



AGED CARE COMMISSIONER

ANNUAL REPORT

1 JULY 2009 – 30 JUNE 2010



Australian Government

Office of the Aged Care Commissioner
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The Hon Mark Butler MP
Minister for Mental Health and Ageing
Parliament House
CANBERRA ACT 2600

Dear Minister

I hereby submit my Annual Report pursuant to my obligations under section 95A-12 of the *Aged Care Act 1997*. The report includes information related to the functions of the Aged Care Commissioner during the period 1 July 2009 to 30 June 2010.

Yours sincerely

A handwritten signature in black ink that reads "John Kelly".

ADJ PROF JOHN G KELLY AM
Aged Care Commissioner

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CHAPTER 1. FOREWORD AND OVERVIEW

1.1 Commissioner's Foreword

Historically, responsibility for the care and protection of older people fell to family members and was provided in the extended family home. Gradually these individual efforts became organised into state owned and managed benevolent institutions to provide care to the poor. The underlying premise of these early systems was based on humanitarian care, within a non-profit model.

However, with the passage of time as costs increased and charitable donations became insufficient to sustain that particular model of care; health care has become the focus for more strategic social policy. Demographic changes, including greater life expectancy, decreasing family size, the geographical dispersion of families and the tendency for women to be educated and work outside the home meant that new models of care for the frail elderly had to be found.

In recent years governments, professional bodies and aged care providers have invested heavily in strategies to improve the quality and safety of aged care throughout Australia. In this country aged care is seen as both a health and a social program. Judgements about quality focus on the medical and nursing aspects of care, on achieving desired health and functional outcomes and on the adherence to best practice systems of care. Resident quality of life is, by definition, largely subjective and so the social aspects of quality are based on the opinions and perceived satisfaction of consumers.

A range of complimentary approaches are used to ensure quality of care for care recipients accessing aged care services. The regulatory system itself is designed to be heavily outcome oriented and resident focussed. With standards set and reinforced by government as well as complaints and compliance activities, there is an obvious intersection and reinforcement between the user rights strategy, the Aged Care Standards and Accreditation Agency Ltd, the role of the Department of Health and Ageing, including the Complaints Investigation Scheme, and the Aged Care Commissioner.

The principal function of the Commissioner's Office is to act as an office of review. This Office, which is independent of the bureaucracy, exists primarily to examine some of the decisions and processes of the Complaints Investigation Scheme and the actions of the Accreditation Agency.

Beyond this, however, one of the most powerful objectives for the Office is to have a positive impact on the quality of aged care service delivery across Australia.

Ideally, aged care service values are founded on altruism and relief of suffering. Within this philosophy, essential tasks are oriented towards the physical and psychological care and safety of residents and are performed in such a way that affirms resident rights, in a context where the values of the service provide a sense of belonging, emotional integration and reassurance of worth for residents.

Things have improved in both resident care and business excellence. However, some would argue that the change has come slowly, sometimes begrudgingly and not always with enthusiasm. Perhaps this has been because change has been imposed by government edict whereas in reality service improvement is predominately shaped by the behaviour and attitudes of providers and practicing clinicians.

Central to the philosophy of continuous improvement, through the enhancement of organisational and clinical processes, is the theory that quality problems result from poor processes and systems, rather than from individual performance.

While this is the case, a management approach that focuses on system-wide evaluation of work processes alone may disallow those aspects of openness and transparency that act as a lever for continuous quality improvement. This approach can also negate the benefits gained through discussion with naturally occurring work groups and clinical care teams and where employees are empowered to identify quality problems and improvement opportunities and to own and undertake action.

Providers who focus on team work benefit by recognising that, due to their knowledge and experience, team members bring valuable insights regarding the process to be improved and staff are more likely to implement improvements to problems they have identified.

When entrenched in everyday work this approach allows new evidence, technologies and models of care to be incorporated into work practices, enhancing the ability to respond to the ever-changing needs of individual care recipients and, at the same time, enhancing the satisfaction of staff by encouraging a more open culture with less emphasis on blaming the individual and more on learning, team work and support.

Clinical and organisational performance is difficult to measure; however, it is important to adopt a quality improvement plan designed to measure, evaluate and improve processes and outcomes, including the effective use of resources. Because not every change is necessarily an improvement, a new process must be tested and studied to determine whether it has actually resulted in improvement.

Performance measurement is about accountability; but it is often a contentious process. Accordingly, it is essential that any framework adopted to test, or explain, organisational success is able to withstand external examination and, for that reason, any strategies developed must be extensive, objective and measurable rather than narrow and intuitive.

The challenges and changes needed in aged care have been well documented. Government reforms over the last decade have increased the range of available services and have improved access and quality. To secure further improvements on a large scale will take time, resources and the commitment of the wider community.

I would like to recognise the important work of the inaugural Aged Care Commissioner, Rhonda Parker. I would also like to acknowledge the staff in my Office, past and present, who have shown professionalism, dedication and competence in their work and sincerely thank them for the support provided. I have also been grateful for the assistance and acumen provided to the Office by the out posted staff from the Australian Government Solicitor.

I wish to record my appreciation to staff from the Department of Health and Ageing, the Complaints Investigation Scheme and the Aged Care Standards and Accreditation Agency Ltd, for the cooperation shown to this Office during the last financial year.

I would also like to acknowledge the commitment of approved providers and the various initiatives directed at improved service delivery, including the attention given to the internal resolution of complaints. These initiatives reflect positively on service providers and the industry more generally, giving rise to a framework that supports an improved standard of care and increased consumer confidence.

Finally I would like to pay tribute to all advocates and the consumers themselves. Involvement in an aged care service can be difficult for the care recipient and family members. Theirs is not an easy role. For some, the improvements gained are not good enough, particularly where the resident is seen to be suffering from indifference or poor management. The challenge to have others take their complaints seriously, to act on them positively and to ensure that the rhetoric of resident rights is embedded in reality, is one that takes commitment and patience.

ADJ PROF JOHN G KELLY AM
Aged Care Commissioner

1.2 Overview

The future growth, distribution and age structure of populations are key elements behind policy development in most countries across the world. Australia's population is projected to grow from around 21 million people in 2007 to 62 million in 2101. In addition to the future size of the overall population the most profound change that is projected to occur is in the ageing of the population.

According to Australian Bureau of Statistics (ABS) projections, the rate at which the populations aged 65 years and over and 85 years and over will grow, is projected to accelerate in the short and medium term. Between now and 2050 the number of older people aged between 65-84 years is expected to more than double. This means that by 2050 nearly one quarter of the population will be aged 65 years and over, compared with 13 per cent today. The number of people in this age group will grow by an average 2.7 per cent to 2011 and then accelerate to grow by an average 3.5 per cent per year over the next 11 years to 4 million in 2022. At the same time, the population aged 85 years and over is the most rapidly growing population group among the elderly population, with the number expected to quadruple from 0.4 million to 1.8 million in 2050 (*ABS March 2009*).

The ageing of the population in Australia will have a significant effect on the demand for and supply of aged care services and on the resources needed to provide those services. Much of the increase in demand for aged care services is expected to occur when the "baby boom" generation enters the over 65 years age group. The first of this cohort will reach 65 years in the year 2011 and the last will do so around 2030.

On average, the older population today is in better health than its counterpart of a few decades ago. Despite the fact that overall health has improved a person's general health status tends to deteriorate with age. While the majority of older people remain independent, many individuals exhibit one or more chronic conditions and require some support from informal caregivers, including family members, neighbours, friends and volunteer groups.

On the other hand many older people experience a significant decline in functional, cognitive and emotional health and require assistance from formal aged care services provided through residential care and community based organisations. Entitlement to residential care (high care, low care or respite services) or a community based service, such as the Community Aged Care Packages (CACPs); Extended Aged Care at Home (EACH) and EACH Dementia places is determined by Aged Care Assessment Teams (ACAT). A person must be assessed as eligible for any of these services before a subsidy is provided by the Australian Government. This tiered approach recognises the continuum of care and aims to ensure that older Australians receive the correct level of care when and where it is required and that the transition between care settings is managed appropriately.

At 30 June 2010 there were 2,773 operational residential care facilities offering 179,749 places. In its report *Residential Care in Australia 2007-08*, the Australian Institute of Health and Welfare (AIHW) reported that almost half of permanent residents had a diagnosis of dementia. Other health conditions affecting residents' admissions included circulatory diseases and diseases of the musculoskeletal and connective tissue. AIHW reported the average occupancy rate during this period was 93.5 per cent with an average length of stay of 147.8 weeks. The most common reason for the separation of residents was death (88 per cent). These facts, together with the overall vulnerability of this population, differentiate this group from other health care users.

AIHW also reported that almost half the admissions to residential services were for respite care. Respite care is usually of a short duration with an average length of stay of 3.3 weeks. The majority of respite residents (77 per cent) were reported to return to the community; however, 16 per cent continue in residential care, either as permanent residents or for additional respite care.

At 30 June 2010 there were also 42,634 CACPs; 5,587 EACH and 2,583 EACH Dementia places operational in Australia. In its report, *Aged care packages in the community 2007-08: a statistical overview*, AIHW commented on the growth of CACPs, EACH and EACH Dementia places in recent years and the higher rate of usage amongst people born in non-English speaking countries and Aboriginal and Torres Strait Islander communities. AIHW reported an occupancy rate for CACPs of 93 per cent and a length of stay between three months and over four years. Reasons for separation were identified as admission to residential care (46 per cent), death (17 per cent), admission to hospital (four per cent) and transfer to another provider (eight per cent).

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

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

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

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

The legislation allows a person to give information to the Complaints Investigation Scheme (the Scheme), by way of complaint or otherwise, about any matter involving an approved provider's responsibilities under the *Aged Care Act 1997 (Cth)* (the Act) and *Aged Care Principles 1997 (Cth)* (the Principles). Information may be given to the Scheme orally or in writing and can be dealt with on an open, confidential or anonymous basis.

The Scheme is required to determine whether the relevant approved provider has breached its responsibilities under the Act or Principles and can elect to issue an NRA which outlines the steps an approved provider must take to conform to the legislation and the timeframe necessary for the remedial steps to be taken to address any identified deficiencies in meeting its responsibilities.

