggrieved person

Prior to 1 September 2011, approved providers could ask the Commissioner to examine the following decisions by the Scheme:

- 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 on reconsideration by the Secretary to issue an NRA where the Secretary originally decided not to investigate or to cease investigating the matter

<sup>4</sup> Covers the period since 1 September 2011 when the 14 day assessment time limit was introduced.

<sup>5</sup> See footnote 1

Now people who have made a complaint to the Scheme (complainants) can ask the Commissioner to examine decisions by the Scheme to:

- take no further action
- end a resolution process
- confirm a decision, or end a new resolution process, following reconsideration by the Scheme (as long as the new resolution process was not the result of a recommendation by the Commissioner).

Approved providers can ask the Commissioner to examine decisions by the Secretary to:

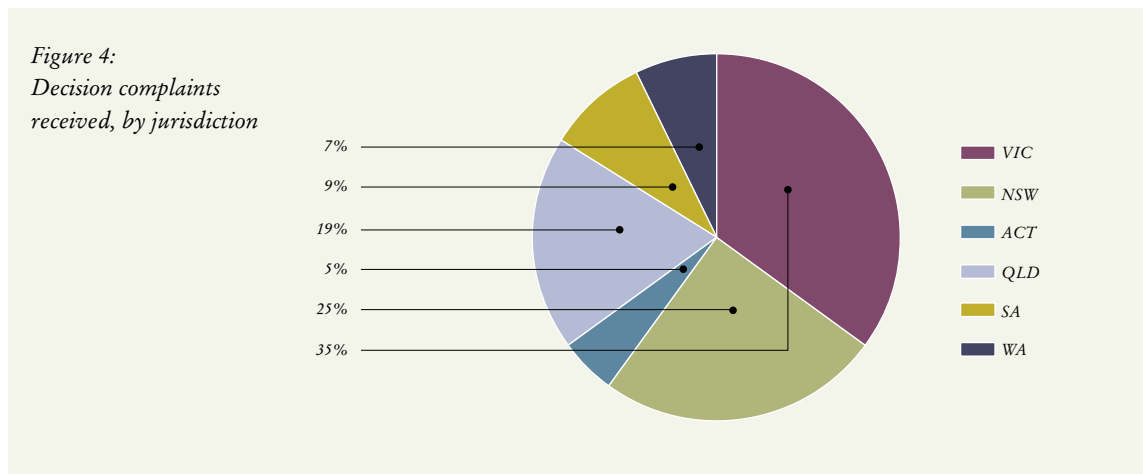
- end a resolution process
- confirm a decision to end a resolution process, or end such a process following reconsideration by the Scheme

Unlike complainants, approved providers are able to ask the Commissioner to examine decisions by the Secretary to end a new resolution process that arose from a recommendation by the Commissioner following an earlier case. In particular, they can ask the Commissioner to examine the decision if the Secretary has issued 'Directions' to the approved provider as part of the new process that were not given as part of the original resolution process.

