



AGED CARE COMMISSIONER

ANNUAL REPORT

1 JULY 2012 – 30 JUNE 2013



OUR VISION > To be a recognised leader in complaints management and in fostering excellence in public administration.

OUR 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.





Australian Government

Office of the Aged Care Commissioner

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Senator the Hon Mitch Fifield
Assistant Minister for Social Services
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 2012 to 30 June 2013.

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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PART 1: OVERVIEW

Aged Care Commissioner's Foreword

As the cover of this year's annual report reminds us, making a positive difference to someone can be very simple.

A few soap bubbles shared with a baby brings magic and joy to an ordinary day, just as taking the time to cater for an older person's individual needs, interests and preferences, can turn ordinary care into the extraordinary.

If you ask people what great care looks like to them, those in nursing homes will often share stories about thoughtful actions by facility staff that mean a great deal to them. Like the man who loves sport and appreciates staff waiting for the final whistle before interrupting him with his pills, the woman who likes to feel part of the facility's everyday functions and enjoys helping to collect the tea cups for washing and a resident who is happy to be able to stay up late at night reading and then lie in bed in the morning.

Very simple actions can also make a big difference when it comes to dealing with complaints about aged care. This year we have been reminded regularly of just how important it is for people to receive an explanation and an apology when there have been deficiencies in the care.

As an office of review we do not deal first hand with complaints about aged care. That is the job of the Aged Care Complaints Scheme (the Scheme) in the Department of Health and Ageing (the Department)¹.

Furthermore, my focus is different from that of the Scheme. I am asked to examine the Scheme's decision on the complaint and/ or the process it followed rather than the original complaint issues.

By the time a complaint reaches me as Aged Care Commissioner (the Commissioner), it has generally already been through at least two other complaints processes – that of the service provider, and then the Scheme. Time has passed, the parties may feel disenchanting with the process, the relationship may have broken down and the complainant may still have issues they feel are unresolved. The best window for successfully resolving a complaint – early and directly between the parties – is long gone.

Nonetheless we see that complaints can and do make a difference at many levels, whether it be providing resolution of a concern for a grieving relative, or bringing about improvements in communication with a family, or care for an individual or other nursing home residents.

This year it has been particularly rewarding to see a number of cases where complainants and service providers have been able to better resolve matters during or after an examination by this office and subsequent action by the Scheme.

These cases have involved service providers who have approached the process as a further opportunity to look for the lessons in complaints and therefore improved services as a result; who have been prepared to acknowledge failings in care, and who have offered meaningful apologies and explanations to the families involved.

¹ On 18 September 2013 responsibility for aged care services was moved from the Department of Health and Ageing to the Department of Social Services.

Full credit to the services involved. However I often wonder why it has taken so long to offer an apology when it could, and should, have happened earlier. Where there have been deficiencies in care, families should not have to wait until the end of a complaint and review process to receive a good explanation and apology. It is simply the right thing to do.

For the first time some de-identified case studies have been included later in this report. These positive examples should help people to understand what might be achieved by coming to this office. I also hope the studies will encourage services to respond well to complaints, and to do it early.

Making a difference through our work

Making a difference is central to our activities.

Examining the way the Scheme deals with issues of who can speak for care recipients when they are unable to express their own views on complaints about their care, is one example of an opportunity we have taken to make a difference this year. Having identified through our case work that there was a wider issue, we looked into it as an own initiative investigation, and came up with recommendations to assist Scheme officers and thereby benefit those who use the complaints system.

Another example is our new system of following up with the Scheme to see what progress is being made on implementing recommendations it has accepted from me for improving its complaints processes.

The Scheme's response is summarised later in this report. It provides evidence that seeking a review by the Commissioner can bring about systemic change to policies and practices. It shows that the Scheme and indeed the Department take the recommendations very seriously and use them for quality improvement.

As an office which looks at the decisions and processes of other agencies it is also vital for us to turn the spotlight on ourselves, seek feedback from the people who use our services and interact with us, and look for opportunities to improve. This year we have sought and received more feedback than ever before. The results are reported later. It has been gratifying to see the constructive and largely positive response to our surveys of complainants, service providers, Department staff and Scheme officers. It will help us to improve our service.

Of course not all complaints to me as Commissioner result in a finding that the Scheme's decision was flawed or that the process can be improved. As a result, complainants may be disappointed with the outcome of my examination. The feedback from our public survey suggests this is sometimes the case.

Nonetheless, even when people do not get the outcome they seek, this office has made a difference by providing an independent examination of the Scheme's decision on their complaint, and/or its process.

The same can be said in relation to my examination of complaints about the conduct of the Aged Care Standards and Accreditation Agency Ltd (the Agency)².

² The Agency will become the Aged Care Quality Agency on 1 January 2014.

Other highlights

While complaints and the subsequent examinations are our core work, we have been busy also with a number of other activities.

A particular highlight for me has been participating as a keynote speaker at aged care and 'Better Practice' conferences across Australia where my key message has been to encourage the aged care industry to see the positive value in complaints, respond accordingly, and use them to make a difference to care.

These presentations, along with invitations to write for printed and online publications pitched at service providers and complaints handlers, have been welcome opportunities to educate and influence.

Another focus has been the preparation for the Commissioner's new powers in relation to the Scheme from 1 August 2013, and jurisdiction in relation to complaints about certain processes of the Agency from 1 January 2014³. The consultative approach taken by the Department has been greatly appreciated. Having the power to direct the Scheme to undertake a new complaints resolution process and take specified matters into account, to provide further feedback to the Scheme about the process, and the discretion to take matters further, will strengthen the Commissioner's independent oversight role.

While in practice, the Scheme accepts almost all recommendations from the Commissioner, the new determinative powers will give the public greater confidence that it is worthwhile seeking a review.

Acknowledgements

None of this work can be done alone. Thanks are due once again to my talented team.

With a small team such as ours, it is sometimes necessary to pitch in and assist with planning, projects, and wider administrative tasks, on top of core duties. I am grateful to all staff for their dedication to this, their leadership and professionalism, and their overall commitment to ensuring that the work we do makes a positive difference.

Thanks are due also to lawyers from the Australian Government Solicitor, who continue to provide us with high quality independent advice.

Finally, a big thank you to photographer Trudi Sanchez, and residents, staff and volunteers from UnitingCare Ageing's Starrett Lodge Hamlyn Terrace, New South Wales, for the wonderful photographs for this annual report. The photo shoot and selection of images made us smile and reminded us of the many activities that make a positive difference every day in aged care.