CHAPTER 2. ABOUT THE OFFICE

2.1 Aged Care Commissioner's Role and Functions

The Aged Care Commissioner (the Commissioner) holds a statutory appointment and is independent of the Department of Health and Ageing (the Department) and the Aged Care Standards and Accreditation Agency Ltd (the Agency).

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

- (a) *to examine decisions that are made by the Secretary under the Investigation Principles and are identified by those Principles as being examinable by the Aged Care Commissioner, and make recommendations to the Secretary arising from the examination;*
- (b) *to examine complaints made to the Aged Care Commissioner about the Secretary's processes for handling matters under the Investigation Principles, and make recommendations to the Secretary arising from the examination;*
- (c) *to examine on the Commissioner's own initiative, the Secretary's processes for handling matters under the Investigation Principles and make recommendations to the Secretary arising from the examination;*
- (d) *to examine complaints made to the Aged Care Commissioner about:*
 - (i) *the conduct of an accreditation body relating to its responsibilities under the Accreditation Grant Principles; or*
 - (ii) *the conduct of a person carrying out an audit, or making a support contact, under those Principles;**(but not a complaint about the merits of a decision under those Principles) and make recommendations to the accreditation body concerned arising from the examination.*
- (e) *to examine, on the Aged Care Commissioner's own initiative:*
 - (i) *the conduct of an accreditation body relating to its responsibilities under the Accreditation Grant Principles; and*
 - (ii) *the conduct of persons carrying out audits, or making support contacts, under those Principles;**and make recommendations to the accreditation body concerned arising from the examination.*
- (f) *to advise the Minister, at the Minister's request, about matters relating to any of paragraphs (a), (b), (c), (d) and (e);*
- (g) *the functions (if any) specified in the Investigation Principles.*

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

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

The Principles, initially promulgated 1 May 2007, were amended 1 January 2009. The amendments included the addition of a further type of relevant decision (being the decision not to investigate a complaint); the removal of the obligation for appellants to lodge their application to the Commissioner in writing, and the removal of the obligation for complainants to advise either the Scheme or the Agency of an intention to lodge a complaint with the Commissioner.

The amendments also provide for the Scheme to make a reconsideration decision and notify the parties within 21 days after receiving the Commissioner's recommendation.

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

- a decision by the Secretary not to investigate a matter relating to an approved provider's responsibilities
- a decision by the Secretary to cease investigating a matter
- a decision by the Secretary that there has not been a breach of the approved provider's responsibilities
- a decision by the Secretary not to issue an NRA
- the terms/conditions of an NRA that directly relate to the aggrieved person.

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

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

The term of appointment for the inaugural Aged Care Commissioner ended on 30 April 2010. Adjunct Professor John G Kelly AM was appointed as Aged Care Commissioner from 1 May 2010.

2.1.1 Annual Report

Section 95A-12 of the Act relates to the provision of an annual report by the Commissioner and states:

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

Our annual report, therefore, is a public record of the work undertaken each financial year. It provides the Minister, the Parliament and the wider community with an opportunity to find out what business processes are in place, what has been achieved and the challenges faced during the year.

2.2 The Office of the Aged Care Commissioner

All existing policy documents were reviewed between 4 December 2009 and 20 January 2010. During this period additional documents were also developed to support business processes and practices of the Office. These include:

- Case Management System User Guide
- Managing Conflict of Interest
- Managing Difficult Telephone Calls
- Office Administration Procedures Manual

Figure one demonstrates all policy documents are interrelated.

The corporate plan provides broad strategic direction for our work and is supported by additional centralised office policies and plans. The business plan outlines the detailed strategies and activities to support the corporate plan. Performance indicators form part of a broader quality improvement strategy and track performance on two levels; individual files and systems, and policies and structures. The Office also has a general work plan which provides a further basis for the performance development arrangements for individual staff.

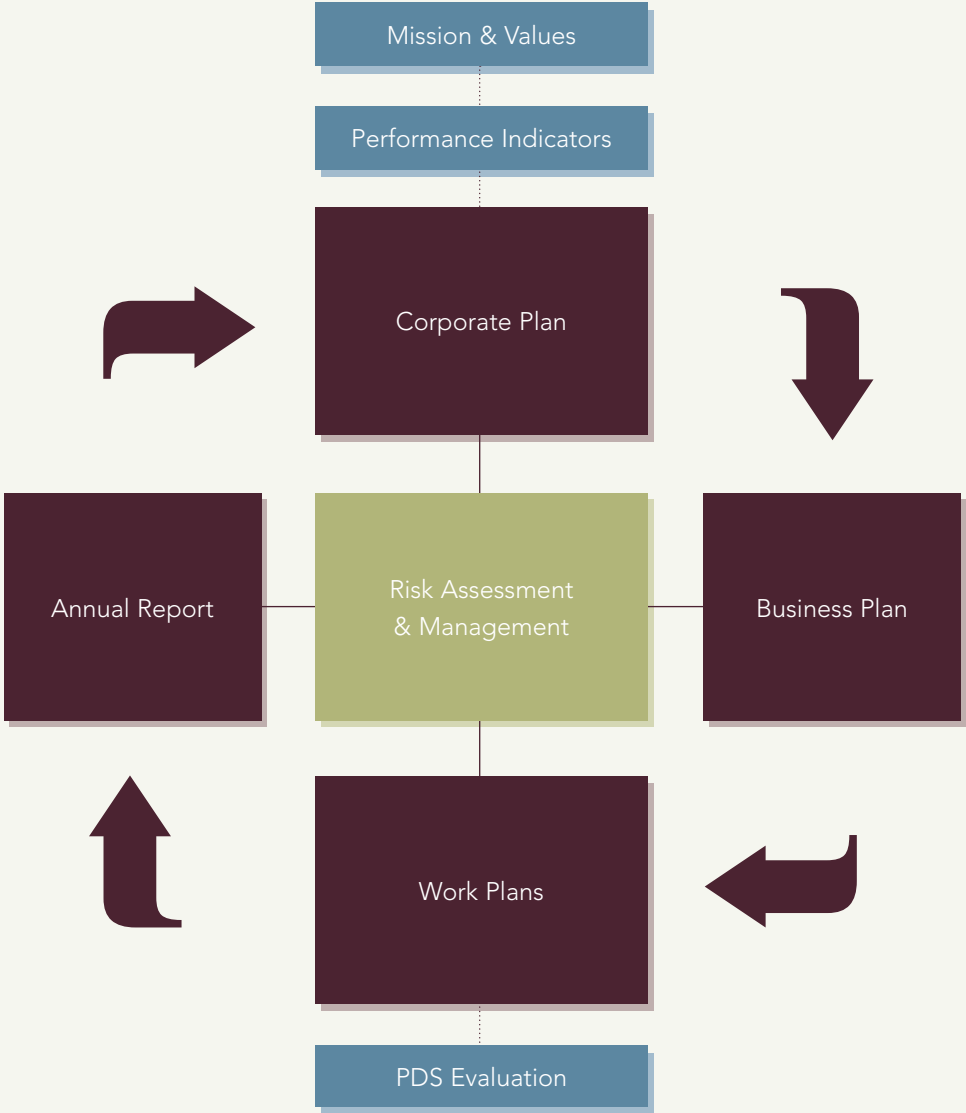
The vision for the Office is: *To be recognised as a leader in complaints management and in fostering excellence in public administration.*

The mission statement is: *In collaboration with others, promote continuous improvement in the quality of aged care services for older Australians through leadership in complaint handling, by fostering excellence in public administration and delivering a service that is characterised by fairness, impartiality and balance.*

This statement is designed to acknowledge and value the contribution of others and aims to reflect the commitment to professionalism of Office staff in the performance of all functions.

Accountability

Figure 1: Accountability and the interrelationship of documents



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

To ensure maximum accessibility the Office maintains a free-call telephone number 1800 500 294. The Office is located at Level 4, 12-20 Flinders Lane Melbourne and is open between 9-5 each weekday, except public holidays. The postal address is Locked Bag 3, Collins Street East, Vic 8003.

2.2.1 Budget

A budget of \$1.3M was initially allocated for the 2009-2010 financial year to support the operation of the Office. The salary for the Commissioner is set by the Remuneration Tribunal and is included in the allocation to meet salaries and on-costs.

The Office is dependent on the Ageing and Aged Care Division of the Department for funding. In order to address an identified shortfall in resources the Office lodged a submission to the mid-year budget review seeking funding for the employment of two additional staff. The Commissioner and Director met with the Deputy Secretary in November 2009. The Office was advised that the funding submission was successful in December 2009. The revised budget for 2009-2010 was increased to \$1.43M, enabling the appointment of additional human resources. New staff commenced employment in January 2010.

2.2.2 Service Charter

The Service Charter includes key information about the service delivery approach of the Office and provides a clear statement about the responsibilities and standards of service the community can expect from it.

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

2.2.3 Staffing

The Office comprises a committed team of ten people who bring a diverse mix of skills, experience and cultural backgrounds. The collective experience provides the capacity to examine matters with the necessary investigative, administrative, legal and clinical considerations and supports the Office in its role as an independent office of review.

Staff are supported by legal advisors from the Australian Government Solicitor (AGS) who attend the Office two days a week to provide independent legal counsel.

2.2.4 Website

The internet is an excellent conduit for providing and receiving information as it breaks down geographical barriers, is widely accessible and reaches an extensive audience.

The website is an important avenue for the provision of information to the public. It is intended to be a user friendly and practical resource for people who access the site, explaining what we do and how we do it. The website provides access to a range of brochures and fact sheets which present client friendly information and provides links to other organisations to assist the reader.

Website statistics show how much traffic the website receives, how visitors get there and where, geographically, the visitor is located (see Chapter 6, page 38).

Visitors to the site are able to make an online complaint about the processes used by the Scheme when handling matters under the *Investigation Principles 2007 (Cth)* (Investigation Principles) the conduct of the Agency, or the conduct of persons carrying out site visits or making a support contact under the *Accreditation Grant Principles 1999 (Cth)* (Accreditation Grant Principles).

The website can be located at **www.agedcarecommissioner.net.au**

2.2.5 Satisfaction Surveys

In order to provide exceptional service and maintain a focus on continuous improvement it is important to gauge perceptions as to whether the Office is meeting the needs and expectations of its clients. The Office utilises satisfaction surveys as one method of assessing client satisfaction.