**Received**

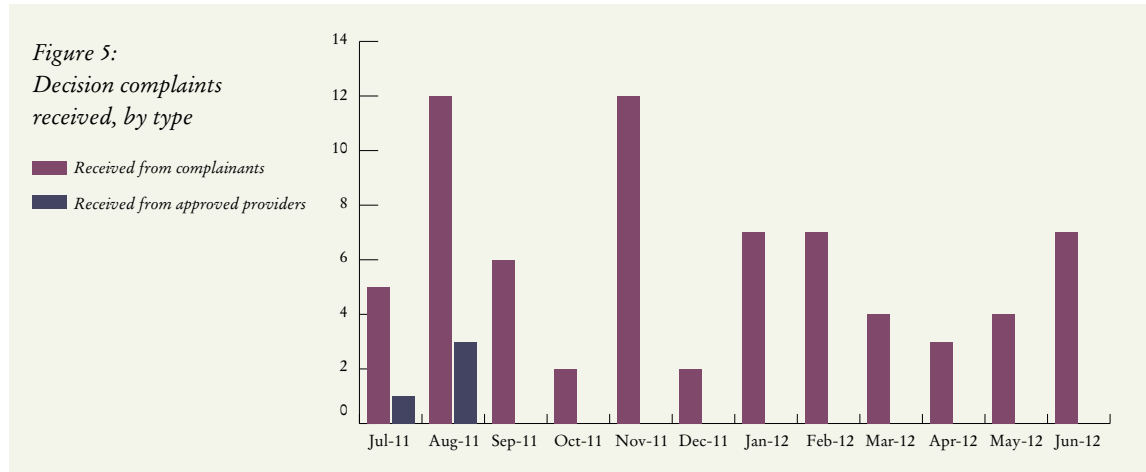
There were 75 applications for the Commissioner to examine a decision made by the Scheme. Of these, 28 were about decisions made by the Scheme under the Investigation Principles, 39 were about decisions made by the Scheme under the Complaints Principles and eight were complaints that were not related to examinable decisions<sup>6</sup>.

As figure four shows, most of these complaints related to Scheme decisions in the larger states of Victoria, New South Wales and Queensland. None were lodged about decisions in Tasmania and the Northern Territory.



<sup>6</sup> In December 2011/January 2012 the new system was introduced to record complaints that were found not to relate to the Commissioner's role or functions, as enquiries or contacts.

Ninety five per cent of the complaints about Scheme decisions were from members of the public and five per cent were from approved providers. However, as figure five shows, no complaints about the Scheme's decisions were received from approved providers following the changes to the Scheme on 1 September 2011.



#### **Accepted for examination**

Thirty nine complaints about Scheme decisions were accepted for examination by the Commissioner. Twenty two were about Scheme decisions made under the Investigation Principles and 17 were about Scheme decisions made under the Complaints Principles.

#### **Finalised without examination**

Thirty six decision complaints were finalised without being examined. Eight were about Scheme decisions made under the Investigation Principles and 20 were about Scheme decisions made under the Complaints Principles.<sup>7</sup>

Five decision complaints were withdrawn before the Commissioner could determine whether to examine the complaint.

Twenty six complaints were not accepted for examination as the complaint was outside the Commissioner's jurisdiction. This was ordinarily because:

- the complainant had come directly to the Commissioner before going to the Scheme with their concerns about aged care
- the cases were yet to be completed by the Scheme
- the complaint to the Commissioner was received outside the timeframes required by the Investigation and Complaints Principles (14 and 28 days respectively)

<sup>7</sup> Neither set of Principles applied in eight cases which were finalised as out of scope because there was no examinable decision. See footnote 6 also.

- the complaint had not been validly made as it was not possible to establish reasons for the complaint other than dissatisfaction with the Scheme's decision (required by both the Investigation and Complaints Principles)
- the complaint did not relate to an examinable decision<sup>8</sup>

In respect of four decision complaints the Commissioner decided not to examine the complaint. Under the Complaints Principles, the Commissioner may decide to 'take no further action' (that is, she may decide not to examine a complaint about a decision) if, for instance, it relates to another legal proceeding and/or a coronial inquiry, the care recipient does not wish the matter to be examined, or there are circumstances which suggest examination of the decision is not warranted. Similar discretion existed under the Investigation Principles.

One decision complaint was conciliated before being accepted for examination.

### ***Examinations finalised***

Of the decision complaints that were examined by the Commissioner, 39 were finalised after an investigation. Twenty eight were about decisions under the Investigation Principles and 11 were about decisions under the Complaints Principles.

Eight decision complaints were withdrawn after the Commissioner's decision to examine these cases and before an investigation could be completed.

As mentioned earlier, the Commissioner is required to finalise these complaints within 60 days of accepting them. The 39 complaints that were investigated took, on average, 50 days to complete.

All decision complaints were completed within 60 days of being accepted for examination.