Rae Lamb
Aged Care Commissioner

³ See footnote 2.

About the Office of the Aged Care Commissioner

The Commissioner is a statutory officer appointed under Part 6.6 of the *Aged Care Act 1997* by the Minister for Mental Health and Ageing⁴. Rae Lamb was first appointed on 5 January 2011 for a three year term. In June 2013 she was reappointed until 4 January 2017.

Functions

The Commissioner's functions are set out in Part 6.6 of the *Aged Care Act 1997* and Part 7 of the *Complaints Principles 2011*.

Complaints

The Commissioner's primary function is to examine complaints lodged against the:

- *Aged Care Complaints Scheme* – a branch of the Australian Government Department of Health and Ageing. It examines concerns about the care or services provided to people receiving Australian Government subsidised aged care services; and
- *Aged Care Standards and Accreditation Agency Ltd* – a Commonwealth company which accredits and monitors Australian Government subsidised aged care services.

Four types of complaints can be made to the Commissioner. These are:

- **Decision complaints:** complaints about certain decisions made by the Scheme;
- **Process complaints:** complaints about the processes adopted by the Scheme;
- **Agency conduct complaints**⁵: complaints about the conduct of the Agency in relation to its responsibilities under the *Accreditation Grant Principles 2011* and *Accreditation Grant Principles 1999*; and
- **Assessor conduct complaints**⁶: about the conduct of Agency assessors when carrying out certain kinds of visits or audits.

When the Commissioner has examined a complaint, she will decide whether the processes followed or decisions made by the Scheme, or the conduct of the Agency or its assessors, were reasonable in the circumstances. If the Commissioner considers they were not reasonable, she may make recommendations⁷ to the Department's Secretary⁸ or to the Agency to take certain actions⁹.

4 See footnote 1.

5 The Commissioner's jurisdiction in relation to the Agency will change when it becomes the Aged Care Quality Agency on 1 January 2014.

6 *ibid*

7 Under legislative changes which take effect on 1 August 2013, the Commissioner will have the power to direct the Scheme to conduct a new process, where appropriate, and to require it to take certain matters into account.

8 The Scheme acts as the delegate of the Secretary.

9 See footnote 5.

Other Functions

The Commissioner may also conduct examinations in the absence of a complaint. These are known as own initiative examinations.

At the Minister's request, the Commissioner advises the Minister about matters relevant to her statutory functions such as themes identified from examinations¹⁰.

Complaints management

Complaints can be made by phone, email, mail or facsimile. Where an issue falls outside the Commissioner's powers, people are referred to another appropriate agency wherever possible. If the complaint appears to be a matter the Commissioner can address, it is then a question of whether the Commissioner should investigate it or take no further action for any of the reasons outlined in the *Complaints Principles 2011*¹¹.

The Commissioner approaches this on the basis that complaints should be examined unless there is a good reason not to.

The process as at 30 June 2013 is outlined in Figure 1 opposite.

10 From 1 August 2013 the Commissioner will also have the power to make reports to the Minister regarding her functions.

11 Section 13A.24(2) of the *Complaints Principles 2011* provides five reasons why the Commissioner may decide to take no further action on a decision complaint. Section 13A.28(3) of the *Complaints Principles 2011* provides five reasons why the Commissioner may refuse to examine a process or conduct complaint.

Figure 1: The complaints process as at 30 June 2013



Staffing

The Commissioner is supported by 10 staff. The Commissioner, Director and Investigations Manager oversee the operations of the office. The Investigations Manager leads a team of senior investigators whose primary role it is to examine complaints. The investigation team works closely with the intake and assessment officers who, in addition, provide administrative support.

Lawyers from the Australian Government Solicitor (AGS) attend the office to provide independent legal advice.

Budget

The Commissioner's budget for 2012-13 was \$1.5 million. Staff salaries are included in the budget allocation. The Commissioner's salary is determined by the Remuneration Tribunal.

The Commissioner's budget falls under the Department's *Outcome 4 – Aged Care and Population Ageing* and is monitored and reported on by the Department.

Activities 2012-13

A number of key activities have been undertaken by the Commissioner and her staff during 2012-13, in addition to the complaints work. These include the preparation and presentation of various speeches, papers and submissions, providing internal and external education, making referrals and internal quality improvement.

Changes to the Aged Care Act

A significant undertaking has been preparing for the amendments to the *Aged Care Act 1997*¹². The Commissioner has been involved in discussions and forums, has written submissions and responded to requests regarding the proposed amendments relevant to her role and powers.

The office's processes have been reviewed also, and amended in preparation for the legislative changes.

As noted earlier, from 1 August 2013, the Commissioner will have the power to issue directions to the Scheme in relation to decision complaints rather than simply making recommendations. Further important changes include that Scheme must provide relevant information requested by the Commissioner and must take into account any further comments from the Commissioner before finalising a new resolution process following a direction.

The Commissioner was invited to make a submission to the Senate's Standing Committee on Community Affairs - Legislation Committee. She provided a written submission and appeared in front of the Committee in May. Her submission covered issues such as: appropriate complaints avenues for those receiving home based care, increasing the Commissioner's powers from recommendatory to directive, annual reporting requirements, the amendment proposing to remove the Commissioner's jurisdiction over the conduct of the Agency's assessors in light of them becoming

¹² These amendments will occur as the relevant parts of the *Aged Care Act 1997* (as amended) commence.

subject to the *Public Service Act 1999*, the introduction of the Aged Care Pricing Commissioner, the Agency's disclosure of information to the Commissioner, the new Quality Agency's education role and the Commissioner's terms and conditions¹³.

Quality improvement

As noted in the Commissioner's foreword, there has been considerable work on internal quality improvement processes this year. In particular, the Key Performance Indicators (KPIs) which internally measure the office's performance have been updated. A new system for annually auditing a selection of case files against quality criteria has been designed and introduced. Further, a new approach has been taken to conducting satisfaction surveys, and this has resulted in significantly more responses compared with previous years.

All of these initiatives are described in more detail in Part 3 of this report.