The surveys are designed to provide information from informants and approved providers who have had dealings with this Office during the financial year. Additionally, the surveys are designed to capture client demographic information such as ethnicity, age groups and approved provider types (see Chapter 5, page 34).

The overall purpose of these surveys is to promote a focus on client outcomes and stimulate improvements in the work practices and processes used within the Office. Trends in client satisfaction and key indicators of customer dissatisfaction are documented and are supported by objective information. These trends are periodically reported and reviewed by senior management.

The objective has been to gain a better understanding of respondents' perceptions, to identify strengths and weaknesses and to determine the actions required to meet the needs and expectations of our clients.

In previous reports we have discussed the limitations of satisfaction surveys. An analysis of the data in previous years suggested there was a correlation between the Commissioner's recommendations and satisfaction rates.

In other words, where the respondent believed the outcome was favourable to their interests they were more likely to be satisfied with the work undertaken by the Office. This, plus the fact that some people completing and returning surveys continue to confuse this Office with the Scheme, demonstrates that the data received from the satisfaction surveys does not provide reliable information on which the Office could plan its quality improvement efforts alone. Human nature being what it is, it will probably always be difficult to separate positive or negative comments from the outcomes of cases; for this reason, satisfaction surveys are but one element of our continuous quality assessment and improvement program.

2.2.6 Post Case Conferences

The Office operates on the premise we should continually assess our work and learn from the experience. By doing little, or no assessment, we risk losing touch with the needs of our clients and administrative practices, fail to make needed improvements or corrections in processes and demonstrate poor stewardship of our legislative responsibilities.

Working on the pedagogical assumption that knowledge is created as it is shared; the Office established a strategic initiative known as *post case conferences (PCC)* which provides a forum for the sharing of professional knowledge and information. PCCs provide an opportunity for the entire team to develop critical thinking and analytical skills; to discuss multiple issues, balance different views and to apply collective knowledge in problem solving situations.

Completed case reviews are generally conducted on a fortnightly basis. The principal goals are to identify the strengths and weaknesses of the work undertaken in the case under review, to reinforce an understanding of our role and the legislation that guides it, to reduce the risk of errors in the future and to improve efficiency and effectiveness of the Office (see Chapter 5, page 37).

2.2.7 Case Management System

The case management system (CMS) was implemented in July 2009 and, as expected, has improved efficiencies in work practice in the Office. CMS was developed as a database for the management of complaints and appeals lodged with the Commissioner. A user guide, describing specific CMS functionalities and links to complaint handling procedures and performance indicators is available to staff.

The database is used in a number of ways to facilitate the work of the Office. Staff are able to record complaints and appeals as they are received at intake, to manage each case through all elements of the investigation process and to search and retrieve information. The database also assists staff by reminding them when an action is due, or overdue, and allows senior managers to monitor workloads and trends in the numbers and nature of appeals and complaints over time.

The database produces a number of management reports which detail statistics on a weekly, quarterly, annual and ad hoc basis.

2.2.8 Activities and Achievements

Accountability to the Parliament and the wider public is not one dimensional and the Office continues to operate a comprehensive quality assurance system as part of ongoing improvement and accountability processes. The system includes: financial management processes, data analysis and reporting, post case conferencing, key performance indicators, satisfaction surveys and focus groups.

In addition to a comprehensive orientation program the Office provides internal training and development for staff which includes presentations on clinical, administrative, legal and investigative matters. In addition to a comprehensive guide for users of the CMS, a range of fact sheets and procedures manuals are also available for use of both administrative and investigative staff.

In addition to managing the Commissioner's statutory functions, the Office received a significant number of contacts from people who required advice or assistance to manage lifestyle and other issues. In many cases the Office does not have any formal powers to consider the concerns raised by these callers as they fall outside the Commissioner's jurisdiction. Nonetheless, where possible, staff re-direct callers to the appropriate service or give them information that may enable them to find a solution themselves.

During the reporting period the Commissioner attended and was an invited speaker at ten conferences. The Commissioner attended a number of regular meetings and also met with a range of individuals and industry groups including:

- Ageing Consultative Committee
- Portfolio Executive Officers
- Health Service Complaints Commissioners
- Commonwealth Ombudsman
- ECCV Multicultural Aged Care Services
- Australian Association of Gerontology
- Professor Merrilyn Walton (Review of the Complaints Investigation Scheme)
- Monash University: Healthy Ageing Research Unit
- Health Services Commissioner, Victoria
- Chairman, Productivity Commission
- National Seniors Australia
- MECWA annual general meeting.

The Office has instituted a staff development program which covers a range of educational topics on a fortnightly basis. Staff also have access to an array of educational and industry journals and the instructive series produced by the Aged Care Channel.

CHAPTER 3. RELATIONSHIPS

In 2007 the Australian Government introduced legislation to establish the role and functions of the Aged Care Commissioner. The Act is the primary law under which the Commissioner exists and operates. The Principles further outline the Commissioner's role and functions. The Commissioner was appointed by, and is responsible to, the Minister. The appointment of the inaugural Aged Care Commissioner concluded on 30 April 2010. From 1 May 2010 Adjunct Professor John G Kelly AM was appointed as acting Aged Care Commissioner, until such time as a recruitment process is completed.

As an independent statutory office holder it is important that the Commissioner maintains sound working relationships with a range of stakeholders.

The Office has established protocols with the:

- Commonwealth Ombudsman
- Aged Care Standards and Accreditation Agency Ltd
- Department of Health and Ageing.

All protocols are currently being updated in order to reflect legislative amendments and changes in practice.

There are many challenges in establishing inter-agency relationships. Different organisations need to work together in different ways depending on what they are trying to achieve and for whom. Yet it is important for organisations that are responsive to and underpinned by the same political paradigm to come together to discuss issues of mutual interest and concern.

The success of inter-agency protocols is largely dependent on sound relationships across organisational boundaries, open and honest communication and a healthy climate of commitment and cooperation between the participating organisations.

A good working relationship is one which allows for open and frank discussions about individual issues and any systemic concerns that have been identified. The Office believes that a free flow of information helps to build up a picture of the issues and risks that face each organisation. Solutions are able to be achieved in a more informed way and the resolution of complaints is accelerated.

Historically these services have evolved with their own ethos, service orientation and policy and program approaches. This Office believes that regular contact at senior level is mutually beneficial. The intent is to overcome entrenched power concentrations, to promote the resolution of complex issues and to improve outcomes for people receiving aged care services.

In part, the Commissioner's role is to independently and impartially examine, on appeal, the administrative decisions made by the Scheme which can impact on the business operations of approved providers and the lives of various individuals. The Commissioner is also required to examine, analyse and assess the processes of the Scheme and/or the conduct of the Agency and its staff, following receipt of a complaint.

Organisations and individuals named in reports produced are given an opportunity to provide comment or correction to a transcript of interview, where one has occurred, and also to provide a response to a draft report, which is then taken into account in the preparing the finalised report.

Often the reports include one or more recommendations directed at achieving change and improving public administration by ensuring the organisation's administrative processes are robust and effective and therefore less open to maladministration.

The Commissioner has no power to compel these organisations to implement or comply with any recommendation made in the final report. Moreover, unlike an Ombudsman, the Commissioner does not generally receive a response to recommendations prior to the finalisation of a report. As there is no capacity to include responses to recommendations made in a final report, responses to relevant recommendations are included in the annual report as in most cases a period of time has passed for meaningful progress to have been made (see Chapter 4, page 30).

3.1 Office of Aged Care Quality and Compliance

The Commissioner has an important role in examining decisions and processes of the Scheme and aims to acquit that role in a transparent, open and practical way that engages all parties equally. The intended results are multi faceted and aspire to improve processes within the Scheme and systems in the aged care industry in order to secure a better quality of life for frail, vulnerable, elderly care recipients

The Office of Aged Care Quality and Compliance (OACQC) in Canberra is responsible for the overall management of the Scheme. Scheme staff are located within each state/territory office and are therefore responsible to state managers on a day-to-day basis.

Quarterly statistics are exchanged during the financial year as per established protocols. Based on the number of in scope cases, the Commissioner received applications to examine 1.68 per cent of all in scope cases finalised and received complaints about the Scheme's processes in relation to 0.30 per cent of complaints finalised nationally. However, these data include cases finalised at intake. The majority of appeals and complaints received by the Commissioner relate to cases finalised after investigation. Based on these data the Commissioner received an application to examine a decision in relation to 2.43 per cent of cases finalised post intake and received a complaint in 0.44 per cent of cases finalised post intake.

For the most part, liaison with the Department is through OACQC, in particular the Director and staff of Complaints Review and Finance Section. A positive and effective relationship has developed, assisting the Office in dealing with matters in a timely and responsive manner.

The Commissioner and the Director of this Office meet with OACQC senior staff on a regular basis. These meetings present an opportunity for discussion in relation to changing contexts and requirements and the resolution of potential problems or where a problem has emerged. These meetings have engendered a shared understanding and a positive and collegiate relationship.

3.1.1 The Complaints Investigation Scheme

The Scheme is a free service that accepts oral and written information and complaints regarding Commonwealth–subsidised aged care services. The Scheme is available to anyone who wishes to provide information (by way of a complaint or otherwise) in relation to a matter involving an approved provider's responsibilities under the Act or the Principles.

The Scheme has the power to investigate concerns raised. The investigation process has a number of steps or decision points; however, in practice many of the steps may be undertaken concurrently or in very quick succession.

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

The Scheme is able to take action if an investigation determines that the approved provider has not met its responsibilities under the Act and Principles. In the event that a breach is identified the Scheme may decide to issue an NRA or it may determine that the breach has been remedied.

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

Following receipt of the Commissioner's recommendation the Department has 21 days to reconsider a decision that has been appealed to the Commissioner. The legislation requires the Scheme to advise the parties of the Scheme's decision on reconsideration at the end of this timeframe. The legislation also requires the Secretary to advise the Commissioner of the final decision made on reconsideration; however, no timeframe is stipulated in the legislation.

There are occasions when issues related to the matter under review arise which should be brought to the attention of the Scheme and warrant a best practice comment. These issues generally relate to administrative procedures or the conduct of the investigation itself. These matters are included in the final report to the Department under a section titled 'Related Issues'. The recommendations made in the related issues report are intended to inform management, improve processes and assist learning. A formal follow-up procedure is in place in order to assess effectiveness of these best practice comments (see Chapter 4, page 27).

