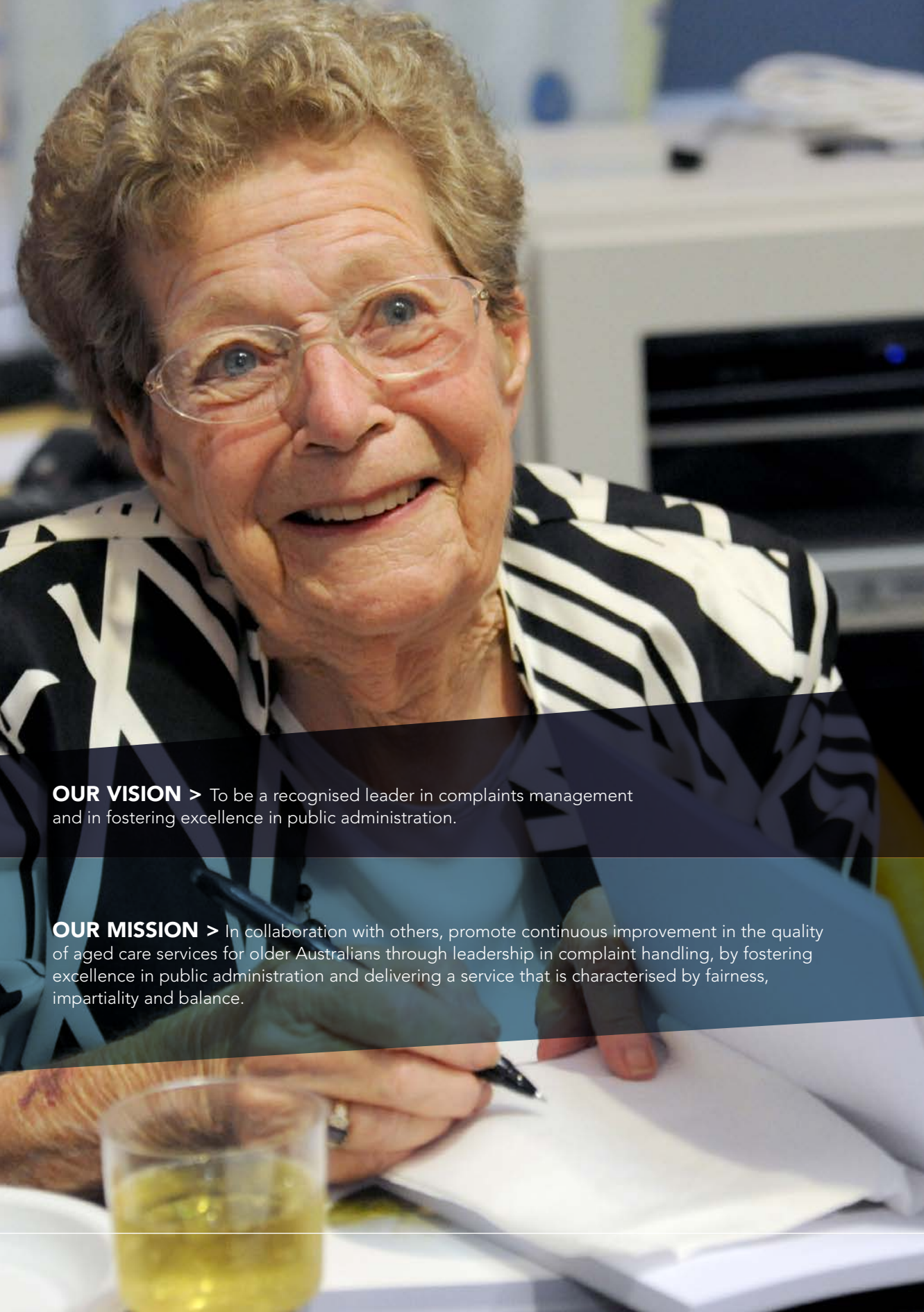




AGED CARE COMMISSIONER

ANNUAL REPORT

1 JULY 2013 – 30 JUNE 2014



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

Level 4, 12-20 Flinders Lane, MELBOURNE VIC 3000
Locked Bag 3, Collins Street East VIC 8003
Tel: 1800 500 294, Fax: (03) 9665 8026
ABN: 36 342 015 855

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 2013 to 30 June 2014.

Yours sincerely

A handwritten signature in black ink, appearing to read 'RAE LAMB'.

RAE LAMB
Aged Care Commissioner

Table of Contents

VALUES	ii
LETTER OF TRANSMITTAL	1
COMMISSIONER'S FOREWORD	4
PART 1: WHO WE ARE AND WHAT WE DO	7
Functions	7
How We Manage Complaints	8
Staffing	12
Budget	13
Activities	13
PART 2: PERFORMANCE REPORTING	15
Public Enquiries	15
Complaints Overview	15
Complaints about Scheme Decisions	17
Complaints about Scheme Processes	22
Complaints about Agency Conduct	25
Complaints about Agency Assessors' Conduct	26
Complaints about Quality Agency Processes	26
Own Initiative Examinations	27
Requests from the Minister	27
Complaints to the Commonwealth Ombudsman	27

Table of Contents (continued)

PART 3: QUALITY ASSURANCE	28
Satisfaction Surveys	28
Post Case Conferences	29
File Audit	30
Key Performance Indicators	30
TABLE OF FIGURES	33
APPENDIX	34
CONTACT US	36

COMMISSIONER'S FOREWORD

This is my first annual report since the 1 August 2013 introduction of new powers intended to strengthen my independent oversight of the Aged Care Complaints Scheme (the Scheme) in the Department of Social Services¹ (the Department).

Having the power now to direct the Scheme to look at complaints again and take specified matters into account; and to provide further feedback to the Scheme about the proposed findings from that new process (which it must take into account), has, I think, improved outcomes from some complaints.

As you can see from the case studies later in this report, some complainants have received better information; outstanding issues have been addressed; action has been taken to improve aged care services; and aged care services have been encouraged to apologise where it is due. For example, in one case my examination resulted in a complaint being looked at and upheld by the Scheme and action was taken to improve aspects of an aged care service, when previously the complaint was not going to be investigated at all.

Of course, such positive outcomes can and do result directly from the many complaints handled by the Scheme which do not subsequently come to my office for review. Furthermore, as can be seen by the data in this report, not all complaints to me, as Commissioner, result in an examination of the Scheme's decision and/or a direction from me to the Scheme to look at the matter again.

Nonetheless, the results clearly show there are occasions where further examination of the issues is warranted. It is gratifying to see that by independently examining the decision, directing that there be a new process, and reviewing and making comment on any further findings by the Scheme before they are finalised, we add value where it is needed.