Presentations and speeches

The Commissioner presented at numerous conferences and meetings during the year. In particular, she was a keynote speaker at the 2012-13 "Better Practice" conferences the Agency held for service providers in Sydney, Melbourne, Adelaide, Perth and the Gold Coast. Other presentations included speeches to the Australian Nursing Federation Aged Care Forum in Melbourne, the Royal Brisbane & Women's Hospital Aged Care Conference, and a Helping Hand workshop in Adelaide. In April, the Commissioner presented to the Australia and New Zealand Health Complaints Commissioners' meeting in Adelaide about how complaints' entities deal with issues of cognitive capacity and representation.

The Commissioner wrote a number of articles including a guest post on the power of apologies, published on the Scheme's online blog and external internet site, and a response to a complaint scenario in *The Standard*¹⁴, a monthly newsletter published by the Agency for aged care facility staff, managers, residents and their families.

Training and workplace health and safety

There have been a number of staff training opportunities covering such topics as dementia and dementia care, administrative decision making and natural justice. The AGS also provided training on information law and secrecy provisions in the *Aged Care Act 1997*. All staff completed training conducted by the New South Wales Ombudsman in relation to complaints handling and dealing with unreasonable conduct.

Occupational health and safety initiatives this year have included a review and consequent upgrade to the security systems at the office, and the appointment of a new workplace health and safety representative. Staff wellbeing is a high priority for the Commissioner. Workplace health and safety is a standing agenda item for the senior management team weekly meetings and the monthly all staff meetings. All new and relocating staff have workplace assessments by external occupational therapists.

¹³ A copy of the Commissioner's submission is available at www.agedcarecommissioner.net.au

¹⁴ Copies of the Commissioner's blog and articles can be found at www.agedcarecommissioner.net.au

Making a Difference: Case Studies

Complaints to the Commissioner may result not only in further action by the Scheme or Agency on the original complaint, but also actions by aged care service providers or changes to improve complaints processes.

The examination of the complaints can highlight opportunities to: resolve outstanding issues for complainants, address urgent needs of care recipients, and improve the quality of care and complaints handling.

The de-identified case studies below illustrate the kinds of outcomes that may follow an examination by the Commissioner.

Resolution: The power of an apology

Case one:

A relative of an aged care resident received an unexpected visit and apology following a complaint to the Commissioner and further action by the Scheme.

The relative's parent had lived in the aged care facility for a number of years. There had been ongoing issues between the relative and the facility in relation to their parent's care. When a complaint was made to the Scheme, it found the majority of the issues it examined did not warrant continuing the resolution process and closed the case.

In coming to the Commissioner, the relative provided information regarding the reasons they believed the Scheme's decision not to continue the resolution process was incorrect.

After examining the matter, the Commissioner recommended the Scheme undertake a new case in relation to some of the original complaint issues. The Scheme did so, and took further action in relation to some matters.

Later, the relative telephoned to say the service provider's head person and a senior staff member had personally visited their home and apologised.

This was a complex case where relationships between the relative and the service provider had become very difficult as concerns had repeatedly been raised about the care. This had gone on for some time. It appeared both were frustrated at not being able to resolve long standing issues. Yet it was reported to the Commissioner that the visit and apology had meant a great deal. The relative said they finally felt able to let go of the matter.

Making a Difference: Case Studies (continued)

Case two:

After coming to the Commissioner, a family received an explanation, acknowledgement and apology for failings in a relative's care on the day they died.

A family member had complained to the Scheme about the failings in the care. They then asked the Commissioner to examine the Scheme's decision that the issues had been satisfactorily addressed by the aged care service provider.

The Commissioner found the Scheme had considered all relevant information and ensured action had been taken to address the deficiencies found in the care. It had not, however, ensured the aged care service provider had taken sufficient steps to resolve the matter for the family.

The Commissioner recommended that the Scheme reconsider the matter, taking into account the complainant's request for an explanation, acknowledgement and apology and the expressed willingness of the service to meet with the family.

Following the Commissioner's recommendation and during the Scheme's new resolution process, verbal and written apologies were provided directly to the complainant. The family was satisfied with the response and hoped no one else would have the same experience.

Protection: Considering an aged care recipient's needs

Some complaints are not considered significant when compared with others, and do not prompt immediate action when in fact the issues do need urgent attention because they are affecting the day- to-day wellbeing of the person receiving care.

In this case a complainant asked the Commissioner to examine whether the Scheme took too long to investigate an issue relating to the provision of appropriate footwear for a care recipient. The complainant stated that while the Scheme was looking into the wider complaint, the care recipient had to manage for too long without the proper footwear and this was a significant health and safety risk.

In examining the Scheme's process, the Commissioner considered whether, at the time the complaint was made, the Scheme had adequately assessed the care recipient's circumstances in order to establish whether or not there was an immediate risk to health or safety, especially given the concerns that had been raised. Having examined the available evidence, the Commissioner was not satisfied that sufficient assessment occurred. She highlighted the fact that an elderly person having to manage without appropriate footwear would view this as quite significant in relation to their health, safety and wellbeing.

Making a Difference: Case Studies (continued)

The Commissioner recommended that, at intake, Scheme officers should ensure they formally assess whether or not there is an immediate risk to the care recipient's health and safety or wellbeing. In particular, Scheme officers should consider whether there are any care issues that need to be addressed more urgently than usual complaint timeframes allow, especially where a complainant indicates the issue has been longstanding and ongoing. If such risks are identified, Scheme officers should consider referring the matter or taking other more immediate action in an appropriate and timely manner. This should occur even if the merits of the case have yet to be established.

The Scheme accepted the recommendations. Since this time, the Scheme has separately introduced a system for identifying, escalating, and acting on urgent health and safety risks highlighted by complaints, and provided relevant guidelines to staff. However, in response to this case, the Scheme also agreed to email all staff and publish articles reminding intake officers to carefully risk-assess each complaint, being particularly mindful of care issues that may present an immediate risk to the care recipient's health, safety or wellbeing. It advised that officers in the relevant office had been reminded to assess risk to wellbeing, and to escalate complaints appropriately according to the current and changing circumstances of individuals.

Learning: Service improvements

An aged care service has improved its falls' management arrangements and taken ongoing action to improve communication with a care recipient's representative, following an examination by the Commissioner, and further action by the Scheme.

The care recipient's representative asked the Commissioner to examine Scheme decisions to close their complaint because the aged care service provider had satisfactorily addressed some issues, and, in the case of other issues, despite reasonable enquiry, the circumstances could not be determined.