In 2009 the Minister for Ageing requested an independent review be conducted to identify areas of improvement to ensure the Scheme achieves best practice aged care complaints management

arrangements. The aim of the review was to gain insight into the public and aged care industry's experiences with the Scheme since its introduction, with a view to determining whether the Scheme had met the needs and expectations of all interested parties. The review considered nine terms of reference.

The review found that the Scheme needed to be strengthened and that

Consumers and providers want better opportunities to state their case and provide supporting evidence, clearer feedback and clearer advice on the outcomes of investigations and a broader scope of options for resolving complaints.

The Government has announced additional resources will be provided to the Scheme in 2010-2011 to reduce case loads, to improve the timeliness and thoroughness of investigations and to provide access to mediation and conciliation services.

3.2 The Aged Care Standards and Accreditation Agency

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

The core functions of the Agency are to:

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

Approved providers wishing to appeal accreditation decisions made by the Agency must apply to the Administrative Appeals Tribunal. However, the Commissioner is authorised to examine a complaint about the conduct of the Agency and/or the conduct of a person making a support contact.

3.3 The Commonwealth Ombudsman

The doctrine of independence does not mean that this Office is not accountable for its actions.

The Commonwealth Ombudsman has wide reaching and significant powers and functions which are set out in the Ombudsman Act 1976 (Cth) (the Ombudsman Act). Section 4(2) and section 5 of that Act refer to the investigation, following a complaint or on the Ombudsman's own motion, of actions taken by Commonwealth agencies that relate to a matter of administration, including actions taken by persons classed as Commonwealth approved providers. The Ombudsman also has functions related to the Ombudsman's other capacities and under other legislation.

The Ombudsman has powers under the Ombudsman Act, including powers:

- to make preliminary inquiries
- to request or receive information from any person
- to require persons to provide information or documents or to require persons to attend and answer questions
- to provide an agency head or Minister with evidence of misconduct
- to cease an investigation for reasons specified in section 6 of the Ombudsman Act
- to make comments and suggestions to any person following an investigation
- to make a report and recommendations to an agency, to inform the Prime Minister of such a report and to report to the Parliament
- to make a statement or disclose information in the public interest.

This Office has developed an open, transparent and cooperative relationship with the Ombudsman.

The two cases that remained open with the Ombudsman at the end of the 2008-2009 financial year were finalised by the Ombudsman after investigation, with no adverse findings against this Office. During the 2009-2010 financial year the Ombudsman advised of eight complaints they had received from persons who considered they had dealt with this Office. Of those matters one person was found not to have had dealings with this Office and another had lodged a complaint with both this Office and the Ombudsman. In this case it was agreed that the Commissioner would investigate the complaint issues and provide a copy of the report to the Ombudsman. During the reporting period the Ombudsman investigated complaints from a further six people who had previously dealt with this Office. One complaint was lodged with the Ombudsman at the end of the financial year and remains open. The remaining five cases were closed after investigation, with no adverse findings.

3.4 Consumer and Industry Groups

The Aged Care Commissioner is independent of industry, consumers and government. Notwithstanding this, every day decisions are made that affect clients coming to the Office, each of whom is justly concerned that they be treated with respect and courtesy and will be dealt with in a fair and impartial manner.

The continued public acceptance of the Office and the Commissioner's role is dependent on these matters as well as trust and confidence in an administration that is accountable for its actions and one that understands the current environment and issues and pays due attention to the comments, concerns and satisfaction levels of its stakeholder groups.

While staff in the Office hold considerable expertise and have much to offer, lessons can always be learnt. The landscape in aged care is continually changing and influencing the pressures experienced by both consumers and service providers. The Office genuinely believes that input from consumer and industry groups is important if the Office is to remain up to date and relevant and retain its hard fought for recognition and respect.

Consumer and industry groups are committed to addressing challenges facing their particular constituency and often play a central role in the two-way flow of information to and from their specific communities of interest, raising concerns, dispelling myths, managing expectations and exerting influence where and when appropriate. Consumer advocacy services have been a particularly useful source of information for this Office in understanding the key issues raised by care recipients and their relatives.

Such groups are also able to provide the Commissioner with an understanding of both industry and community perspectives and share up to date information on those issues affecting these parties; thereby adding considerable value to the overall examination of appeals and complaints and ensuring that the decisions made are more robust and informed.

It is important to note that each year the aged care industry provides care to in excess of one million care recipients across Australia through both residential and community based programs. Contrary to perceptions in the media and wider community the majority of services are of a high standard, delivered by committed staff and, in the majority of cases, without incident or complaint.

In any familial care relationship there is a past, a history of lives lived to date and memories of good, sometimes better, times. Most older people wish to remain in their own homes, generally supported by family members and for this reason community care continues to be a significant element of the government's aged care framework. However, a percentage of older people require 24 hour care in a residential care environment. For most family members relinquishing care can be a difficult, even painful, experience. However, in truth, many carers do not hand over this role entirely but seek to maintain dignity, comfort and high quality care for their loved one, albeit in different surroundings.

This Office will continue to seek out and be informed by consumer and industry groups representing the aged care sector.

CHAPTER 4. PERFORMANCE AND STATISTICS

4.1 Annual report

Section 95A-12 of the Act states

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

The Commissioner is able to examine, on appeal, relevant decisions made by the Scheme and to receive and examine complaints about the Secretary's processes for handling matters under the Principles. The Commissioner is also able to examine complaints about the conduct of the accreditation body or the conduct of a person carrying out an audit or making a support contact. The Commissioner is restricted to examining matters that occurred on or after 1 May 2007. The statistics reported here, therefore, relate to the period between 1 July and 20 June 2010.

4.2 Examinable Decisions

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

During the reporting period the Commissioner received a total of 136 applications to examine a decision made by the Scheme (appeals). Of these 74 per cent were lodged by care recipients or their representatives and 26 per cent by approved providers. The Commissioner was unable to deal with 29 appeals. This number includes one matter which was conciliated, one appeal which was lodged by a Type B informant, six cases that were withdrawn and 21 cases (15 per cent) which were received outside the 14 day legislative timeframe. This is a four per cent increase in the number of appeals received outside the legislative period over the last reporting period. All but one of these applications were lodged by informants.

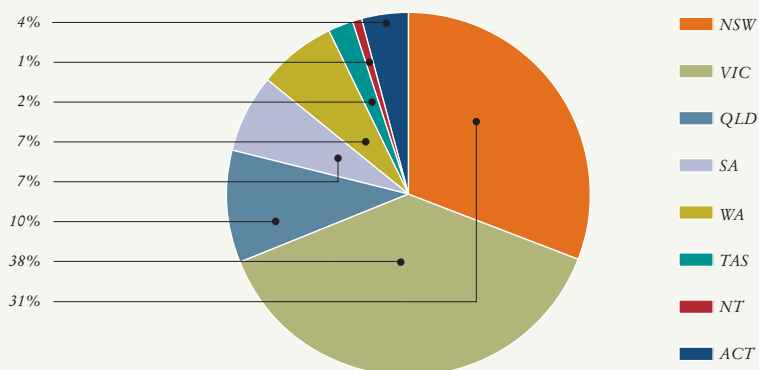
As noted in previous reports, appellants are able to lodge their application verbally or in writing. Of the total appeals received thirty-four percent (46) were lodged orally and 66 per cent were in writing. Interestingly, of the appeals received outside the 14 day timeframe, 29 per cent (six) were lodged as verbal appeals.

The reason for the 'late' lodgement of appeals is unclear. It could be that personal or business issues prevent people from lodging applications within the legislative timeframe; or that people are unaware the legislation does not allow for discretion in this matter.

Figure 2 shows that 38 per cent of the total number of appeals originated in Victoria, 31 per cent from New South Wales, 10 per cent from Queensland and seven per cent from South Australia and Western Australia respectively. Four per cent of appeals originated from complaints lodged in the Australian Capital Territory, two per cent in Tasmania and one per cent of appeals were lodged about decisions made in the Northern Territory.

Total appeals

Figure 2: Total number of appeals received



Appeals from Informants

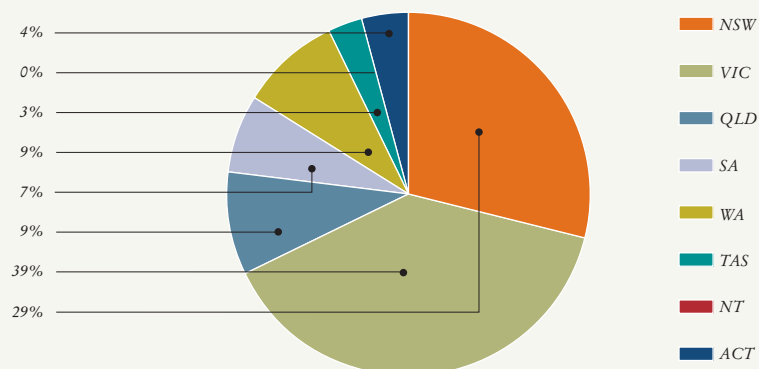
The legislation allows care recipients and/or their representatives (Type A informants) to appeal relevant decisions.

Care recipients or their representatives are able to appeal decisions:

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

Appeals: Informants

Figure 3: Total number of appeals from informants



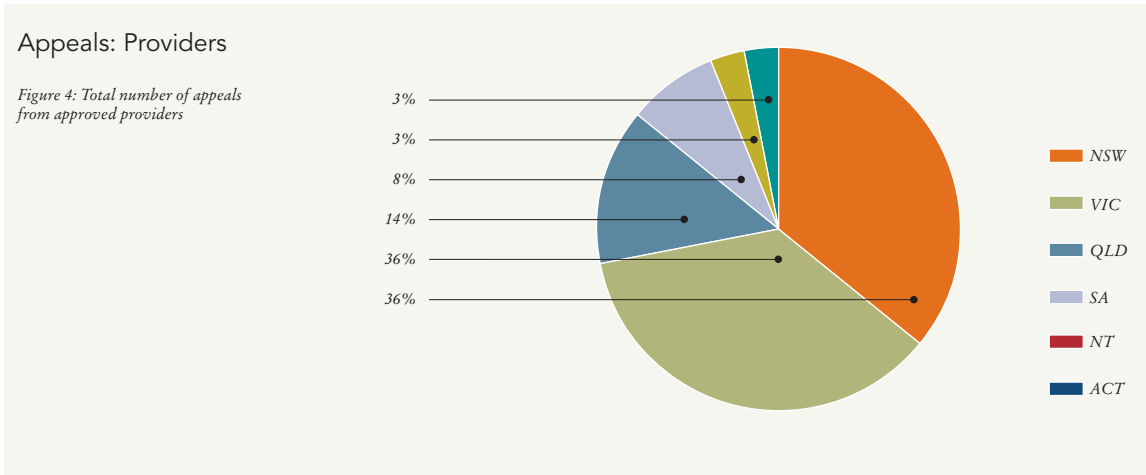
Thirty-nine per cent of appeals lodged by informants were in relation to decisions made in Victoria. Twenty-nine per cent of appeals came from New South Wales and nine per cent originated in Queensland and Western Australia respectively. Informants from South Australia lodged seven per cent of applications; four per cent came from the Australian Capital Territory and three per cent from Tasmania. No appeals were received relating to decisions made in the Northern Territory.