As the information later in this report shows, our follow up of my recommendations for improvements to the Scheme's process suggests we are also making a difference there. Last year we introduced this follow up for the first time. Now we do it annually and we find that the recommendations result in prompt action by the Scheme to improve its processes.

My role

As Commissioner I don't deal first hand with complaints about aged care. That is the job of the Scheme. As an office of review, our focus is independently examining the decisions and processes of the Scheme, and the accreditation and quality review processes of the Australian Aged Care Quality Agency (the Quality Agency)² fairly and impartially, without fear or favour.

As an independent reviewer I must call it as I see it, based on the available information. As long as our process has been fair, impartial and transparent, and the reasons for my findings are sound, I have done my job. Sometimes this means people do not get the outcome they hoped for. This is reflected in some of the feedback we have had in this year's surveys.

¹ Responsibility for the Scheme switched from the former Department of Health and Ageing to the Department of Social Services on 18 September 2013 as a result of Machinery of Government changes.

² Prior to 1 January 2014 this was the Aged Care Standards and Accreditation Agency Ltd.

Even when they do not get the outcome they want, the important thing is that complainants, whether they are members of the public or aged care services, have had the opportunity to have the original decision or process examined impartially and independently. That they, and other parties involved in the complaint, can be confident the matter has been carefully reviewed, and the findings are independent and fair.

This year we again surveyed not just complainants and aged care services, but also Department staff and Scheme officers. The results are reported later and we will use them to help us to improve our service.

The Quality Agency

In January my powers to examine complaints in relation to the process for accrediting aged care facilities also changed. Previously I was tasked with examining complaints about the conduct of the Aged Care Standards and Accreditation Agency Limited (the Agency) and its assessors. Now I examine complaints about the accreditation and quality review³ processes of the Quality Agency. As the legislative amendments included changing the Quality Agency from a company to a statutory body and the staff are now public servants covered by the Australian Public Service Code of Conduct, there is no longer a necessity for me to examine complaints about individual assessor conduct.

Complaints about the Agency, and the new Quality Agency, have remained low this year. Nonetheless the complaints have raised topical issues around the role of the public and the way information provided by the public and through the complaints process, impacts on the accreditation process.

Complaints about the Scheme have also raised issues about what happens to the information it refers to the Quality Agency after it receives a complaint.

As a result, late in the year I began an own initiative examination of the information referral process between the Scheme and the Quality Agency to identify whether it is working effectively in terms of supporting their respective roles in protecting the safety, health and wellbeing of people in residential aged care. There is more information about this later in this report.

Other activities

Other highlights this year have included:

- attending and speaking at numerous meetings and conferences and engaging with consumers, advocates, carers, aged care services, and others in aged care;
- participating in 'Master Classes' run by the Scheme for its officers in all the states and territories. This focused on sharing the lessons from my examinations of complaints about the Scheme's decisions and processes; and

³ From 1 July 2014 the Quality Agency is responsible for quality reviews of home care.

- bringing together people with a common interest in complaints and the standard of aged care. This included organising and hosting a meeting between the Scheme and the Australian Health Practitioner Regulation Agency (AHPRA) to discuss their referrals process, and arranging for the Scheme to meet with the health complaints entities from all the states and territories to discuss complaints handling.

Acknowledgements

None of this can be done alone. Thanks are due once again to my team. Their skill, commitment and professionalism ensure that the work we do makes a positive difference. I include in this, lawyers from the Australian Government Solicitor, who continue to provide us with high quality independent advice.

Finally, a big thank you to all who helped us obtain the wonderful photographs for the front cover and used throughout this report.

Rae Lamb
Aged Care Commissioner

PART 1: WHO WE ARE AND WHAT WE DO

The Commissioner, Rae Lamb, is a statutory office holder, appointed under Part 6.6 of the *Aged Care Act 1997*. She was appointed by the former Minister for Ageing on 5 January 2011, and reappointed in June 2013. Her term expires on 4 January 2017.

Functions

The Commissioner's functions are set out under Part 6.6 of the *Aged Care Act 1997* and Part 7 of the *Complaints Principles 2014*⁴ (*the Complaints Principles*).

Complaints

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

- *Aged Care Complaints Scheme (the Scheme)* – a branch of the Australian Government's Department of Social Services. It examines concerns about the care or services provided to people receiving Australian Government subsidised aged care services;
- *Australian Aged Care Quality Agency (the Quality Agency)*⁵ – a Commonwealth statutory agency, which accredits and monitors Australian Government subsidised aged care and home care services.

There are three types of complaints that can be made to the Commissioner. These are:

Figure 1: Types of complaints which can be made to the Commissioner



4 *The Complaints Principles 2014* replaced the *Complaints Principles 2011* (now repealed) on 1 July 2014.

5 Formerly the Aged Care Standards and Accreditation Agency Ltd (the Agency).

New Agency, New Functions

For the first half of this year, there was another category of complaints able to be made to the Commissioner. These were complaints relating to the conduct of the former Agency and its assessors.

Prior to 1 January 2014, the Commissioner could examine:

- *Agency conduct complaints* – about the Agency in relation to its responsibilities under the *Accreditation Grant Principles 2011* and *Accreditation Grant Principles 1999*.
- *Assessor conduct complaints* - about the conduct of Agency assessors when carrying out certain kinds of visits or audits.

On 1 January 2014 the Agency was replaced by the Quality Agency.

Now, as noted in figure 1, the Commissioner can examine the Quality Agency's processes for accrediting aged care services and conducting quality reviews of home care services under the *Quality Agency Principles 2013*.

Potential Outcomes

After the Commissioner has examined a complaint, she may direct⁶ or make recommendations to the Scheme, or she may make recommendations to the Quality Agency to take certain actions.

Other Functions

The Commissioner may conduct examinations without receiving a complaint. This power can be used to examine discrete issues relating to the processes of the Scheme or the Quality Agency or when the Commissioner identifies what may be a systemic issue relating to their processes.

These are known as own initiative examinations.

The Commissioner may also at any time or at the Minister's request, advise or provide a written report to the Minister about matters relevant to her statutory functions, such as themes identified from examinations.

How We Manage Complaints

Complaints can be made by telephone, 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, the Commissioner approaches this from the position that all complaints should be examined unless there is a good reason not to.

There are strict time limits in which the Commissioner can accept and investigate complaints, and reasons why a complaint may not be accepted are set out in the Complaints Principles.

⁶ Since 1 August 2013 the Commissioner has been able to direct the Secretary of the Department of Social Services to conduct a new resolution process, following the examination of a decision. Previously the Commissioner could only recommend that there be a new process.