The service provider had taken a number of steps to address the issues in the original complaint to the Scheme. Nonetheless, the Commissioner found there were matters that needed further consideration and recommended the Scheme undertake a new process to look at these.

Although the new process was also ended by the Scheme on the basis that the issues had been satisfactorily addressed by the aged care service provider, it is clear that significant additional steps were taken by the provider during and after the Commissioner's examination. These included updating its falls' management policy to include medication review, action to improve staff knowledge of, and compliance with, the policy and evidence of ongoing commitment to addressing communication issues with the care recipient's representative.

Making a Difference: Case Studies (continued)

Learning: Identifying knowledge gaps or inconsistencies

Some complaints to the Commissioner lead to the identification of valuable training opportunities for Scheme officers because the complaints highlight gaps in knowledge or inconsistencies in practice.

In this case the Commissioner found incorrect information had been provided regarding the right to seek a review of the Scheme's decision, and written feedback had not been sent to the complainant when it should have been.

The Commissioner recommended that the case be used (in a de-identified way) for training Scheme officers with a focus on the need to ensure all finalisation decisions are made in accordance with the *Complaints Principles 2011*, meet the appropriate feedback requirements, and that staff are aware of the circumstances in which review rights are available to parties and can accurately communicate this to complainants.

The Scheme accepted the recommendation, advising of various relevant training and resources being planned for staff. It also advised that an example, based on this case, would be included in a booklet for staff, and there would be a blog on the staff intranet about the issue.

PART 2: PERFORMANCE REPORTING

The Commissioner is required by legislation to report on a number of indicators in the Annual Report (see Appendix). In addition to these statutory requirements, and to increase understanding of the various activities of this office, she also reports on:

- the number of complaints finalised without examination;
- the time taken to examine conduct, process and decision complaints;
- recommendations made to the Scheme and Agency following complaints and the outcomes;
- contacts and enquiries received;
- the number of complaints about the Commissioner investigated by the Commonwealth Ombudsman and the outcomes; and
- Key Performance Indicators (KPIs) – how these internal standards are measured, the results and outcomes.

Contacts and Enquires

Many people contact the office about matters which do not relate to the Commissioner's functions. Nonetheless, staff will assist them wherever possible by listening to their concerns and referring them to another agency or body which better fits their needs. It is important to record this work as staff invest significant time and effort in addressing these contacts.

There were 465 out of scope¹⁵ enquiries this year, 386 by telephone and 79 in writing.

Complaints Overview

Since the introduction of the *Complaints Principles 2011* in September 2011, there have been changes in the number, types, and nature of complaints to the Commissioner. This year is no exception.

Once again there have been no complaints about the Scheme from service providers and it is still the case that only a small number of complaints to the Scheme result in requests for review by the Commissioner.

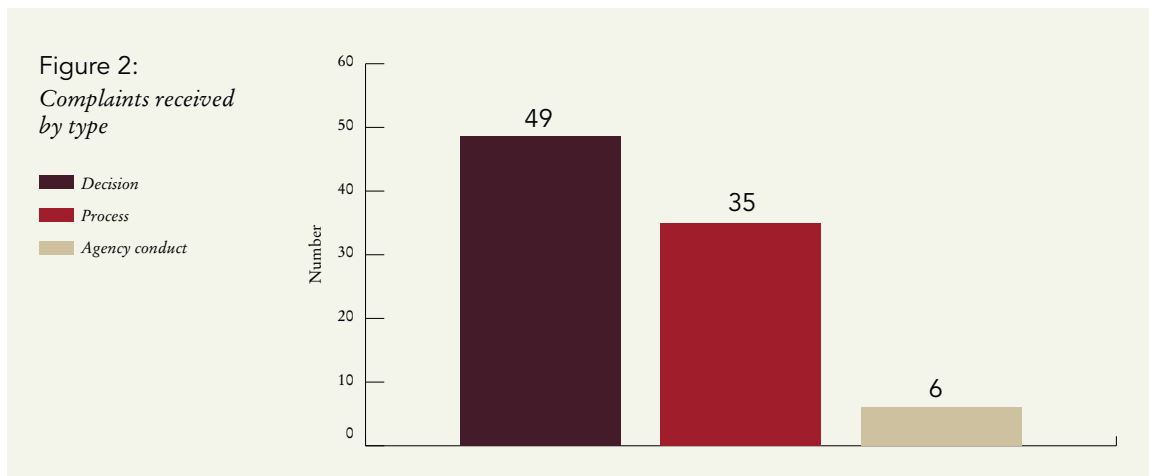
Nonetheless, while complaint numbers continue to be lower than they were before the September 2011 changes to the Scheme, the office's workload has remained high. This is due to an escalation in the complexity of cases about Scheme processes and decisions. For example, it is not uncommon now for the Commissioner to be asked to examine the Scheme's individual decisions on up to 15 issues within one case. There has also been an increase in multiple complaints from the same people, or multiple complaints, sometimes from people known to each other, about the same service providers.

¹⁵ Complaints which are deemed to be 'out of scope' are those that do not fall within the legislation. These include, for example; when a complaint about a decision is lodged after the legislated 28 days from when the decision was provided in writing to the complainant; and people who contact the office with complaints about aged care who have not yet taken their concerns to the Scheme. The latter are referred to the Scheme and to aged care advocacy services.

Also noteworthy, is the appearance of complaints from care recipients and their families about the conduct of the Agency and its assessors. While the number of complaints about the Agency remains low, previously such complaints have more commonly come from service providers rather than service users.

Total Complaints

The Commissioner received 90 complaints this financial year. The majority, 49 complaints or 54 per cent, related to Scheme decisions while 35 complaints (39 per cent) were about Scheme processes¹⁶. Six complaints (seven per cent) were about Agency conduct. None were about an Agency assessor's conduct.



All complaints were assessed within the required 14 day statutory timeframe.