The majority of informants (89 per cent) appealed the Scheme’s decision not to find the approved provider in breach of its responsibilities. Three per cent of applications from informants appealed the Scheme’s decision not to issue an NRA, not to investigate, or to end an investigation respectively. Two per cent of applications related to the terms and conditions of the NRA issued.

Appeals from Approved Providers

Approved providers are able to appeal decisions:

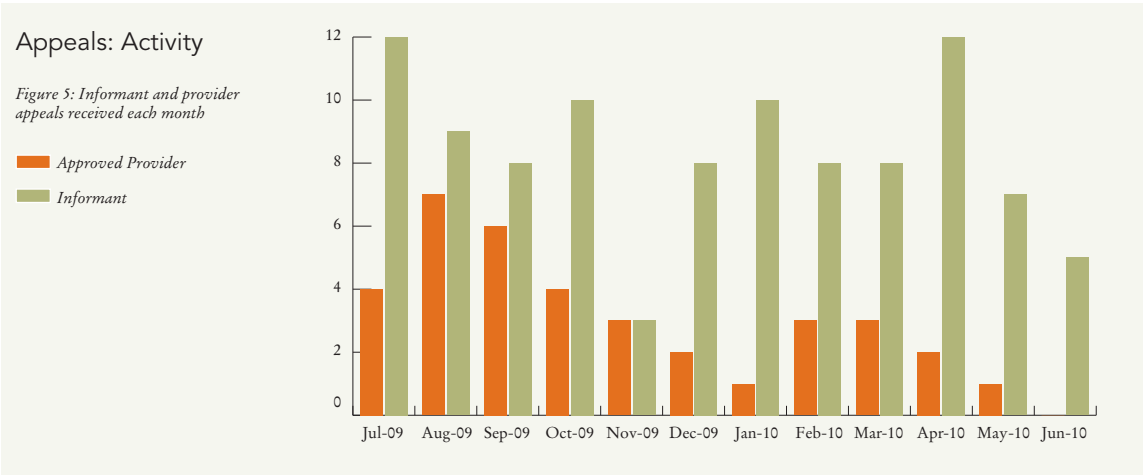
- that the approved provider is in breach of its responsibilities
- to issue an NRA
- setting, adding or varying the terms and conditions of an NRA.



Thirty-six per cent of applications received from approved providers related to decisions made in Victoria and New South Wales respectively. Fourteen per cent of appeals from approved providers originated in Queensland, eight per cent came from South Australia and three per cent from the Northern Territory and the Australian Capital Territory respectively. No appeals were received from approved providers in either Western Australia or Tasmania.

The majority of approved providers (83 per cent) appealed the Scheme’s decision to find the approved provider in breach of its responsibilities. Eight per cent of providers appealed the decision to find the approved provider in breach and to issue an NRA. Six per cent of providers appealed the Scheme’s decision to issue an NRA and three per cent appealed the terms and conditions of the NRA.

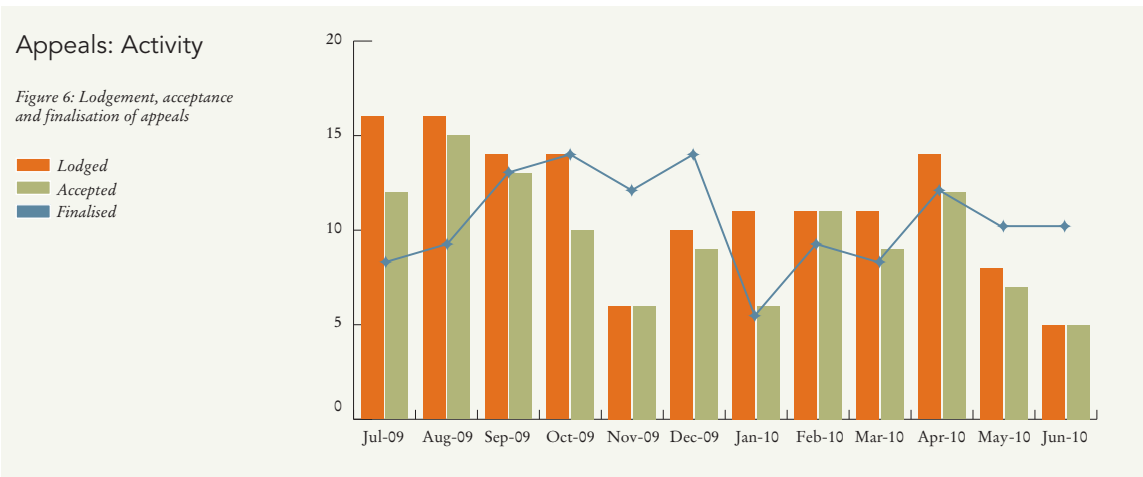
The following graph shows the split between informant and provider appeals and the rate at which appeals were lodged on a monthly basis.



4.2.1 Finalisation of Appeals

Figure 6 shows the level of activity in relation to the management of appeals. The graph shows the number of appeals lodged, accepted and finalised each month. At the end of the current reporting period the examination of 13 appeals was underway and these cases are due to be finalised in July and August 2010.

The graph excludes actions involved in those appeals where the Commissioner was not able to progress the application; it should be noted that there is a degree of activity required in the assessment of the application, subsequent correspondence and reporting of these matters.



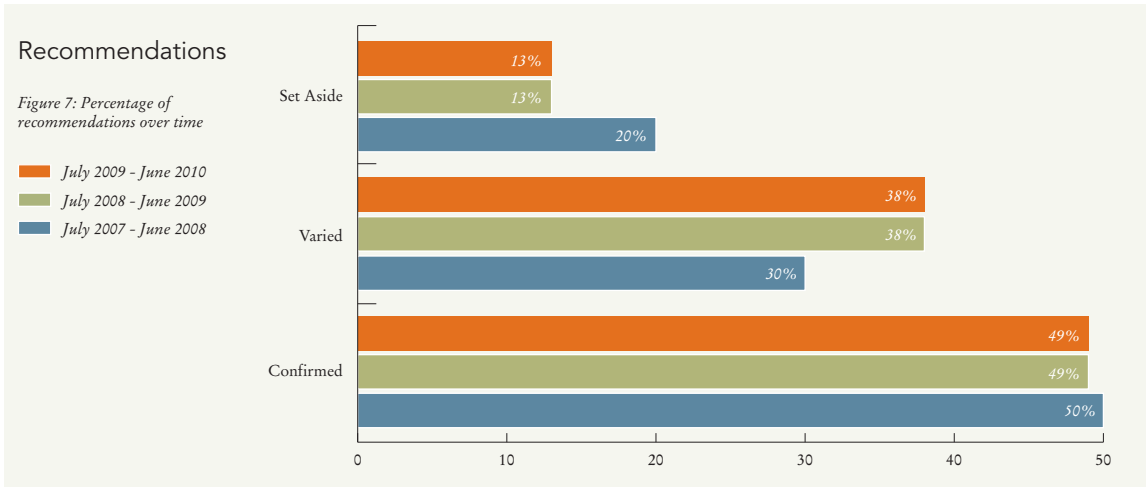
A total of 143 appeals were finalised during the reporting period (including the 29 matters the Commissioner did not accept). The average number of days to finalise these matters was 50 days. Taken separately, the average number of days to finalise 103 applications received from informants was 48 days and the average number of days to finalise 40 applications from approved providers was 55.27 days. A total of 114 cases were finalised after investigation. The average number of days to finalise these cases was 58 days.

4.2.2 Commissioner’s Recommendations: Appeals

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

Of the 114 appeals finalised during the reporting period the Commissioner recommended that the Scheme’s decision be confirmed in 49 per cent of cases (56). In 38 per cent of cases (43) the Commissioner recommended that the original decision be varied and in 13 per cent of cases (15) the Commissioner recommended that the original decision be set aside.

The following graph shows that the percentages for the current reporting period are the same as those reported for the 2008-2009 financial year.



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



4.2.3 Reconsiderations

During the reporting period the Commissioner provided 114 reports with recommendations to the Secretary. The Secretary is required to advise the parties of the reconsideration decision within 21 days after receiving the Commissioner's recommendations. The legislation also requires the Secretary to advise the Commissioner of all decisions made on reconsideration.

During the reporting period the Scheme advised the Commissioner of the reconsideration decision in relation to all of these cases (114). Of the total 114 reconsideration decisions advised, the Scheme disagreed with the Commissioner's recommendation on one occasion (0.87 per cent) and partially disagreed with the Commissioner's recommendation in a further four instances. Added together this means that the Scheme did not accept the Commissioner's recommendations in four per cent of the 114 cases reconsidered. The average number of days for the Commissioner to receive notification of reconsideration decisions was 27 days.

4.2.4 Related Issues

During the examination of an appeal, process or best practice issues that are not directly part of the appeal process are sometimes identified as matters that should be brought to the attention of the Department.

In these circumstances the Commissioner will address those matters arising out of the investigation that require comment or, from a practice point of view, require correction as related issues and will often suggest remedial actions.

The nature of the related issue and any recommendations made are advised in finalisation letters addressed to the First Assistant Secretary, OACQC, and the relevant state/territory manager, and are included in the body of the finalised report. Responses to related issues are sent to the Commissioner on a quarterly basis.