Figure 2: The complaints management process



New Functions as at 1 August 2013

Prior to 1 August 2013, when the Commissioner examined a complaint about a decision by the Scheme and found faults in the decision, she could *recommend* that the Scheme look at the complaint again.

Since 1 August 2013, the Commissioner has been able to *direct* the Scheme to look at the complaint issue or issues again.

When directing the Scheme, the Commissioner may outline matters it must take into account when it relooks at the complaint. She may, for example, require the Scheme to consider a particular piece of information.

Before it concludes this process, the Scheme must provide its draft findings to the Commissioner and take into account any further comments she makes.

An example of how the new powers may work in practice is opposite.

Figure 3: The new powers in action – Case study

CASE STUDY

New powers in action

Complaint to the Scheme: Mr X* complained that an aged care service had not put in place strategies to manage his father's behaviour.

The Scheme's decision: The Scheme began the complaint then discontinued its examination because it found there were appropriate strategies, and furthermore the care recipient's guardian, not Mr X, was satisfied that strategies were in place.

Complaint to the Commissioner: Mr X complained that the Scheme did not consider all relevant information. The Commissioner accepted Mr X's complaint and also contacted the legal guardian. Although the guardian had no concerns about the care recipient's care, they supported Mr X's right to complain to the Commissioner and expressed concern that their views had led to the Scheme discontinuing the complaint.

Commissioner's directions to the Scheme: The Commissioner found that the Scheme did not consider whether the behaviour management strategies were being used. There was also doubt about whether the guardian's views had been correctly understood. The Scheme was directed to examine the complaint again, taking into account whether:

- staff had been managing the behaviour in accordance with the documented strategies;
- the time taken to apply the behavioural management plan was appropriate; and
- identified issues had been satisfactorily addressed.

The Scheme's new examination: The Scheme found the recommended behaviour management strategies may not have been used. It issued a notice to the aged care service to take certain steps. The service responded with an action plan including systems and processes to manage difficult behaviour and evidence that the recommended strategies were applied. The Scheme invited Mr X to give comments and these were considered.

Commissioner's comments to the Scheme's preliminary findings: The Scheme sent a preliminary report to the Commissioner setting out its findings and conclusions. Following the Commissioner's further comments to the Scheme, the service sent a letter of apology to Mr X and the legal guardian.

*Case de-identified

Staffing

The Commissioner has 10 staff whose backgrounds include investigations, law and administrative review, public policy, clinical practice in speech pathology and nursing, and more.

The Commissioner, Director and Investigations Manager oversee the office's operations. The Investigations Manager heads a team of senior investigators who primarily examine complaints. They work closely with the intake officers, who also provide the office with administrative support.

Also, lawyers from the Australian Government Solicitor (AGS) regularly attend the office to provide independent legal advice to the Commissioner.



The Commissioner and some of the team

Budget

The Commissioner's budget this year was \$1.378⁷ million which includes staff salaries. The budget falls under the Department of Social Services' *Outcome 3 – Ageing and Aged Care* and is monitored and reported on by the Department.

Activities

In addition to complaints management, the Commissioner and her staff undertook a number of key activities throughout the year. Highlights are outlined below.

Scheme Master Classes

In November 2013, as part of the Scheme's nationwide training program, the Commissioner delivered a 'Master Class' session to each Scheme office around the country. The interactive presentations included (de-identified) case studies of some of the office's previous complaints which Scheme officers worked through from the Commissioner's perspective. These were delivered in face-to-face and videoconference sessions. This was an excellent opportunity for Scheme officers to learn from real cases seen by the office.

Presentations and Speeches

The Commissioner presented at numerous conferences and meetings. These included the Agency's Better Practice Conference in Sydney, and the Consumer Directed Aged Care Community Services Evolution 2014 conference. The Commissioner also met with and delivered a presentation to the National Consumer Advisory Group for Alzheimer's Australia and in turn learned about living with dementia through an interactive training session at their facility in Melbourne. These have been welcome opportunities to educate and influence the sector and community and to learn from them in return.

Staff Planning Day

In February the Commissioner and staff had an annual planning day, to set goals and identify projects to be undertaken over the next 12 months to support the key functions of the office.

It was also an opportunity for team building, reflecting on the office's performance during the previous year and to identify opportunities to enhance performance in the year ahead.

There were two themes:

- 1) consolidating new processes following recent legislative changes, and;
- 2) increasing engagement internally and with external stakeholders.

⁷ In February 2014 the budget allocation was revised as part of the Machinery of Government changes. The original budget allocation was \$1.478 million.

A number of activities were identified and have subsequently been completed towards these goals. These include: staff members presenting 'the policy of the month' in a creative way for whole staff development at monthly staff meetings; a visit by complaints intake and investigation staff to the New South Wales Health Care Complaints Commission (HCCC) to learn about its practices and share the lessons from this on their return; cross role training within the office; improvements to the complaints assessment and the post-case conference processes, and the updating of report templates to make them easier to work with, reduce duplication, and improve readability. Many activities are ongoing.

The office has also changed policies and practices in accordance with the further amendments to both the Aged Care Act and the Complaints Principles.

Workplace Health and Safety

The office is committed to ensuring the health and wellbeing of its staff in the workplace. Activities include the use of regular office audits which assess for potential hazards, encouraging all staff to be aware of and to report incidents and hazards in the workplace; work health and safety training; and ensuring adherence to the Australian Public Service Code of Conduct and compliance with the *Work Health and Safety Act 2011*.

Work health and safety is a standing item on the agendas for the weekly senior management team meeting and the monthly all staff meeting.

During the year the office provided training for the health and safety representative and all staff completed a workplace health and safety e-learning module. New and relocating staff were offered and provided with full ergonomic assessments and any equipment which was subsequently required was provided.

There were no workplace health and safety incidents reported.



PART 2: PERFORMANCE REPORTING

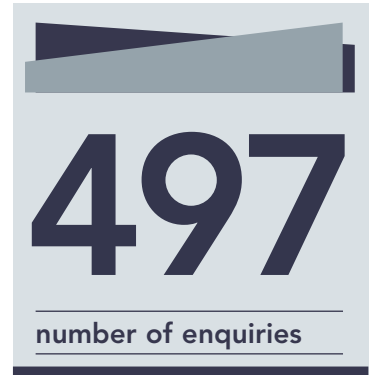
The Commissioner is required to report on a number of indicators in the Annual Report (see Appendix). She also reports on various other activities of the office which contribute to improving complaints handling and, in turn, aged care.

Public Enquiries

A free enquiries line (1800 500 294) allows people to call with a variety of questions and concerns, and to lodge complaints. Many people are concerned about their care or that of a family member and may not know who to contact. Others call with more general issues or concerns.