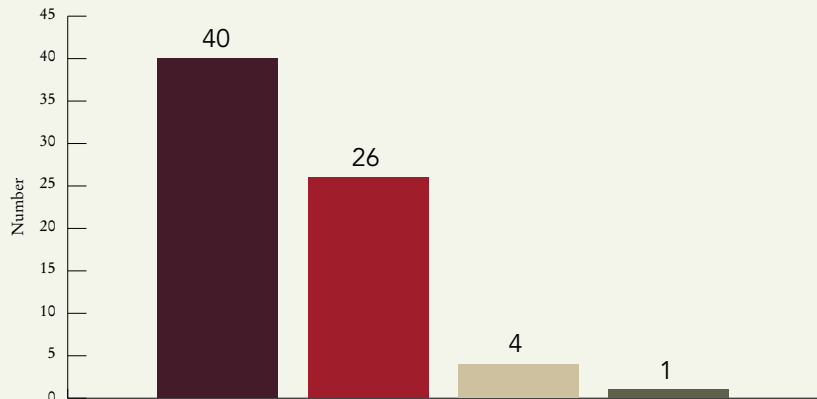
The Commissioner began examination of 61 complaints during the financial year. Thirty three (54 per cent) related to Scheme decisions, 26 (43 per cent) to Scheme processes and two (three per cent) to Agency conduct. There were no examinations commenced into complaints about an Agency assessor.

Seventy-one complaints were finalised. Forty (56 per cent) related to Scheme decisions, 26 (37 per cent) were about Scheme processes. Four (six per cent) were about Agency conduct and one (one per cent) was about assessor conduct. Some of these examinations were in progress at the start of the year and therefore related to complaints received in 2011-2012.

¹⁶ By comparison the Scheme received 3,717 complaints this year. The statistics suggest that only around two per cent of complaints to the Scheme result in complaints to the Commissioner.

Figure 3:
*Complaints finalised
by type*

Decision
Process
Agency conduct
Assessor conduct



Complaints about Scheme Decisions

A person who has made a complaint to the Scheme, and is dissatisfied with the outcome, may complain to the Commissioner about decisions made by the Scheme to:

- take no further action;
- end a resolution process;
- confirm a decision to take no further action or end a resolution process on reconsideration by the Scheme; or
- end a new resolution process following a reconsideration by the Scheme.

A service provider may seek examination of a decision made by the Scheme to:

- end a resolution process;
- confirm a decision to end a resolution process on reconsideration by the Scheme;
- end a new resolution process following reconsideration by the Scheme; and/or
- issue directions that the service provider take certain actions that were not in relation to the original decision following a new resolution process arising from a recommendation by the Commissioner.

Received and accepted

As noted above, the Commissioner received 49 complaints about decisions made by the Scheme. All were from members of the public rather than service providers. Thirty-three complaints about a Scheme decision were accepted for examination.

Finalised without examination

There are various reasons why a complaint may not be examined. For example, the complaint may be withdrawn by the person who lodged it, a complaint may be outside the Commissioner's jurisdiction or the Commissioner may decide, given all of the circumstances of the particular case, to take no further action.

Three complaints were withdrawn before acceptance and two were withdrawn after acceptance but before the examination was finalised.

Seven complaints were outside the Commissioner's jurisdiction and the Commissioner decided to take no further action on six complaints.

Finalised by examination

Twenty two complaints about Scheme decisions were finalised by an examination. Within these complaints, the Commissioner examined decisions covering 81 issues.

All of these examinations were completed within the statutory timeframe of 60 days from acceptance of the complaint. On average, the Commissioner's examinations were completed within 50 days.

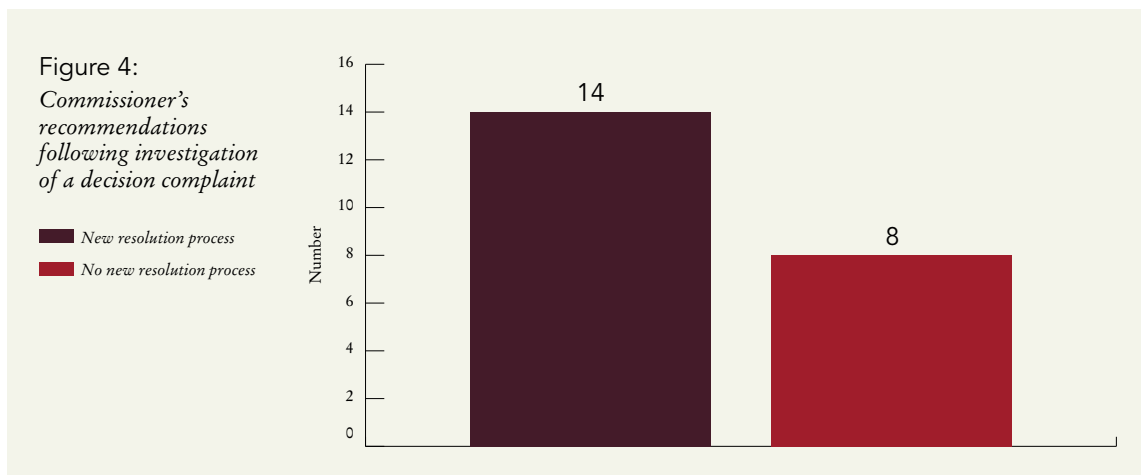
Recommendations

After examining a Scheme decision, the Commissioner is required to provide one of two recommendations to the Scheme. These are:

- that the Secretary undertakes a new resolution process; or,
- that the Secretary does not undertake a new resolution process.

These recommendations may relate to any, or all, of the issues examined by the Commissioner.

Of the 22 complaints finalised by examination, 14 (64 per cent) resulted in recommendations that a new resolution process be conducted in relation to all or some issues. In eight cases (36 per cent) no further process was recommended.



Complaints about Scheme Processes

Any person can make a complaint to the Commissioner about the processes adopted by the Scheme in addressing a complaint.

Received and accepted

As noted earlier, 35 complaints¹⁷ about the Scheme's process were received. The Commissioner accepted and began to examine 26 process complaints.

Finalised without examination

As with decision complaints, there are a number of reasons why a process complaint may not be examined.

Two complaints were withdrawn before acceptance. Three were withdrawn before the examination was finalised.

One complaint was not accepted as it was outside the Commissioner's jurisdiction. Another was finalised for other reasons¹⁸. In four cases, the Commissioner decided to take no further action.

Finalised by examination

Fifteen complaints about the Scheme's processes, involving 50 issues, were completed by examination.

Time taken to complete process complaints

Process complaints generally take longer to address and finalise than decision complaints. One reason is that some complaints about the Scheme's process are also about the decision. To ensure the Commissioner meets the 60 day deadline for completing her examination of the decision, she may complete that examination before starting the process complaint¹⁹. Process complaints also take longer because they go beyond the review of information that led to a decision. The investigation of these complaints generally requires the gathering of new information, and often interviews with relevant parties are also needed.