Throughout the reporting period the Commissioner raised related issues in 25 cases, that is, in 22 percent of appeals finalised. No related issues were raised during the final quarter of the financial year. These best practice issues are often repeated within and between jurisdictions. Not all related issues carried a recommendation; however, the best practice comments were predominantly associated with administrative practices and included comments on:

- statements of reasons
- the investigation process
- communication
- record keeping
- natural justice, including bias
- notice of required action
- site visits
- confidentiality
- delegation
- provision of documents.

The Commissioner received written responses to all related issues and recommendations raised. The responses did not address individual cases but grouped common themes together. In summary, the Department noted and agreed with the majority of recommendations made. The Departmental responses referred to the strengthening of the investigation process based on the training of Scheme staff and improvements to the procedures manual and correspondence templates.

4.3 Complaints

The management of complaints is a significant component of the work and a major challenge for the Office. Examinations conducted by the Office are not designed as a test in legitimisation but are intended to fulfil the functions set out by the Parliament, address natural justice and accountability issues and meet the expectations of the wider community.

During the reporting period the Commissioner received a total of 31 complaints; of these 81 per cent (25) related to the Secretary's processes for handling matters under the Investigation Principles and 19 per cent (6) related to the conduct of the accreditation body relating to its responsibilities under the Accreditation Grant Principles and persons conducting audits or support contacts under those Principles.

The Commissioner is also able to make recommendations to the Secretary or accreditation body following an examination of a complaint against these organisations. Recommendations vary but generally suggest appropriate corrective action in an area of practice. Often, more than one action is recommended.

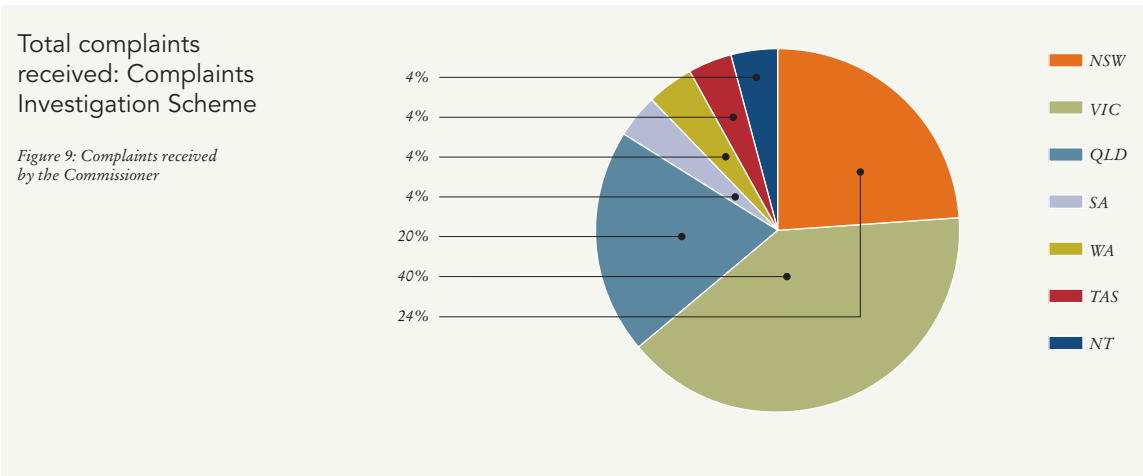
Timeliness in complaint investigation is crucial and is an important determinant of satisfaction in complaint handling. Timeliness remained a concern for the Office and during the reporting period; the Commissioner regrettably advised the Minister and the Department that it was necessary to put the investigation of complaints on hold due to a lack of resources. Complainants were also advised of the delay in finalising these cases. This situation was addressed in January 2010 with the recruitment of two additional staff.

There is currently no requirement under the legislation for either the Department or the Agency to action recommendations made, or indeed to formally respond to the Commissioner's recommendations. However, the Commissioner has an expectation that a response be provided, not only because quality improvement and good practice would seem to dictate this, but also because the Commissioner should be able to report to the Minister, the Parliament and the wider community the value or otherwise of the role and the recommendations made. The Department and Agency concur with this view and work with this Office to ensure we are able to meet these expectations.

4.3.1 Office of Aged Care Quality and Compliance

During the reporting period 25 complaints were lodged in relation to the Secretary's processes for handing complaints under the Principles. A total of 23 complainants also lodged appeals. Thirteen complaints (52 per cent) were lodged concurrently with an appeal against the Scheme's decision.

In a situation where an appeal and complaint are lodged at the same time, the Office has adopted a guiding principle whereby the complaint will be accepted and managed after the appeal has been finalised.



A total of 16 complaints relating to the Scheme were finalised during the financial year. The Office was unable to deal with one complaint and five complaints were withdrawn prior to finalisation. The average number of days taken to finalise all matters was 205 days.

Ten cases were finalised following an investigation. The average number of days taken to finalise these cases was 264 days.

The Commissioner made a range of recommendations in relation to the finalised investigations; these predominately related to administrative processes and included matters such as:

- fair and rigorous investigation practices
- standard of proof
- open and transparent decision making and the responsibility of delegates
- accuracy in report writing
- obtaining relevant documents
- obtaining clinical expertise and advice
- natural justice and procedural fairness
- staff training
- statement of reasons.

Following an examination of a complaint all finalised reports are considered by the Department's Executive prior to responding to the Commissioner. During the reporting period the Commissioner received responses in relation to the ten cases finalised during 2009-10 and six cases finalised during the latter half of the 2008-09 financial year.

In responding, the Department addressed all recommendations individually and noted that in two cases finalised between March and September the complaints were not substantiated and no recommendations were made. Among other things, the Commissioner was advised that a comprehensive training package is being developed, the issues have been addressed in the Scheme's regular bulletins and that the procedure manual is being updated.

4.3.2 The Aged Care Standards and Accreditation Agency

During the reporting period the Commissioner received two complaints related to the Agency; one originated in South Australia and one in Victoria. One of these complaints was withdrawn and the other was not accepted by the Commissioner as it did not relate to the Commissioner's functions.

Four complaints were finalised during the reporting period. All four finalised complaints were received in the previous reporting period and all originated in Queensland. One approved provider had complained about the conduct of the accreditation body and the conduct of persons carrying out a support contact (three complaints). These matters were investigated and reported separately. The complaints were not substantiated.

In the remaining case finalised an approved provider had raised seven issues when complaining about the conduct of a person carrying out a support contact. The Commissioner found five issues were unsubstantiated. Two issues pertaining to the conduct of an assessor were referred to the Chief Executive Officer for his attention.

The average number of days to finalise all cases was 308 days. The average number of days to finalise those cases investigated was 445 days.

4.4 Internal Complaints

Complaints can, and should, help organisations to identify areas of service that need improvement or show where expectations of service levels exceed what can reasonably be delivered. To facilitate this, the Office maintains an internal complaints policy which provides a framework for responding to complaints and for using consumer feedback to improve services. The objective in investigating internal complaints is to firstly address the complainant's dissatisfaction and secondly to take remedial action if necessary and consider how to prevent similar issues arising in the future.

During the reporting period no complaints about staff or Office processes were received by the Commissioner.

4.5 Own Motion Investigations

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

4.6 Requests from the Minister

During the reporting period the Commissioner did not receive any requests from the Minister.

CHAPTER 5. QUALITY ASSURANCE

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

5.1 Performance Indicators

The indicators instituted by the Office are numerical measures, expressed as a percentage, and are designed to describe important and useful information about the performance of the Office. The data, collated and analysed, are intended to demonstrate whether the Office is achieving its overall objectives and meeting set targets.

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

Indicator 2 measures the time between receipt of the appeal or complaint and the time taken to inform the appellant or complainant that the Commissioner is unable to accept their appeal or complaint. This contact should be made within 14 days following the receipt of an appeal or complaint. This period is intended to allow the Office to receive relevant documents from either the Scheme or the Agency and to confirm jurisdictional issues. The expected target is set at 90 per cent. The Commissioner was unable to deal with 22 appeals (excluding six cases withdrawn and one conciliated) and one complaint. One hundred per cent of these contacts were sent correspondence advising the Commissioner was unable to deal with their matter within the stipulated timeframe.

Indicator 3 relates to the development of an investigation matrix. The matrix is to identify the issues, potential breach(s), where evidence might be found, the avenues of inquiry and timelines for follow-up as appropriate. The matrix is to be developed within 14 days of the acceptance of the appeal or complaint and the expected target is 90 per cent. During the reporting period the target was met in 54 per cent of accepted cases.

Indicator 4 measures the time between the acceptance of a complaint and finalisation of that complaint. Complaints should be resolved and finalised in accordance with the assessed complexity measure (straightforward or complex), that is, between 30 and 141 days. The target set is 70 per cent. The target was met in 21 per cent of cases.

Indicator 5: Part A measures the time between the receipt of an appeal and a documented finalisation date and provision of a recommendation to the Secretary recorded within 60 days. This indicator is based on a legislative requirement to provide the Secretary with a recommendation. The target set is 100 per cent. The target was met in 77 per cent of cases; including those cases where the recommendation was due to be provided on a weekend and the report was sent on Monday.

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

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

Indicator 7 measures the number of investigation reports provided to (a) OACQC and (b) the Agency within four days from the date the Commissioner's investigation of a complaint is finalised. The target set is 100 per cent. Ten cases were finalised following an examination of the Secretary's processes for handling a complaint. Four complaints relating to the accreditation body or assessors were finalised during the reporting period. The target was met in 100 per cent.

Indicator 8 measures the number of post case conferences conducted after a complaint or appeal has been finalised. The intention is to critically review the management of a case once finalised and to identify any areas for improvement. The target set is 35 per cent. The indicator was met in 41 per cent of finalised cases.

Indicator 9: Part A measures the number of satisfactions surveys sent to complainants after the finalisation of a complaint with a target of 95 per cent. During the reporting period 22 complaints were finalised. Satisfactions forms were sent to all complainants therefore this indicator was met in 100 per cent of finalised cases.

Part B of the indicator also measures the number of satisfaction surveys returned from complainants who indicate they rate the overall handling of their complaint as either very good or good. The target set for this indicator is 80 per cent. One completed survey was returned in relation to finalised complaints. The respondent reported an overall satisfaction rating of very good, therefore the target was met in 100 per cent of completed surveys.