### ***Recommendations***

The Commissioner is required to provide a recommendation to the Secretary after examining complaints against Scheme decisions.

This year, the Commissioner recommended that the Scheme's decision be confirmed in 21 of the 39 cases investigated. In seven cases the Commissioner recommended that the original decision be varied and in 11 cases the Commissioner recommended that the original decision be set aside.

Before 1 September 2011 these recommendations related to whether the Commissioner agreed with the Scheme's decision that an approved provider had or had not breached its responsibilities in relation to the issues in the complaint and/or whether Notices of Required Action should or should not have been issued. The Commissioner's recommendation could result in the decision being overturned.

Now the Commissioner recommends whether there should be a further resolution process by the Scheme in relation to any or all of the issues covered by the decision. If she confirms the decision it means she is recommending no change. If she decides to vary the decision it means

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<sup>8</sup> See footnote 6

she recommends some issues should be the focus of further resolution. Setting aside means the Commissioner recommends that all the issues should go back to the Scheme for further process.

In recommending further action the Commissioner is required to specify any matters she has identified that should be taken into account by the Scheme.

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

*Figure 6: Recommendations to the Secretary following examination of decisions*

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
<b>Confirmed</b>	6	4	3	4	3	0	0	1
<b>Varied</b>	0	1	3	1	1	0	0	1
<b>Set Aside</b>	5	3	1	1	1	0	0	0

The Commissioner issued 39 reports with recommendations to the Secretary following the examination of Scheme decisions. Prior to 1 September 2011, the Secretary was required to advise the parties of the response to the recommendations (the reconsideration decision) within 21 days of receiving the Commissioner's recommendations. Now the Secretary must do so within 28 days.

The Secretary accepted the Commissioner's recommendations in relation to all cases and the Commissioner was advised of this, on average, in just over 17 days<sup>9</sup>.

### *Complaints about process*

Anyone can complain to the Commissioner about the Scheme's process for handling complaints prior to 1 September 2011 under the Investigation Principles, and subsequently, under the Complaints Principles.

#### **Received**

The Commissioner received 26 complaints about the Scheme's process. Fourteen related to the Scheme's processes for handling complaints under the Investigation Principles and eight to the Scheme's processes for handling complaints under the Complaints Principles. One other process complaint related to both Principles. The remaining three did not relate to either Principles<sup>10</sup>.

#### **Accepted for Examination**

Seventeen process complaints were accepted for examination. (One was received in the previous financial year). Nine of those accepted related to the Scheme's processes for handling complaints under the Investigation Principles and seven related to the Scheme's processes for handling complaints under the Complaints Principles. One process complaint which was accepted related to both Principles.

<sup>9</sup> Since 1 September 2011 the Secretary is no longer required to reconsider the matter and advise an outcome if the Commissioner has confirmed the original Scheme decision.

<sup>10</sup> These cases were found to be out of scope.

### **Finalised without examination**

Ten process complaints were finalised without examination. Five related to the Scheme's processes under the Investigation Principles and two related to the Scheme's processes under the Complaints Principles. The other three were finalised as outside the Commissioner's scope as they were not examinable complaints<sup>11</sup>.