This year, complaints about processes and conduct were finalised in an average of 120 days.

Recommendations

The 50 process issues the Commissioner examined this year included whether the Scheme:

- took too long to investigate the complaint;
- considered all relevant information;

17 Prior to January 2013, when the Commissioner received a process complaint from one complainant but relating to several Scheme cases/processes, it was recorded as one complaint. Since January 2013, each complaint about a Scheme case/process has been recorded as a separate complaint. This will reflect more accurately the number of processes examined.

18 In this case, the Commissioner ceased an investigation after the complaint was accepted because the complaint issues had been addressed in another case.

19 Unlike decision complaints, the *Complaints Principles 2011* do not mandate a timeframe in which process complaints must be finalised.

- gave equal weight to information provided by all parties; and,
- informed complainants of their review rights when providing written outcomes.

Twenty-three issues (46 per cent) were found to be substantiated.

As a result, the Commissioner made 25 recommendations for improvements to the Scheme's complaints processes. The recommendations covered such matters as:

- considering sending a draft report to all parties before finalising a complaint;
- making all relevant enquiries, and documenting the reasons why, when it is determined that it is unnecessary to make further enquiries;
- informing complainants that when complaints are referred to the Australian Health Practitioner Regulation Agency (AHPRA), it is up to AHPRA whether they will receive any further information, and that they can lodge their own separate complaint with AHPRA;
- formally assessing at intake whether or not there is an immediate risk to the care recipient's health, safety or wellbeing; and
- considering other forms of communication such as a short letter, where people have become upset and verbal communication is not considered appropriate.

The Secretary accepted 23 (92 per cent) of the Commissioner's recommendations²⁰.

²⁰ The two recommendations the Scheme did not accept were the same; that the Scheme sends a preliminary report to relevant parties for a response before the matter is finalised. In rejecting these recommendations the Scheme explained it has introduced other ways to seek feedback from the parties before finalising complaints.

Making a Difference: Commissioner's Recommendations

Previously, once the Secretary accepted the Commissioner's recommendations arising from a process complaint, it was the end of the matter. Usually, the Commissioner received no follow up regarding progress on the implementation of her recommendations.

This year, the Commissioner asked the Scheme to provide updates on its actions taken in response to recommendations from her that it accepted during the first half of the year (1 July 2012 to 14 January 2013).

In particular, the Commissioner asked about progress on 23 actions the Scheme had confirmed it would undertake in response to her recommendations. The Scheme reported its progress on 29 activities to improve its processes²¹. Of these, nine had been completed and 20 were under development or partially completed before 30 June 2013²². The Scheme reported that many of the activities under development or partially completed, would be completed early in the new financial year.

Some of the actions taken by the Scheme in response to the Commissioner's recommendations are outlined below.

Changes to Scheme guidelines

The Scheme has formal written guidelines to assist its staff across the country to address complaints consistently. Following recommendations from the Commissioner, the Scheme has updated these guidelines to include clear direction on what is considered reasonable in terms of officers introducing themselves to complainants, providing updates, and the timeframe in which updates should occur. The Scheme has included additional information for its officers in relation to appropriately testing and weighing information and how best to document information.

Blog posts and staff bulletins

Many of the Commissioner's recommendations focused on improving the provision of information to Scheme staff about certain topics. This information has been disseminated through articles on the staff intranet site blog. Topics have included:

- assessing immediate risks to care recipients when the Scheme receives information;
- information that should be provided to complainants when the Scheme refers matters to the AHPRA; and
- communicating with distressed complainants.

²¹ The Scheme provided its responses categorised by themes and some activities were split into two parts and included additional actions.

²² These statistics include recommendations and actions arising from the Commissioner's own initiative examination. More detail on these recommendations and actions is provided later in this report.

Making a Difference: Commissioner's Recommendations (continued)

At the time of reporting, the Scheme planned to publish additional blogs on various topics including:

- dealing with anonymous complaints;
- seeking and considering relevant information from various sources; and
- dealing with matters which involve more than one complainant.

Training and resource development

The Commissioner's recommendations also resulted in additional training and resources for Scheme staff. For instance, in 2013, the Scheme conducted training for its officers at the central and state and territory branch offices following a recommendation that it considers other forms of communication when people have become distressed and oral communication is no longer considered appropriate.

The Scheme is developing fact sheets to guide staff with matters such as releasing protected information, the provision of feedback at the conclusion of a complaint, and testing and weighing information. At the time of reporting, the Scheme was adding more case studies to its Examples Booklet, a staff resource which includes de-identified case studies and templates.

Complaints about the Agency

The Commissioner can examine complaints about the conduct of the Agency relating to its responsibilities under the *Accreditation Grant Principles 2011* and *Accreditation Grant Principles 1999* (Agency conduct complaints) and the conduct of the Agency assessors when carrying out certain kinds of visits or audits (assessor conduct complaints).

There has been an increase in the number of complaints about the Agency received this year with the office receiving six complaints, compared with two the previous year. Unusually, all the complaints this year were from service users and their families rather than service providers. All of the complaints were about the Agency and not about its assessors.

Complaints about the Agency Conduct

Received and accepted

Six complaints about the Agency's conduct were received during the financial year²³.

Two were accepted for examination.

²³ Some complaints received in 2012-13 were yet to be accepted by 30 June 2013.

Finalised without examination

One complaint was withdrawn and the Commissioner decided to take no further action on two complaints.

Finalised by examination

The Commissioner completed her examination of one complaint about the Agency, containing one issue. This complaint was made by a member of the public.

Recommendations

The Commissioner examined one conduct issue regarding the way in which the Agency considered information from a member of the public in relation to an aged care service.

As a result, the Commissioner made three recommendations to the Agency to:

- review its guidelines and include information guiding assessors to clearly document consideration and analysis of information provided by residents, or their representatives, whether provided prior to, or during, a site visit;
- review its guidelines and ensure there is clear guidance about how information provided by residents, or their representatives, is reflected in the assessors' notes, site audit assessment information or site audit report; and
- consider giving simple, written information to residents or representatives regarding how the information they provide will be used and explaining the inability of the Agency to provide specific feedback in the light of issues of practicality and confidentiality.

All the recommendations were accepted by the Agency.