Indicator 10: Part A measures the number of satisfaction surveys sent to the parties after the finalisation of the appeal process with a target of 95 per cent. During the reporting period 114 appeals were finalised and 228 satisfaction surveys were sent. This indicator was met in 100 per cent of cases.

Part B of the indicator also measures the number of satisfaction surveys returned from people after the finalisation of an appeal process who indicate they rate the overall handling of the appeal as either very good or good. The target set for this indicator is 80 per cent. Twenty-nine completed surveys were returned. The data show that 22 respondents (74 per cent) rated this as very good and one respondent (three per cent) said it was good. This means that 77 per cent of respondents (23) reported that the overall management of the appeal was either good or very good. The target was not met.

5.2 Satisfaction Surveys

Satisfaction surveys are sent to parties as appeals and complaints are finalised. A satisfaction survey is sent to the complainant when a complaint is finalised and surveys are sent to the parties when appeals are finalised. A pre-paid envelope is provided to facilitate responses. The satisfaction surveys comprise nine questions and provide capacity for written responses in relation to three questions. The survey sent to informants includes demographic data and the survey sent to approved providers includes questions related to the service they operate.

During the reporting period a total of 30 completed survey forms were returned. In all but one instance the survey forms (29) related to finalised appeals and one related to a finalised complaint. Fifteen responses (50 per cent) were received from approved providers and 15 (50 per cent) from informants. Assuming 250 satisfaction surveys were sent the overall response rate was 12 per cent.

Question one asks respondents to rate our professionalism and service. Seventy-seven per cent of respondents (23) rated this as very good; seven per cent (two) said this was good and three per cent (one) said it was satisfactory. Ten per cent of respondents (three) found our professionalism and service very poor and one respondent did not answer the question. The overall average rating score for question one is 4.4 – very good. Taken separately the average score received from approved providers for this question is 4.6 and from informants is 4.2.

Question two asks respondents to rate the way we communicated in writing. Seventy-four per cent of respondents rated this as very good; ten per cent said this was good and three per cent said it was satisfactory. Ten per cent of respondents said our written communication was very poor and one respondent did not answer the question. The overall average rating score for question two is 4.4. Taken separately the average score received from approved providers for this question is 4.5 and from informants is 4.2.

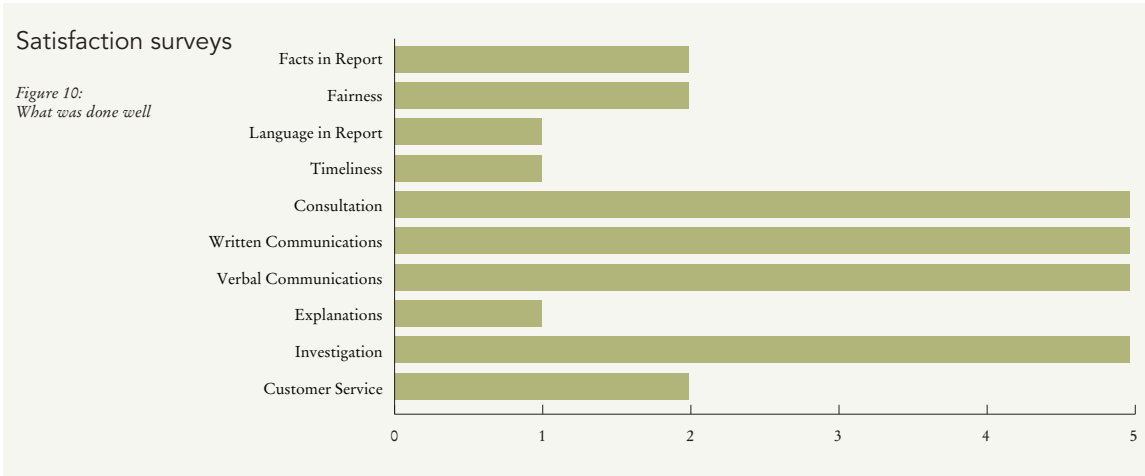
The third question asks respondents to rate our ability to provide clear reasons for our recommendations. Sixty-eight per cent of respondents reported this was very good; 13 per cent said it was good and three per cent said it was satisfactory. Ten per cent of respondent said our ability to provide clear reasons for recommendations was very poor and one person did not answer the question. The overall average rating score for question three is 4.2. Taken separately the average score received from approved providers for this question is 4.5 and from informants is 4.0.

Respondents are asked to rate the overall fairness and impartiality displayed by the Office in question four. Sixty-eight per cent of respondents reported this was very good and 13 per cent said it was good. Three per cent of respondents said our overall fairness and impartiality is poor and 13 per cent said it was very poor. The overall average rating score for question four is 4.1. Taken separately the average score received from approved providers for this question is 4.5 and from informants is 3.6.

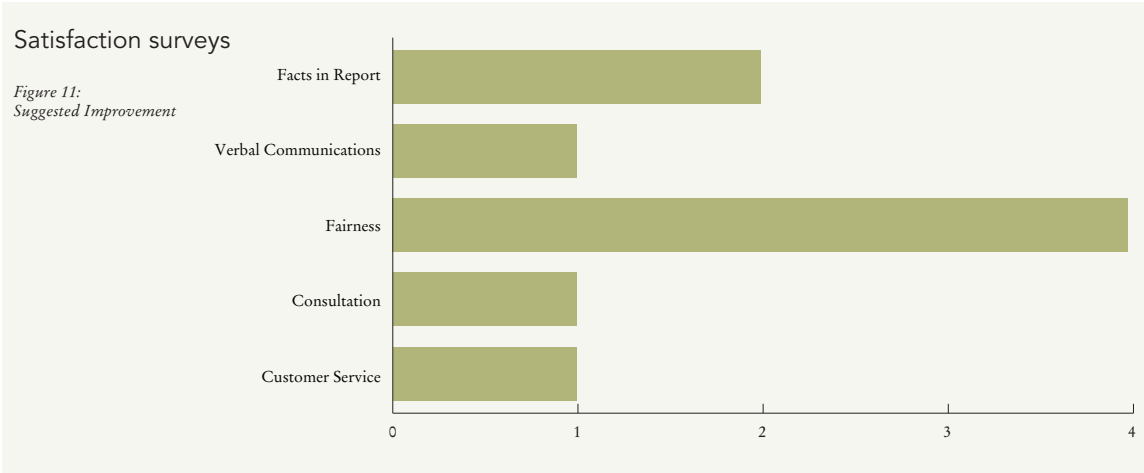
Question five asks respondents to rate the consideration, courtesy and respect afforded to them. Seventy-seven per cent of respondents rated this as very good; three per cent said it was good and seven per cent of respondents found this to be satisfactory. Ten per cent of respondents found our courtesy and respect to be very poor and one person did not respond to the question. The overall average rating score for question five is 4.4. Taken separately the average score received from approved providers for this question is 4.6 and from informants is 4.0.

General feedback is sought in question six which asks respondents for an overall rating on how their case was handled. Seventy-four per cent of respondents rate this as very good; three per cent found this to be good and a further three per cent said this was satisfactory. Two per cent rated this as poor and three per cent said it was very poor. The overall average rating score for question six is 4.2. Taken separately the average score received from approved providers for this question is 4.5 and from informants is 3.8.

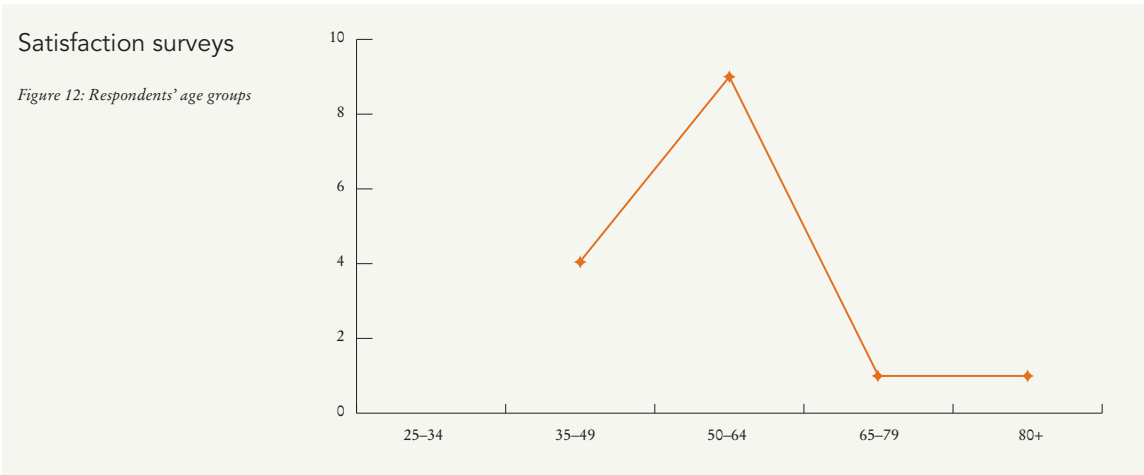
Question seven asks respondents to identify what the Office did particularly well. Fourteen informants and five approved providers responded to this question. Figure 10 depicts the responses received.



Question eight asks what aspect of work the Office could improve. Figure 11 depicts the responses received and also shows areas of overlap or contradiction with information reported in Figure 10.



One respondent indicated a first language other than English and one person identified themselves as an Aboriginal or Torres Strait Islander. All informants identified their age group. Figure 12 below identifies that the majority of informants contacting this Office and completing survey forms said their age group was 50-64 years of age.



Thirteen surveys were returned by respondents living in New South Wales, nine were from Victoria, three were from Queensland and South Australia respectively and one respondent resided in Western Australia. Nine approved providers identified their business as church/charitable and four were privately owned. One approved provider did not identify the nature of their business.