Where callers raise matters outside the Commissioner's functions, staff listen and discuss available options, and then refer them to agencies which may be able to assist them. Occasionally enquiries are received by letter or email.

This year the office received approximately 497 'out of scope' enquires, with 422 of these received via telephone, and 75 in writing.



Complaints Overview

People who have made complaints to the Scheme and service providers can complain to the Commissioner about the Scheme's decisions.⁸ Any person can complain about the Scheme's processes or the accreditation and review processes of the Quality Agency, or the conduct of the previous Agency and its assessors.

The number of complaints to the Commissioner has remained relatively stable in recent years and they continue to represent a small percentage of the total number of complaints that go to the Scheme. Complaints about the Agency and its successor, the Quality Agency, continue to be low.

Nonetheless, the year was another busy one, with seven per cent more complaints received than in 2012-2013, and significantly more cases finalised.

Once again the vast majority of the complaints came from aged care recipients and their families rather than aged care services.

Last year's increase in the complexity of cases has continued. There have also been a small but significant number of individual complainants making multiple complaints about decisions and processes of the Scheme. This has led to some large and complex examinations, involving many issues.



⁸ The decisions of the Scheme which can be examined by the Commissioner are listed in s 24 of the *Complaints Principles 2014*.

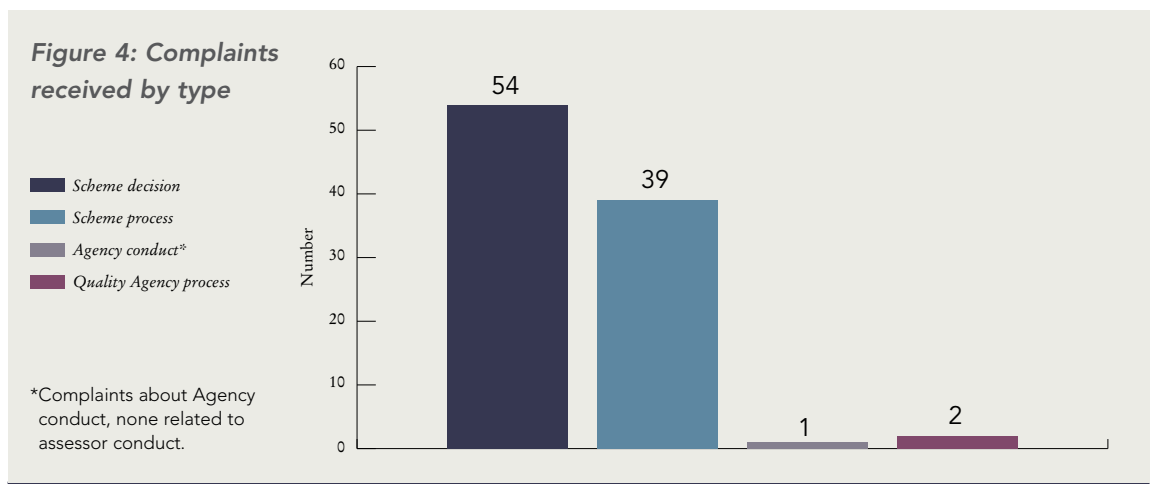
This is one reason why, along with the 14 day triage process which allows for more detailed early assessment of complaints, another feature this year has been fewer complaints being accepted for examination. Some of the cases that were not accepted for examination were about the same or similar issues that were already being, or had been, examined by the Commissioner.



Complaints Received

As noted above, the Commissioner received 96 complaints this year. Most, 54 complaints (56 per cent), related to Scheme *decisions* while 39 (41 per cent) were about Scheme *processes*. There was one complaint (one per cent) about the Agency’s conduct and there were no complaints about Agency assessor’s conduct prior to 1 January 2014. Two complaints (two per cent) were received about the processes of the Quality Agency⁹ after it came into being on that date.

In relation to all of these complaints, the Commissioner made a decision to examine the complaint, or alternatively to take no further action in relation to that complaint, within the 14 day statutory timeframe.



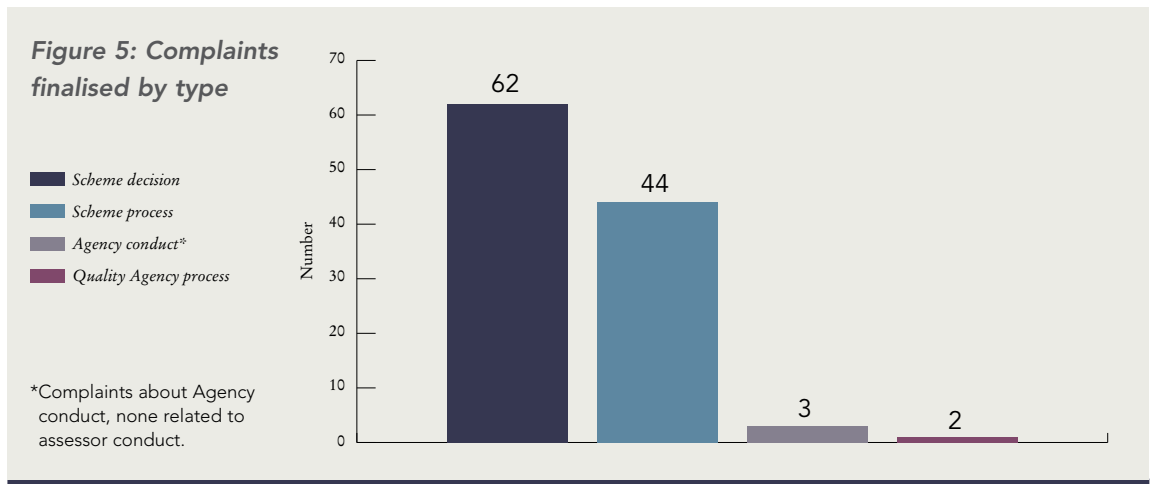
⁹ See Part 1 for more information on changes to the Agency and Quality Agency.

Complaints Commenced

The Commissioner began to examine 43 complaints. Twenty-four (56 per cent) were about Scheme decisions, 18 (42 per cent) about Scheme processes and one (2 per cent) was about Agency conduct. No examinations were commenced into the conduct of Agency assessors or the processes of the Quality Agency.

Complaints Finalised

The Commissioner finalised 111 complaints. Some of these were received in 2012-2013. Sixty-two (56 per cent) were about Scheme decisions, 44 (40 per cent) were about Scheme processes, three (three per cent) were about Agency conduct, none were about Agency assessor conduct and two (two per cent) were about Quality Agency processes.