Complaints about Assessor Conduct

The Commissioner did not receive or start to examine any complaints relating to the conduct of an Agency assessor. The Commissioner finalised one complaint which had been made by a service provider and was received in 2011-2012. The complaint contained two issues relating to:

- the behaviour and impartiality of an Agency assessor; and
- the consideration of information provided to the assessor.

As these issues were found not to be substantiated, no recommendations were made.

Own Initiative Examination

In November 2012 the Commissioner completed an own initiative examination into the Scheme's complaint processes relating to issues of care recipients' capacity and representation²⁴. She decided to examine these issues after receiving correspondence from a Coroner and examining a number of cases which raised issues about how the Scheme determines whether care recipients can speak for themselves and if not, who is entitled to speak for them.

²⁴ This examination commenced in June 2012.

The Commissioner found that there is good understanding and information within the Scheme about issues around capacity and representation. However the approach and levels of understanding about these issues were not consistent nationally.

The Commissioner made eight recommendations arising from this examination, including:

- complainants, who provide identifying details, should not be classified as anonymous without first confirming this with them;
- training should be provided to Scheme officers about the role of substitute decision makers and methods to identify care recipients' wishes and cognitive capacity;
- tools and resources should be developed to support staff training;
- the Scheme should review its guidelines to provide direction for determining care recipients' wishes and the role of substitute decision makers; and
- relevant documentation should be requested when a legal representative has been appointed.

The Secretary accepted all recommendations. In June 2013, the Scheme updated the Commissioner on its progress with the recommendations. It reported:

- education on guardianship and capacity has been provided to all Scheme staff;
- it was developing written guidance material to complement education sessions;
- Scheme officers in all states and territories have undertaken, or have arrangements in place, for information sessions with the Public Advocate and the Public Trustees; and
- it is developing a written guideline for the aged care industry about identifying care recipients' substitute decision makers; knowing when to contact a care recipient's next of kin or substitute decision maker; and outlining the importance of all staff being educated on these matters. The Commissioner will be consulted on the content of this document.

Requests from the Minister

The Minister for Mental Health and Ageing did not seek formal advice from the Commissioner this year. The Commissioner met with the Minister three times.

Complaints to the Commonwealth Ombudsman

People who have complaints about the Commissioner's administrative actions may contact the Commonwealth Ombudsman. This year the Ombudsman notified the Commissioner it had received three new complaints against the office and had one ongoing case at the start of the year. Three complaints were closed without any adverse findings against the Commissioner and one remained open at the end of the year.

PART 3: QUALITY ASSURANCE

A number of initiatives are undertaken annually to ensure there is quality and continuous improvement in the Commissioner's processes, as well as alignment with the Principal Objectives (see below). This includes conducting satisfaction surveys, post case conferences and case file audits as well as monitoring performance against internal Key Performance Indicators (KPIs).

As noted earlier, this year there have been some enhancements and new initiatives.

Principal Objectives

- Integrity and independence
- Courtesy and respect in dealing with all people
- Managing complaints and reviews by adopting a style of working that fosters and ensures honesty, reliability, transparency, impartiality and the principles of natural justice are met
- Fair, reasonable, and credible decisions
- Informed decision making supported by properly gathered, collated and analysed probative evidence
- Equality of access and the delivery of an effective and quality service
- Accountability in our actions through complying with the Aged Care Act and administrative law.

Satisfaction Surveys

As noted earlier in this report, a new approach to surveying the people who use the office's services has resulted in a much higher level of feedback than in recent years.

Previously, survey questionnaires have been attached to the Commissioner's final reports to complainants and, in the case of decision complaints, to service providers. This year the questionnaires were sent separately, in a bulk mail out in February, to complainants and aged care service providers, involved in complaints finalised in the first half of the financial year. There were two follow up mail outs to encourage non-respondents to send in their feedback. People were able to respond anonymously. They were also given the option to complete the survey online.

Additionally, for the first time, Department of Health and Ageing staff were surveyed.

Complainant and Service Provider Survey

Surveys were sent to 31 people (17 complainants and 14 service providers). Nineteen responded (four members of the public, six service providers, four anonymous, and five who asked not to be included or returned a blank survey) giving an overall response of 61 per cent. That is a significant improvement on previous survey response rates of 10 per cent in 2011-2012 and of 16 per cent in 2010-2011.

Fourteen people (four members of the public, six service providers, four anonymous) provided feedback which was able to be analysed²⁵

The feedback was primarily positive with most respondents indicating the Commissioner's processes are "excellent". The processes identified as excellent include professionalism displayed, service provided, clarity of correspondence, courtesy and respect shown, and respect shown during an interview.

Very few people provided negative feedback. The areas identified as needing some improvement were the clarity of information provided about what the Commissioner can and cannot do; the ease with which a complaint can be lodged, the clarity of the explanation of the Commissioner's decision and fairness and impartiality in dealing with a complaint.

Further information is provided later in this report.

Department of Health and Ageing Staff Survey

Fifty departmental officers who work for or with the Scheme, and interacted with this office in the first half of the financial year, were invited to complete an anonymous online survey. Of these, 38 (76 per cent) responded.

The officers provided very useful and positive feedback. The most positive feedback related to: the clarity of the Commissioner's requests for information, their experience of the interview process and accuracy in the way information is used. Scheme officers felt there was room to improve the way in which the Commissioner's findings and reasons for those findings are communicated.

Using Feedback to Improve Service

The results of both surveys have been carefully analysed and shared with all staff to ensure they are aware of the results, and can take positive action in response to it.

In response to the feedback related to the clarity of information provided and communication of the Commissioner's findings, the format of the Commissioner's reports has been reviewed and updated to ensure the conclusions and reasons are as simple and clear as possible. An executive summary has been added to all reports and the reports have become shorter. Changes are also being made to fact sheets and other information provided to the public.

As noted above, the changes to the survey distribution method this year saw a dramatic improvement in the response rate and the quality of feedback received. As such, both surveys will be repeated annually using the new method. Also included in the next survey will be a single question, to be consistent with one of our key performance indicators, regarding people's satisfaction with the services provided and the manner in which they were provided.

²⁵ Five responses were not included in the data analysis as the respondents asked to not be included in the survey or returned a blank survey.

Post Case Conferences

Post case conferences are held monthly and all staff attend. The lead investigators discuss recently finalised complaints and what was learned from them. These discussions are based on the premise that work should be continually assessed and the lessons should be shared and applied to future cases. The conferences provide an opportunity for the entire team to develop critical thinking and analytical skills; to discuss multiple issues, balance different views; to reflect on the usefulness or otherwise of a particular approach and find innovative ways to avoid similar issues arising again or to resolve problems. The conferences also help staff to identify trends and issues in the aged care sector and assist in ensuring consistency and conformity with office procedures and the legislation.