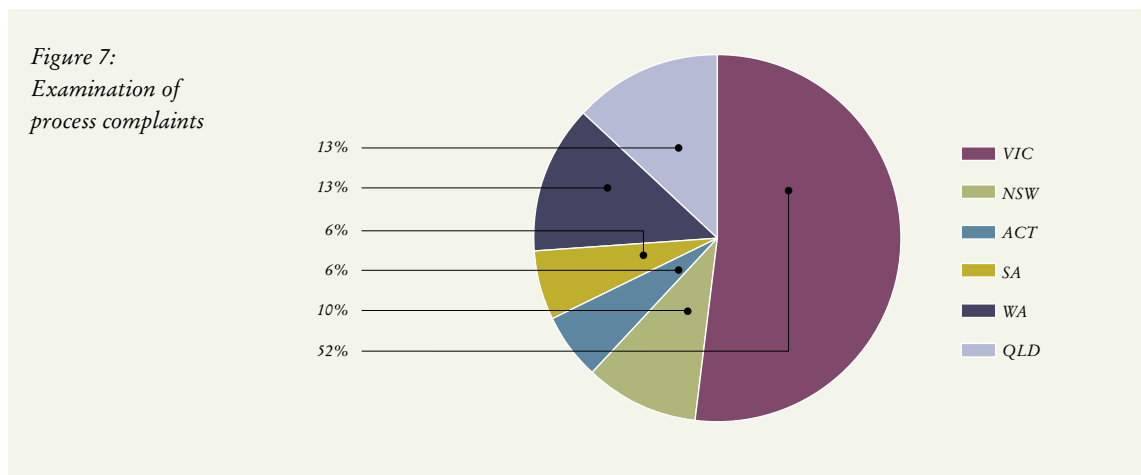
Since 1 September 2011, complaints about the Scheme's process (and the conduct of the Agency or its assessors) have had to be lodged within 12 months of the process (or conduct) complained about. The Commissioner cannot examine complaints which are lodged outside the 12 month time frame or those that do not relate to a function covered by the Commissioner's powers.

Additionally, the Commissioner may decide not to examine a process (or conduct) complaint for the same reasons outlined earlier in relation to decision complaints.

### **Examinations finalised**

Thirty six process complaints were examined and finalised, with 34 related to the Scheme's process under the Investigation Principles and two related to the Scheme's process under the Complaints Principles. Thirty one of the process complaints were finalised after completion of an investigation (29 related to the Investigation Principles and two to the Complaints Principles). Five process complaints were finalised when they were withdrawn following the Commissioner's decision to examine the complaint.

As figure seven shows just over half the complaints finalised by investigation related to the process of the Scheme in Victoria.



<sup>11</sup> See footnotes 6 and 10.



It takes longer to finalise process complaints because most are also associated with a complaint about the Scheme’s decision and therefore they are delayed while that is examined first. Also, the investigation of process complaints involves interviews with the parties and goes beyond review of information that led to the decision.

It took on average, 208 days to complete each of the 31 investigations into process complaints. This is an improvement on previous years and it is encouraging to note that the investigations undertaken by the Commissioner after 1 September 2011 and the introduction of the new Complaints Principles took on average 144 days.

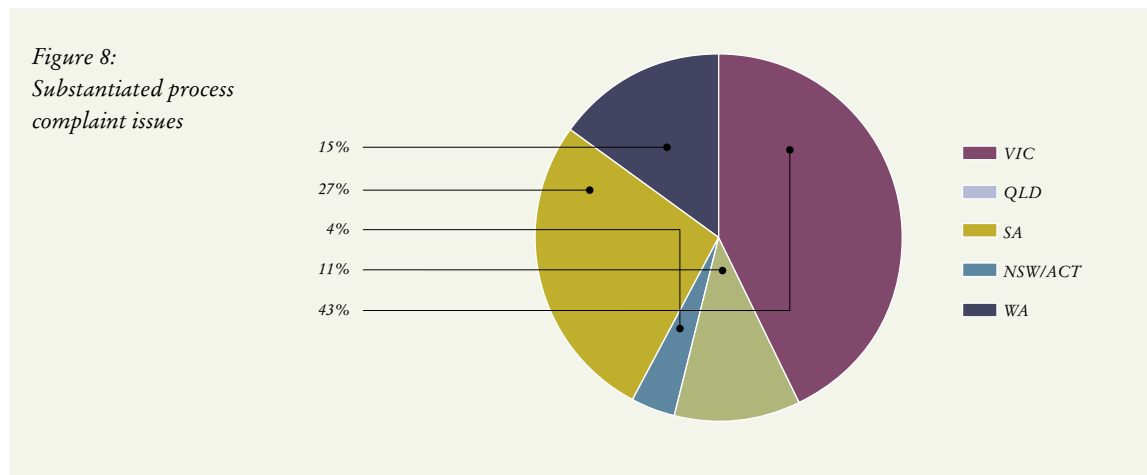
**Recommendations**

The Commissioner’s examination of process complaints also results in recommendations. Here, however, the focus for recommendations is on improving the Scheme’s complaints process for the future. These types of examinations cannot result in a Scheme decision being revisited through a recommendation that there be a new resolution process.