Complaints about Scheme Decisions

When people have made complaints to the Scheme and they, or the service provider, are dissatisfied with its decision, they may complain to the Commissioner¹⁰. If the Commissioner accepts the complaint for examination, she has 60 days to examine it.

Received and Accepted

As noted above, the Commissioner received 54 complaints about decisions the Scheme made. Fifty-three came from people who had originally made the complaint to the Scheme, and one was from an aged care service. Twenty-four complaints were accepted for examination.

¹⁰ See section 24 of the *Complaints Principles 2014*.

Finalised without Examination

There are various reasons why the Commissioner may decide not to examine a complaint. 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, that examination is not warranted.

Seven complaints were withdrawn, seven were outside the Commissioner's jurisdiction and the Commissioner decided not to examine 19 complaints. Some of these complaints were received prior to the start of the year.

Finalised by Examination

Twenty-eight complaints about Scheme decisions were finalised by an examination. Within these complaints, the Commissioner examined decisions covering 90 distinct issues. 'Issues' are essentially a complaint within a complaint, each one requiring a separate examination and decision.

Some of these complaints were received prior to the start of the year.

All the examinations were completed within the statutory timeframe of 60 days from the date of acceptance. On average, the examinations were completed within 55 days.

The Commissioner decided to take no further action on one complaint before the examination was finalised.



CASE STUDY

A Care Recipient's Right to Information

An examination by the Aged Care Commissioner highlighted a care recipient's right to good information and the responsibility of aged care services to provide it.

A family complained that it was charged for an accommodation bond because their parent had been assessed as needing 'low level' care, but their parent was receiving high care. While this decision was legally open to the aged care service, the family noted that their parent had received high level care during a lengthy admission for respite care, prior to taking up permanent care. The family complained to the Scheme that the service should have organised a reassessment of the resident as it knew the low level needs assessment was no longer correct.

The family were unaware that there were financial implications of not having their parent's needs reassessed before the admission to permanent care. If their parent had been formally reassessed as needing high level care they would not have had to pay a substantial accommodation bond.

Following its examination, the Scheme concluded that it would take no further action on the basis that the service had acted legally in charging the bond as the parent had been assessed as requiring low level care. The second reason for the Scheme's decision was that, because legislation does not state whose responsibility it is for organising the reassessment, the service could not be said to have technically failed to meet any responsibilities.

Following the Commissioner's examination she found that while the service 'could' charge the bond if it wanted to, the Scheme had not considered the service's other legislative responsibilities to inform residents, or their representatives, of certain matters such as, in this case, the need to organise an assessment given the undisputed and known need for high level care, and the financial implications of not doing so prior to moving to permanent care.

The Commissioner directed the Scheme to look at the complaint again, with particular attention to whether the service had complied with the *Charter of Residents Rights and Responsibilities*.

In particular, the Scheme considered the right for residents to have access to information about their rights, care, accommodation and other information that relates to them personally and the requirement for aged care services to assist residents or their representatives to understand information about their rights and responsibilities.

The Scheme concluded that the service had not met its responsibilities in relation to providing information and assisting the care recipient's representative to understand it. As a result, the service reviewed and improved its relevant processes, including how it provides information to families, and subsequently offered an apology and a meeting with the family to discuss other ways to resolve this matter.

The Scheme advised the Commissioner that it would develop and distribute advice for the aged care industry about providing good information to care recipients and their representatives, and assist them to understand it, so they can make informed decisions.

Recommendations and Directions

Prior to 1 August 2013, after examining a Scheme decision, the Commissioner was required to make one of two recommendations to the Scheme. These were that the Scheme:

- re-examines the original complaint (undertakes a 'new resolution process'); or
- does not re-examine the original complaint (does not undertake a new 'resolution process').

Since 1 August 2013, after examining a Scheme decision, the Commissioner has been required to:

- decide to take no further action;
- recommend that the Scheme does not re-examine the complaint (does not undertake 'a new resolution process'); or
- direct that the Scheme re-examines the complaint (undertakes 'a new resolution process').

If the Commissioner directs the Scheme to re-examine the complaint, she may specify certain matters it needs to consider. The Scheme is also required to send the Commissioner its preliminary findings and take any further comments into account before closing the case.

Recommendations to the Scheme (Pre 1 August 2013)

Five complaints about decisions by the Scheme were finalised by examination before 1 August 2013. In all five, the Commissioner recommended the Scheme re-examine the original complaint in relation to all or some of the issues. The Scheme accepted the recommendations and conducted a new process.

Directions and Recommendations to the Scheme (Post 1 August 2013)

Of the 23 decision complaints finalised by examination on or after 1 August 2013, 11 (48 per cent) resulted in the Scheme being directed to re-examine all or some issues. In 12 cases (52 per cent) no further processes were recommended.



11
times

Is the number of times the Commissioner has directed the Scheme to re-examine a complaint

Impact of the Commissioner's directions

Some of the actions taken by the Scheme when they have been directed to re-examine a complaint, include:

- issuing notices of intent to issue directions¹¹;
- making referrals to the Quality Agency, and the Department's Compliance and Review section¹²; and
- developing advice for the aged care industry about providing information to care recipients and their representatives, and helping them to understand it, so they can make informed decisions.

Additionally, the re-examinations by the Scheme at the Commissioner's direction have resulted in some aged care services apologising and acknowledging failings to the care recipients. This occurred in four of the 11 cases.

CASE STUDY

Reimbursement for Missing Items

When the Scheme was directed by the Commissioner, following her examination, to consider a complaint that it had originally rejected, the end result was an apology to the complainant, quality improvement to processes at the aged care service and at the Scheme, and reimbursement for a lost item.

The complaint, regarding a missing item, was initially rejected by the Scheme on the basis that it related to an event that had occurred more than a year ago and was not ongoing. The Scheme has the discretion to reject complaints which are more than 12 months old. The Commissioner's view is, however, that discretion should not be exercised where the issue has merit and may still be resolved, as in this case. Nonetheless, when the complainant asked the Scheme to reconsider the matter, it reconfirmed its decision.

Dissatisfied with the Scheme, the complainant asked the Commissioner to examine the Scheme's decision. The Commissioner subsequently found that the Scheme should have done more to ensure that it had gathered all relevant information prior to making its decision not to take action on the complaint. She noted the Scheme had the discretion to accept older complaints and, in directing the Scheme to conduct a new resolution process, she required it to take into account certain matters related to the particular circumstances in this case, including why it had not been lodged earlier.

11 These set out the Scheme's concerns with an aged care service and give the service an opportunity to respond by identifying how it has, or will, address the concerns.