While investigated cases are the primary focus, staff also present and review complaints which have been received and assessed but which have not progressed to investigation. As these can involve considerable work in carefully assessing the information and making decisions, and raise a variety of different issues, it is important to discuss these cases and look at what can be learned from them.

File Audit

Case files are tools of the trade. They are used daily and provide evidence not only of the work done but also how well it has been completed. Case files also serve as reference material for others who will work in this office in the future and, in certain circumstances, may be accessed by others including government departments and agencies. Ensuring these files are accurate and include all relevant material is therefore vital.

For this reason a new audit process has been introduced. It aims to ensure case files reflect the quality work of staff. The files for 33 per cent of the cases closed in the previous six months were randomly selected for the first audit. These files were reviewed by a senior officer who had not been involved in any of the cases.

A tick list was created for use in assessing the files. A variety of parameters were assessed. These included: the accuracy and quality of completed intake and assessment forms, file notes and written correspondence, the timeliness of contact with the parties to complaints, and responses to contacts, the content of verbal updates and discussions with the parties, the quality of the investigation process including planning and the conduct of interviews and the maintenance of electronic and hard copy records and files.

The case files were generally found to be of an excellent standard. One minor area identified for improvement was in relation to the need to spellcheck file notes. Otherwise the files demonstrated excellent communication in all its forms and sound reasoning and documentary evidence supporting the Commissioner's decisions.

Such audits will be completed annually and any concerns identified will be followed up through staff training and feedback and/or adjustments to practices and procedures. This new process has proved useful and encouraging.

Key Performance Indicators

The KPIs are internal targets which assist the Commissioner and senior staff to monitor the performance of the office. These were updated during 2012-13 as part of a review of corporate documents and to better align with the *Complaints Principles 2011*.

There are 10 indicators, relating to four performance measures.

Performance measure one

Complaints to the Commissioner are responded to promptly, people are updated regularly, and matters are finalised within reasonable timeframes.

Indicator 1.1 measures the provision of an acknowledgement letter to people contacting us to lodge a complaint. The letter is to be provided within three working days of the initial contact and the target is 95 per cent. This was exceeded with all acknowledgement letters sent within three working days.

Indicator 1.2 measures the time between the receipt of a complaint and a decision being made as to whether the complaint is one which the Commissioner may examine. It requires that in 100 per cent of cases a decision is made within 14 working days. This target was fully met.

Indicator 1.3 measures the time between acceptance of a decision complaint and the date it is finalised. All decision complaints must be finalised within 60 days. This target was fully met.

Indicator 1.4 measures the time between acceptance of process and conduct complaints and the date they are finalised. The target is for 80 per cent to be completed within 182 days (six months) of acceptance and 100 per cent within 365 days (a year). The target was exceeded with 94 per cent of complaints completed within 182 days and 100 per cent in 365 days.

Performance measure two

The Commissioner and staff consistently provide a high standard of service to the people who contact the office, and demonstrate fairness, impartiality and best practice in the manner in which complaints are handled. Opportunities to improve the service and internal processes and practice are identified and followed up.

Indicator 2.1 measures the quality of service and documentation through annual case file audit. Thirty-three per cent of all files closed in the previous six months are selected and reviewed. Concerns are followed up through staff training and feedback and/or adjustments to practices and procedures. As noted earlier in this report, 33 per cent of files closed between October 2012 and April 2013 were audited and found to be of a generally high standard. One minor issue was followed up.

Indicator 2.2 measures the satisfaction of complainants and service providers by surveying a random selection of members of the public and service providers involved in finalised cases. The target is 90 per cent of those who respond are satisfied or mostly satisfied with the way the office has handled the complaint²⁶.

²⁶ The KPIs and the new survey used different measures making it impossible to accurately assess performance against the target here. As noted earlier this is being corrected for the new financial year.

As noted earlier, this year's surveys differed from previous years in content and approach. Questions about professionalism, service, communication, fairness, impartiality, consideration, respect, accessibility and timeliness were included and respondents asked to rate the office's performance out of five. A 'one' indicated the view that improvement is needed whereas a 'five' was 'excellent'. Across each measure, at least 67 per cent of respondents rated the office as either a four or five. In particular, 92 per cent of respondents rated the professionalism displayed, the service provided and the courtesy and respect shown by the Commissioner and staff as a four or five.

Indicator 2.3 measures the number of post case conferences conducted after a complaint is finalised. The target is to hold post case conferences for 33 per cent of cases finalised. This target was exceeded with 38 per cent of finalised cases being presented in a post case conference.

Indicator 2.4 measures the way internal complaints are handled. In this financial year no complaints were lodged with the office, about the office.

Performance measure three

The Scheme improves its processes as a result of the recommendations from the Commissioner.

Indicator 3.1 measures the number of process complaint recommendations accepted by the Scheme. The target is 95 per cent acceptance. It was met in 23 of 25 cases this year, giving a 92 per cent acceptance rate. However, as explained earlier in the report, both of the outstanding recommendations were in relation to the same process of issuing a draft report before finalising a case, and the Scheme advised it is seeking pre-finalisation feedback by other means.

Performance measure four

Staff are well supported in their roles with regular opportunities for further training and professional development.

Indicator 4.1 measures this support with a target of staff training or development opportunities being offered on average once a month and at least six "all staff" training opportunities during this year. Both targets were exceeded with a total of 33 staff training opportunities being offered including 12 "all of staff" opportunities.

TABLE OF FIGURES

Figure 1: The complaints management process as at 30 June 2013

Figure 2: Complaints received by type

Figure 3: Complaints finalised by type

Figure 4: Commissioner's recommendations following examination of a decision complaint

APPENDIX

The Aged Care Commissioner's annual reporting requirements are prescribed by s 95A-12 of the *Aged Care Act 1997* as set out below.

95A 12 Annual report

- (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
 - (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.

CONTACT US

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Cover and Inside Cover Photography

Photographs taken by Trudi Sanchez of Trudi Sanchez Photography and feature residents, staff, volunteers and young friends at UnitingCare Ageing's Starrett Lodge Hamlyn Terrace NSW.

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