The 31 completed investigations examined 117 process issues, including whether the Scheme:

- spoke to all relevant parties
- conducted the process in a fair and timely way and provided updates
- adequately identified, investigated or addressed complaint issues
- took all relevant information into account
- gave parties an opportunity to provide, respond to, or clarify, information
- gave equal weight to the information from the complainant and the approved provider

Fifty three issues (45 per cent of the issues raised) were found to be substantiated.



As a result, the Commissioner made 121 recommendations for improvements to the Scheme's process for handling complaints. While 29 of the 31 investigations into the Scheme's processes, related to matters dealt with under the previous Investigation Principles, the recommendations focused on ways to improve processes under the new Complaints Principles. The Commissioner's recommendations covered such matters as:

- investigation and complaints resolution practices, including contact with all relevant parties and communicating regular updates and personnel changes
- improving documentation such as file notes and the clarity and accuracy of oral and written communication
- adjusting timeframes for individual circumstances where possible
- procedural fairness
- staff training including using de-identified case studies
- written feedback to complainants
- random file audits as part of quality assurance

The Commissioner investigated and finalised two complaints which related to the Scheme's processes under the Complaints Principles. The Commissioner's recommendations covered such matters as:

- considering how best to assist Scheme officers in situations where the complainant may be limited in their ability to participate in the resolution process; and
- providing further guidance to Scheme officers in relation to drafting decision letters.

All of the Commissioner's recommendations were accepted by the Secretary.

The Commissioner was advised of a number of initiatives and improvements by the Scheme resulting from her recommendations. These include:

- the use of an internal intranet blog to advise Scheme officers that decision timeframes can be adjusted to account for circumstances such as the death of a care recipient, and to issue reminders about record keeping and accuracy
- review of Scheme fact sheets and templates to ensure complainants are clearly informed they can send in further information and are told to let officers know if there is to be a delay in providing information
- periodic file audits as part of quality assurance
- the use of de-identified cases in training to highlight the process issues raised
- internal protocols to establish responsibility for informing complainants of staff changes and providing updates.

### *Complaints about conduct (Agency/assessors)*

One complaint<sup>12</sup> was received about the conduct of a person carrying out an audit or assessment contact under the Accreditation Grant Principles 2011. This matter was accepted for examination but the examination was yet to be concluded at the end of the financial year. There were no complaints about the conduct of the Agency.

### **Own Initiative Examination**

In late June 2012 the Commissioner began an own initiative examination into the Scheme's complaint processes relating to issues of care recipient capacity and representation. The decision to conduct the examination was prompted by issues being raised and identified in some complaints to the Commissioner and raised in correspondence from a coroner.

The examination was yet to be concluded at the end of the financial year.

### **Requests from the Minister**

The Minister of Mental Health and Ageing sought no formal advice from the Commissioner. The Commissioner met the Minister three times during the year and the Commissioner subsequently provided supplementary information in relation to changes to the Scheme proposed by the Productivity Commission.

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<sup>12</sup> This was initially entered as a complaint then withdrawn while the complainant went to the Agency. The complaint was subsequently lodged again. As it is the same matter it has been counted only once.

## QUALITY ASSURANCE

The development, implementation, management and reporting of quality assurance activities takes time and effort, nonetheless the benefits are significant and vital to ensuring excellence is achieved in the operation of this independent statutory office. The quality assurance program demonstrates accountability and assists in meeting the commitment to continuous improvement.