12 Which can take action against aged care services found not to be complying with their responsibilities.

During the new process, the Scheme used conciliation to try to resolve the outstanding concerns between the service and the complainant. It also contacted other parties to obtain and verify information.

It concluded that the service failed to have an appropriate system for recording details of residents' personal possessions. After the conciliation the service agreed to implement new processes and apologised to the complainant for failing to document what had happened to their relative's belongings. The complainant accepted the apology and an offer to replace the misplaced item.

The Commissioner recommended that the Scheme should use this complaint as a case study for future training of its staff when considering how and when to exercise its discretion to accept older complaints.

Complaints about Scheme Processes

People have up to 12 months to complain to the Commissioner about the processes adopted by the Scheme in dealing with a complaint.

Received and Accepted

As noted earlier, 39 complaints about the Scheme's process were received by the Commissioner. The Commissioner accepted and commenced examination of 18 complaints.

Finalised without Examination

As with complaints about the Scheme's decisions, there are a number of reasons why complaints about the Scheme's processes may not be examined¹³.

This year, three complaints about the Scheme's processes were withdrawn and one was not accepted because it was outside the Commissioner's jurisdiction. The Commissioner decided not to examine 19 complaints.

Finalised by Examination

The Commissioner finished examining 21 complaints about the Scheme's processes, involving 28 issues.

Complaints about Scheme processes were finalised on average within 203 days.

Unlike decision complaints, there is no mandated time in which the Commissioner must finalise her examination of process complaints.

¹³ See s 29(2) and (3) of the *Complaints Principles 2014*.

These complaints generally take longer to examine than decision complaints, because the investigation goes beyond examination of the information that led to a decision. Additionally, often a decision complaint has been lodged at the same time and has to be completed first in order to meet the 60 day deadline. This year there was also an extremely large and complex examination of the Scheme's processes, encompassing nine complaints, which took considerable time.

Recommendations

The 28 process issues the Commissioner examined included whether the Scheme:

- considered all relevant information;
- took too long to investigate a complaint;
- appropriately weighed information from all parties;
- should have announced site visits to an aged care facility; and
- communicated with the complainant regularly enough and kept them well informed.

As a result, the Commissioner made 16 recommendations for improvements to the Scheme's complaints processes. These covered such matters as the Scheme taking action to:

- provide advice to its officers on how to communicate with confidential complainants;
- ensure that in cases where there is differing evidence from both parties, it clearly explains which evidence is preferred and the reasons for that;
- ensure that the reasons for decisions to conduct site visits are considered and consistently recorded;
- ensure all details within its feedback letters are factually correct and fair to all parties of the complaint; and
- review its guidelines to ensure the reason for assessing risk to residents (when it assesses complaints) is clear and accurately documented.



The Scheme accepted 14 (88 per cent) of the Commissioner's recommendations. At the end of the year, the Scheme had yet to advise whether it would accept two recommendations.

No recommendations were rejected by the Scheme.

CASE STUDY

Recommendations to Improve the Complaints Process

A relative made numerous complaints to the Commissioner regarding the way the Scheme handled concerns raised about the care and services provided to a family member.

During the Commissioner's examination of the process, two wider themes emerged. The first related to the way the Scheme identified and framed the complaint issues. The second related to managing the process in a responsive and accessible way, while, at the same time, being fair and transparent to all parties, and efficiently using limited resources.

The Commissioner found the Scheme had generally been responsive to the complainant and had gone to some lengths to correctly capture the issues to the complainant's satisfaction and appropriately manage the large volume of information they continued to provide about largely inter-related issues over an extended period of time. The Commissioner noted that resolution of the issues for the complainant was a key focus of Scheme officers.

The Commissioner was not satisfied, however, that the Scheme had effectively managed the process. The Commissioner noted that the Scheme should have set transparent and fair boundaries for all parties to the complaint at each stage of the process and consistently applied them. This would have allowed the parties to understand clearly what was expected of them and allowed the Scheme to address the complaint in a timely way and more efficiently manage its resources.

The Commissioner made several recommendations including that the Scheme revise its guidelines and training regarding accurately formulating complaint issues and managing and considering additional information; establishing a point of review procedure for dealing with complaints from the same person raising multiple and related concerns; and revising existing fact sheets and other information about its processes. The Scheme accepted all the recommendations.

Implementation of Commissioner's Recommendations

Twice a year the Commissioner follows up with the Scheme on its progress in implementing her recommendations. The Commissioner has followed up progress on eight recommendations¹⁴ and one related issue¹⁵ from this year, as well as multiple outstanding actions from the previous financial year.

14 The Commissioner was yet to follow up on some of the recommendations she made during the year as the Scheme had not accepted them at the time of the review.

15 'Related issues' are issues in a process or decision complaint that the Commissioner has noted during her examination and made recommendations on, but were not raised by the complainant.

Last year this follow up was initiated for the first time and while action on many recommendations was underway, most had yet to be completed. This year it is pleasing to report that the Scheme has completed the majority of outstanding actions from last year, and promptly completed, or made significant progress on, the more recent recommendations.

In particular, all outstanding actions from last year's own initiative examination have been followed up and completed. These include the Scheme running education sessions on guardianship and capacity across its state and territory offices, developing fact sheets about this issue, and the provision of a 'What Can We Learn?' report for the industry.

Other actions taken by the Scheme in response to the Commissioner's recommendations from the year are:

- including managers from other areas of the Scheme in the risk assessment process, resulting in risk to care recipients being considered in a broader way;
- training Scheme officers on improving the documentation of decisions and considering the risk to residents when making decisions;
- using 'Master Classes' across the country to emphasise the importance of providing clear feedback to complainants;
- publishing a number of blog posts on the Scheme's internal intranet to distribute information to all officers on a wide range of recommendations; and
- distributing factsheets on topics such as providing well-reasoned feedback to complainants.

Complaints about Agency Conduct

As noted earlier, prior to 1 January 2014 the Commissioner could examine complaints about the conduct of the former Aged Care Standards and Accreditation Agency (the Agency) in relation to its responsibilities under the *Accreditation Grant Principles 2011* and *Accreditation Grant Principles 1999* and the conduct of its assessors.

Received and Accepted

The Commissioner received one complaint about the Agency's conduct and she accepted one complaint (received late in 2012-2013) about the Agency's conduct.

Finalised without Examination

The Commissioner finalised one complaint without examining it because it was outside her jurisdiction.

Finalised by Examination and Recommendations

The Commissioner finished examining two Agency conduct complaints, both relating to the way the Agency handled information it received from the Scheme.

Each of the complaints contained one issue. The Commissioner made a recommendation to the Agency on one of the issues.

Complaints about Agency Assessors' Conduct

The Commissioner did not receive, accept, examine, nor finalise any assessor conduct complaints.

Complaints about Quality Agency Processes

From 1 January 2014 the Commissioner has been able to examine complaints about the newly established Australian Aged Care Quality Agency's processes for accrediting aged care services¹⁶.

The Commissioner received two complaints about the processes adopted by the Quality Agency.

Both complaints were finalised without examination. One was withdrawn and the other the Commissioner decided not to examine.

No examinations of the Quality Agency's processes were commenced or completed.

Implementation of the Commissioner's Recommendations

As with the Scheme, the Commissioner now follows up on the implementation of recommendations made by her to the Quality Agency and its predecessor. The Quality Agency is in the process of implementing the one recommendation the Commissioner made to its predecessor, the Agency during the year. This relates to providing more guidance to assessors on how to document, consider and analyse information provided by residents (or their representatives) during and before the assessors' visits to aged care services.

The Quality Agency has also implemented a recommendation made by the Commissioner in 2012-2013 (in relation to its predecessor, the Agency) about providing information to residents and their families about how it will use the information they give the Quality Agency during its assessors' visits to aged care services.

¹⁶ From 1 July 2014 the Quality Agency also reviews the quality of home care services. The Commissioner can also examine complaints about its processes in relation to this.

Own Initiative Examinations

In May 2014 the Commissioner commenced an own initiative examination into the process for referring concerns about aged care services from the Scheme to the Quality Agency.

This follows concerns about the intersection between the complaints and accreditation systems arising from complaints to this office during the year, and in the media towards the end of last year. The Commissioner considers it is in the public interest to have effective processes to ensure that systemic concerns arising from complaints are appropriately referred to organisations in a way that allows these matters to be promptly followed up and necessary action taken. It is also timely to consider this matter given the recent creation of the Quality Agency.

This examination is ongoing. The Commissioner did not finalise any own initiative examinations this year.

Requests from the Minister

The Commissioner met with the Minister three times this year – once with the former Minister for Mental Health and Ageing and twice with the Assistant Minister for Social Services.

Neither Minister formally requested advice from the Commissioner.

Complaints to the Commonwealth Ombudsman

People who have complaints about the Commissioner's administrative actions may complain to the Commonwealth Ombudsman.

This year the Ombudsman notified the Commissioner it had received two new complaints against the office and had one case open at the start of the year. Two complaints were closed without any adverse findings against the Commissioner and one remained open at the end of the year.

PART 3: QUALITY ASSURANCE

Satisfaction Surveys

Once a year the Commissioner seeks feedback from people who have used the services of the office or whose decisions and processes have been examined.

Two types of surveys are used. The first is for those who have lodged complaints with the office and aged care services who have been party to a complaint.

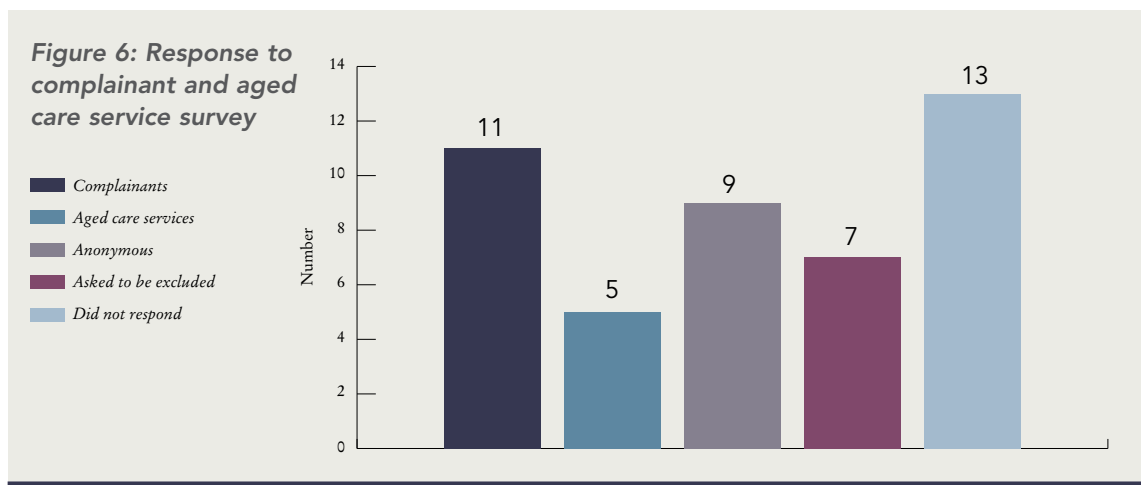
The second is for departmental officers who have interacted with the office in relation to complaints against the Scheme. The Agency and Quality Agency are not surveyed because the sample is too small to provide anonymity to the respondents.

The surveys ask for ratings from one to five¹⁷ in response to questions about topics such as the professionalism of the Commissioner's staff, the clarity of written materials, the timeliness of contact from staff, and overall satisfaction with the way complaints are handled. Where people identify areas for improvement they are asked to comment on this.

Complainant and Aged Care Service Survey

Surveys were sent to 45 people (33 complainants and 12 aged care services) who had cases that were closed this year, with no ongoing or related matters.

Thirty-two people responded (11 complainants, five aged care services, nine anonymous, and seven who asked not to be included in the survey) giving an overall response of 71 per cent. Once the seven who said they did not want to be involved were excluded, the response rate dropped to 56 per cent.



Many of the 25 people who participated in the survey answered some questions but not others and this affected the data. Some of the comments attached to the surveys suggested that a number of responses may have been influenced by whether the Commissioner's findings met the expectations of the complainant.

¹⁷ One indicates 'needs improvement', while five is 'excellent'.

Nonetheless, most respondents indicated they were satisfied with the professionalism of the Commissioner's staff, the clarity of correspondence and the timeliness of processes and responses provided by the office.

Respondents also provided some useful feedback regarding areas for improvement. Some indicated, for example, that improvements could be made to the information that is provided about the role and functions of the Commissioner when a complaint is first lodged.

Department of Social Services Staff Survey

Seventy-two departmental officers (mostly from the Scheme) were invited to complete the anonymous online survey and 42 (58 per cent) responded.

The feedback was generally very positive. In particular, most officers indicated they found the Commissioner's final reports outlined her decision clearly, recommendations for process improvement were useful, requests for information were clear and comments on the Scheme's draft findings after the Commissioner had directed the Scheme to re-examine a complaint, were valuable. It was particularly helpful to receive feedback on the procedures relating to the Commissioner's new powers.