The office takes a broad approach supported by policy and procedural documents which provide for and enhance best practice. The approach includes satisfaction surveys, case review conferences and monitoring performance against internal key performance indicators.

### Key Performance Indicators

These are a set of targets the office has set itself, and which assist staff in assessing whether they are achieving overall objectives and in identifying opportunities to improve. Progress is monitored and followed up internally.

As the indicators were set prior to the commencement of the Complaints Principles on 1 September 2011, many of the indicators are framed within the context of the legislative requirements of the Investigation Principles. The indicators are under review.

**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 four working days after the initial contact and the established target is 100 per cent. This year, 94 per cent of contacts across Australia were sent an acknowledgement letter within the stipulated timeframe.

**Indicator 2** measures the time between receipt of complaints and when complainants are informed that the Commissioner is unable to examine their complaints. It requires that in at least 90 per cent of cases this contact is made within 14 days of the receipt of a complaint<sup>13</sup>. All contacts with complainants were made within the stipulated timeframe so the target was fully met.

**Indicator 3** relates to the development of an investigation matrix to identify the issues, where evidence might be found, the avenues of inquiry and timelines for follow-up as appropriate. The matrix is to be developed within 21 days of the acceptance of a complaint and the expected target is 90 per cent. During the reporting period the target was met in 95 per cent of accepted appeal cases (complaints about decisions) and in 50 per cent of process complaints. The latter was because many process complaints are delayed for 60 days while a related appeal is examined and finalised.

**Indicator 4** measures the time between the acceptance of a process complaint and its finalisation. The target is for 70 per cent of these complaints to be resolved and finalised within 141 days. It was met in 19 per cent of all cases this year. This was because a number of older process complaints were finalised, and the 60 day period during which many process complaints are on hold while appeals are finalised is included in the calculations.

<sup>13</sup> This indicator was set prior to the introduction on 1 September 2011 of the legislative 14 day time limit for the Commissioner to decide whether she can examine complaints. 100% of the decisions to examine a complaint must now be made within 14 days.

Of all the process complaints finalised by investigation for this reporting period, 57 per cent of those received under the Complaints Principles were finalised within 141 days.

**Indicator 5** Part A measures the time between the receipt of a decision complaint and a documented finalisation date and provision of a recommendation to the Secretary. The indicator is based on the legislative requirement for 100 per cent of matters to be finalised date within 60 days. The target was met in all cases.

Part B measures the time between receipt of a complaint about a decision and provision of a report to the Secretary about a refusal to examine a decision under s16A.24(3) of the Investigation Principles and/or a decision to take no further action under s13A.24(1) of the Complaints Principles. The Secretary was notified of all decisions in no more than 13 days after receipt and on average within 10 days.

**Indicator 6** is based on the rationale that complainants should receive timely feedback regarding the finalisation of all complaints. The indicator measures the number of written contacts made within seven working days of finalisation. The target is 100 per cent and was fully met.

**Indicator 7** measures the number of investigation reports provided to OACQC and the Agency within four days from the date the Commissioner's investigation of a process/conduct complaint is finalised. The target is 100 per cent and was fully met.

**Indicator 8** measures the number of post case conferences conducted after a complaint was finalised following examination. The target is 35 per cent. In all, 70 cases were finalised after a completed examination and 41 of these were reviewed. The target was exceeded.

**Indicator 9** Part A measures the number of satisfaction surveys sent to complainants after a process complaint was finalised following a completed examination. The target is 95 per cent. During the reporting period 31 process complaints were finalised following a completed examination. Satisfaction forms were sent to all complainants. Therefore the target was exceeded.

Part B of the indicator measures the number of satisfaction surveys returned from complainants who indicate they rate the overall handling of their process complaint as either very good or good. The target set for this indicator is 80 per cent. Complainants responding to this survey all indicated the overall handling of their complaint was very good. The target was exceeded.