When asked to comment on areas for improvement, a small number of departmental staff raised issues regarding the clarity and practicality of some of the Commissioner's recommendations, and matters she has asked the Scheme to consider when it has been directed to re-examine a complaint. They raised issues around requiring an apology as a complaint outcome and about the Commissioner's interview process.

Using Survey Feedback to Improve Service

The survey results have been analysed and the results have been shared with all staff to ensure they take action to improve the performance of the office where it is necessary.

As noted above, overall the feedback was positive and constructive. Where there were negative comments by some departmental officers, or by members of the public, these have been carefully considered and discussions have occurred within the office as to how the issues can and will be addressed.

The Scheme and the Commissioner have also discussed ways of improving clarity of communication and feedback between the offices and enhancing Scheme officers' understanding of the Commissioner's role and processes.

Post Case Conferences

Each month staff gather to review recently closed cases and discuss the lessons from them. Investigators and intake staff take turns at presenting the cases, followed by an all staff discussion. This provides an opportunity to reflect on complaints and the issues raised, to highlight any lessons relevant to the procedures of the office or to other cases, and to ensure consistency of approach across all cases. It also assists with staff professional development.

File Audit

Once a year a selection of closed case files is randomly selected and reviewed against a checklist to support good file maintenance and record keeping. This year's file audit was completed in April and the results were pleasing.

The file notes and correspondence reviewed demonstrated that staff are consistently professional, understanding and compassionate in their dealings with complainants and other stakeholders. As always, the audit also showed there is still room to improve, for example around note taking being clear and comprehensive, and correctly naming file documents.

Feedback was given to staff regarding consistency of practice across the office and there was training on file naming conventions.

Key Performance Indicators

The Commissioner also has internal targets to assist in monitoring the office's performance and the quality of its work. There are 10 indicators relating to four performance measures. This year's performance across each indicator is outlined below.

Performance Measure One

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

Indicator	Result
95% of complaints are acknowledged in writing within three working days of their initial contact with the office.	Exceeded. 100% of complaints were acknowledged within three working days.
All complaints (100%) are assessed and decisions made regarding acceptance or no further action, within 14 days of receipt by the office.	Fully met. 100% of complaints were assessed and decisions made within 14 days.
100% of decision complaints are completed within 60 days from acceptance.	Fully met. 100% of decision complaints completed in 60 days. On average, the examinations were completed within 55 days.
80% of process complaints are completed within 182 days (six months) of acceptance, and 100% are completed within 365 days (a year).	Partially met. Only 52% per cent of process complaints were finalised within six months. This was mainly due to a large examination which encompassed multiple complaints about the Scheme's process from one complainant. This examination was complex, with many issues, and it was initially delayed while many related complaints about the Scheme's decisions were completed. Nonetheless 100% of process complaints were completed within one year.

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	Result
A random sample of all files closed in the previous six months is reviewed by the Director once a year to monitor the quality of service and documentation. Any concerns are followed up through staff training and feedback and/or adjustments to practices and procedures.	Fully met. A file audit was completed ¹⁸ . Files were found overall to indicate a high quality of service and standard of documentation, although consistent document naming and thoroughness of file notes were identified for improvement. Feedback was provided to staff on these aspects.
A random selection of complainants (all complaints) and aged care services (decision complaints) are surveyed once a year about our processes. 90% of complainants and aged care services who respond, are satisfied or mostly satisfied with the way the complaint has been handled by the office.	Not met. 35% (6) of the 17 complainants and aged care services who answered this survey question indicated they thought the office's handling of their complaint was excellent or close to it ¹⁹ . 41% (7) were neutral and 24% (4) indicated improvement was needed. Feedback from the surveys has been provided to staff and actions taken so that the office can meet this KPI next year.
At least a third (33%) of all finalised complaints are reviewed at a post case conference. Lessons from the complaint and the way it was managed are identified, shared with all staff and recorded.	Exceeded. 38% of finalised cases were presented at a post case conference and lessons were recorded.
All complaints to the office about its processes are handled in accordance with the internal complaints mechanism policy and opportunities for improvement are reported to the Commissioner.	Fully met. One formal complaint about the office's process was received. It was considered and responded to in accordance with the policy.

18 Due to workload the Director delegated the file audit to the Investigations Manager

19 The scale used to assess satisfaction with complaints management differed between the KPI and survey question. This is being corrected for next year.

Performance Measure Three

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

Indicator	Result
95% of all recommendations for process improvement are accepted by the Complaints Scheme.	Not yet met. The Scheme accepted 88% of the Commissioner's recommendations with two recommendations outstanding. The Scheme did not reject any recommendations.

Performance Measure Four

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

Indicator	Result
A staff training or development opportunity is offered on average once a month, with at least six 'all staff' training/development opportunities provided during the year.	Exceeded. An average of two training/development opportunities were provided each month, and 11 all staff training opportunities were provided.

TABLE OF FIGURES

Figure 1: Types of complaints which can be made to the Commissioner

Figure 2: The complaints management process

Figure 3: The new powers in action - Case study

Figure 4: Complaints received by type

Figure 5: Complaints finalised by type

Figure 6: Response to complainant and aged care service survey

APPENDIX

The Commissioner's annual reporting requirements are set out in s 95A-12 of the *Aged Care Act 1997* (below).

Annual Reporting Requirements since 1 January 2014

95A 12 Annual Report (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 processes mentioned in subparagraphs 95A-1(2)(d)(i) and (ii); 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 Commissioner Principles to be included in the report.

Annual Reporting Requirements prior to 1 January 2014

95A 12 Annual Report (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 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 an assessment 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 Commissioner Principles to be included in the report.

CONTACT US

If you have any comments or queries regarding this Annual Report please contact:

The Communications and Intake Officer
Office of the Aged Care Commissioner
Locked Bag 3 Collins Street East
VIC 8003

Phone: 1800 500 294

Fax: (03) 9665 8026

Email: info@agedcarecommissioner.net.au

Copyright

© Commonwealth of Australia 2014

Alternative Formats

This and previous Annual Reports are available electronically on our website at:

www.agedcarecommissioner.gov.au/publications/reports

Cover and Inside Photography

Photographs were taken by Peter Dowd and feature community group members, staff and volunteers from the Australian Vietnamese Women's Association.

Some inside photographs were taken by Trudi Sanchez of Trudi Sanchez Photography and feature residents and young friends at UnitingCare Ageing's Starrett Lodge, Hamlyn Terrace NSW.

The staff photograph was taken by Jessie Mallett.

Report design

Design and layout by Jayne Melville, Salt Marketing.



Aged Care Commissioner

Post to:

Locked Bag 3
Collins Street East VIC 8003

Telephone:
Freecall 1800 500 294

Facsimile:
03 9665 8026