**Indicator 10** Part A measures the number of satisfaction surveys sent to the parties after a decision complaint was finalised following a completed examination. The target is 95 per cent. During the reporting period 39 appeals were finalised following a completed examination and 78 satisfaction surveys (two per case) were sent. Therefore the target was exceeded.

Part B of the indicator also measures the number of satisfaction surveys returned from people in respect of a decision complaint who indicate they rate the overall handling of the decision complaint as either very good or good. The target for this indicator is 80 per cent. Nine people responded to this survey; three indicated the overall management of their appeal was very good, five said it was good and one found the overall management to be poor. The target was met in 89 per cent of cases.

## Satisfaction Surveys

Satisfaction survey forms are sent out with the final reports for all complaints completed following investigations this year. This includes investigations into complaints about Scheme decisions (appeals) and processes. Where the complaint was about a decision, the survey forms are sent to the complainant and the approved provider. Where the complaint was about process or conduct, the form is sent to the complainant.

There were 109 survey forms sent this year and 11 completed survey forms were returned, giving an overall response of around 10 per cent. Five of the responses were from approved providers and six were from complainants.

The small number of responses means the results have limited value. Nonetheless they were generally positive.

All respondents rated our professionalism and service as very good or good while 91 per cent found our written communication to be very good or good, with the other nine per cent rating it as satisfactory.

Ninety one per cent were satisfied with the overall fairness and impartiality displayed by the Commissioner and staff and 100 per cent responded positively in relation to the consideration, courtesy and respect afforded to them. Ninety per cent of respondents gave a rating of good or very good for the overall way in which their case was handled. Only one person gave a rating of poor.

## Post Case Conferences

Post case conferences (PCCs) are based on the premise we should continually assess our work and learn from it. The conferences provide an opportunity for the entire team to develop critical thinking and analytical skills; to discuss multiple issues, balance different views and to apply collective knowledge to resolve problems.

As noted earlier in the report, the conferences are held monthly and while this year, as in past years, investigated cases have been the primary focus, late in the year the decision was made to also present and review complaints which have been received and assessed but which have not progressed to investigation. Given the significant proportion of these, the work entailed in carefully assessing the information and making decisions, and the different issues raised, it is important to discuss these cases and look at what can be learned from them. Including these cases in the meetings helps staff to develop new skills and assists in ensuring consistency and conformity with office procedures and the legislation.

The conferences also help participants to recognise trends and issues; not only those facing staff from this office, the Scheme and the Agency, but also the issues confronting approved providers and their staff, as well as users of aged care services and their representatives.

Forty one investigations and two other cases were reviewed. The learning from each case was recorded and considered as part of ongoing quality improvement.

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## APPENDIX A

The Commissioner's Annual Reporting requirements are prescribed by s 95A-12 of the *Aged Care Act 1997* (Cth) (set out below).

The Commissioner has taken guidance from *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (the Requirements)<sup>14</sup>, in accordance with paragraph 3(4) of the Requirements in preparing this Annual Report. The Commissioner has sought to comply with the Requirements to the extent that they are consistent with the reporting requirements prescribed under s 95A-12.

### Annual reporting requirements – since 1 September 2011

#### *Aged Care Act 1997 section 95A-12 (current)*

- (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.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The Aged Care Commissioner must include in the report:
  - (a) the number of decisions made under the Complaints 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 processes for handling matters under the Complaints 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

<sup>14</sup> The Requirements were approved by the Joint Committee of Public Accounts and Audit under s 63(2) and s 70(2) of the *Public Service Act 1999*.



- (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 Commissioner to the Minister during the financial year in response to requests by the Minister; and
- (k) any other information required by the Complaints Principles to be included in the report.

## Annual reporting requirements – before 1 September 2011

### *Aged Care Act 1997 section 95A-12 (superseded)*

- (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.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (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 of 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 Commissioner to the Minister during the financial year in response to requests by the Minister; and any other information required by the Investigation Principles to be included in the report.

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