5.3 Post Case Conferences

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

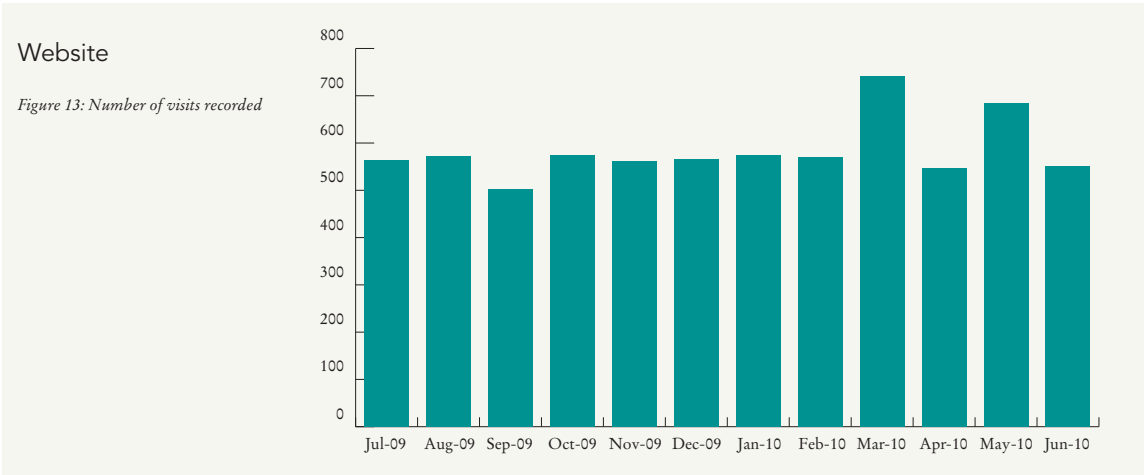
This process assists in ensuring consistency and conformity with office procedures and the legislation. Post case conferencing also assists participants in the recognition of trends and issues; not only those facing office staff, but also those issues confronting approved providers and their staff, as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

Conferences involving the senior management team occur on a weekly basis. A group case conference is conducted on a monthly basis and includes cases presented by the senior investigators.

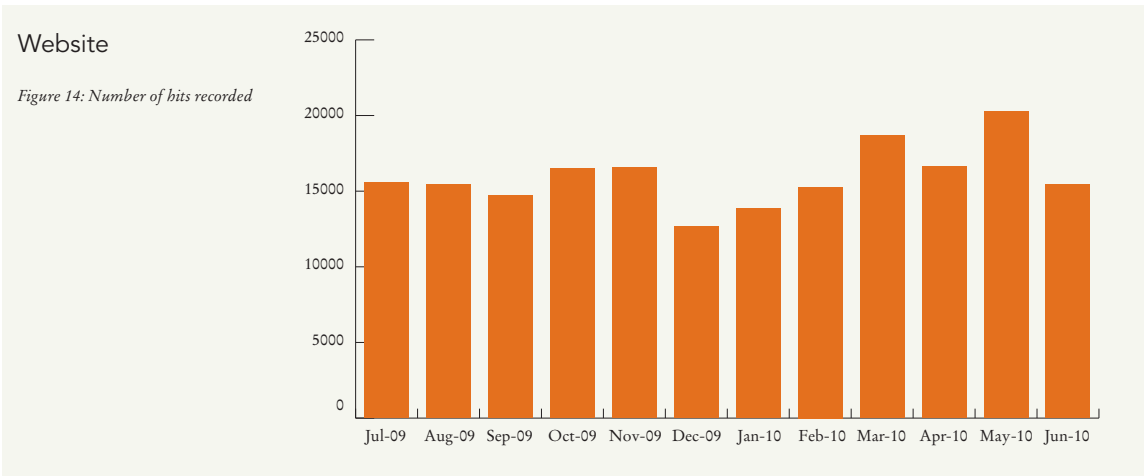
During the financial year a total of 128 cases were finalised after investigation. Of these 53 cases (41 per cent) were methodically reviewed. The learnings from each case were recorded and considered as part of ongoing quality improvement processes.

CHAPTER 6 WEBSITE DATA

The website of the Office of the Aged Care Commissioner became operational in February 2008. Statistics gathered for the reporting period demonstrate that the website received a total of 7007 visits between 1 July 2009 and 30 June 2010. This is the second year the website has been in place and the data reflect an increase in activity when compared with the number of visits recorded in the first year of operation.



Data collected also capture the number of hits on the website. This is a measurement of the amount of information downloaded from the site. The data show a reasonably consistent pattern across the financial year; however, there has been a considerable increase in the number of hits recorded this year when compared to previous reporting periods.

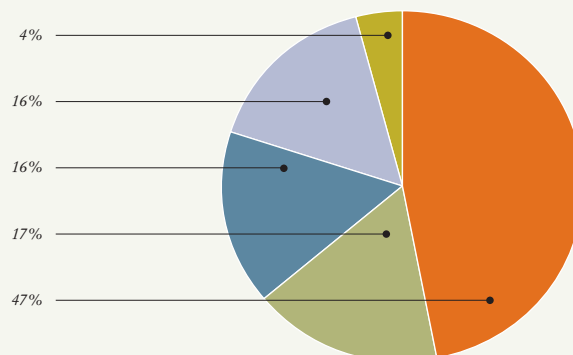


When analysing which countries are actually visiting the website the data also show a similar pattern to that recorded in the last financial year with the majority of visitors to the site originating in Australia.

Website

Figure 15: Percentage of hits by country

- Australia
- Network
- Unresolved/Unknown
- US Commercial
- Other

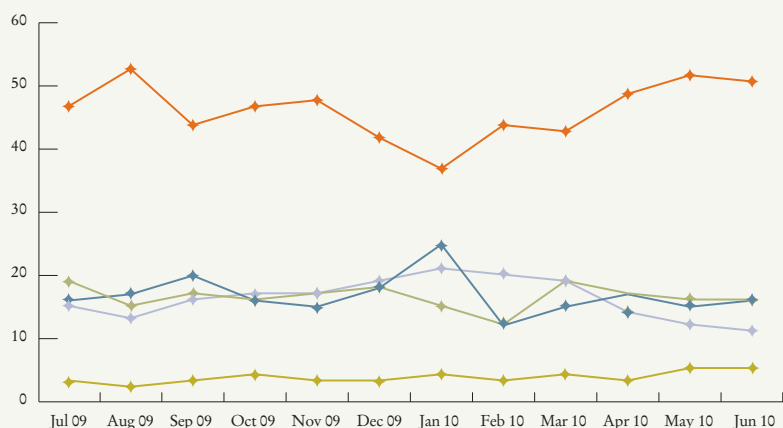


While the data show a continued increase in local activity the statistics demonstrate an overall down turn in action from other countries when compared with previous reporting periods.

Website

Figure 16: Percentage of hits recorded by country each month

- Australia
- Network
- Unresolved/Unknown
- US Commercial
- Other



CHAPTER 7. FREEDOM OF INFORMATION

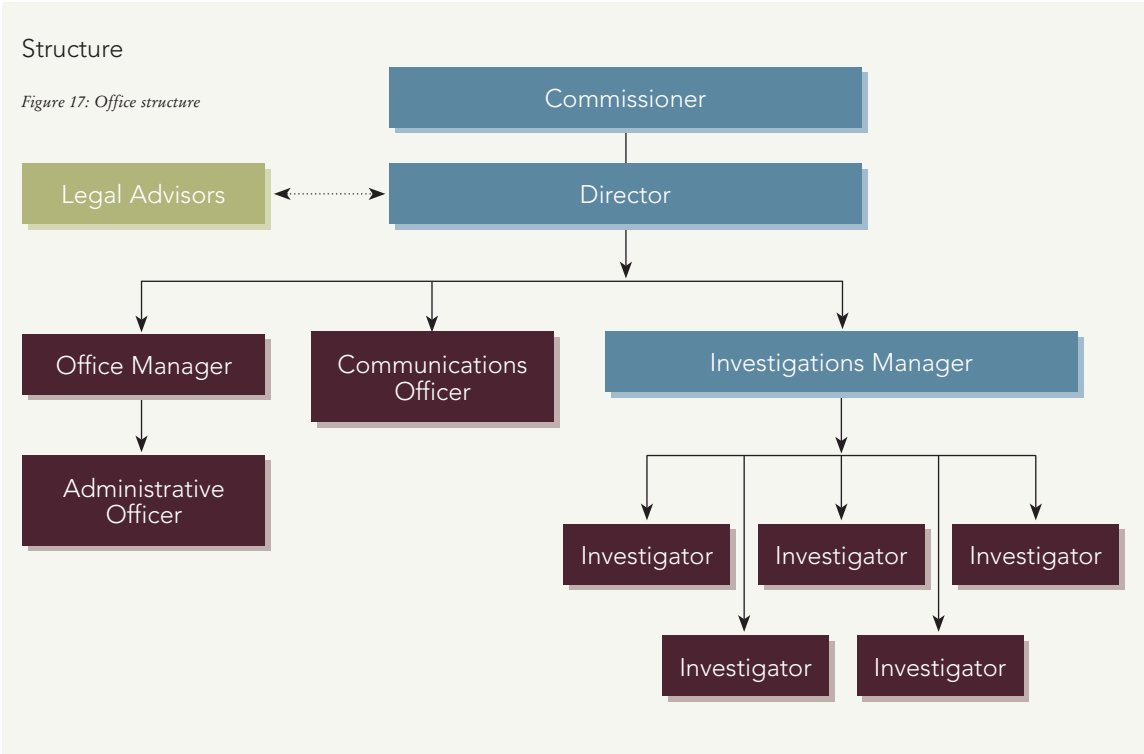
Section 8 of the *Information Act 1982 (Cth)* (FOI Act) requires each Australian government agency to publish information about:

- the organisation, its functions and decision making powers that affect the public
- arrangements for public involvement in the work of the Office
- the types of documents held by the Office
- where and how the public can gain access to these documents.

The major functions and Office organisation are explained in the body of this annual report. This chapter supplements that general information to meet the requirements of section 8 of the FOI Act. It is correct as at 30 June 2010.

7.1 Organisation, Functions and Decision Making Power

The Office of the Aged Care Commissioner was established on 1 May 2007. The Commissioner holds a statutory appointment and is independent of the Department and the Agency. Staff of the Office are employed by the Department and legal advice is provided by out-posted staff from the Australian Government Solicitor.



The functions of the Commissioner are set out in part 6 of the *Aged Care Act 1997* and are further explained in the *Investigation Principles 2007*. Details related to those functions are provided throughout the annual report, particularly in chapters 2 and 4.

The Commissioner does not have determinative decision making powers. Following the examination of an application to examine a decision the Commissioner is required to provide a recommendation to the Secretary of the Department. The Commissioner is also able to make recommendations to the Secretary, or respectively the CEO of the Agency following the examination of a complaint about either organisation.

7.2 Arrangements for Public Involvement

The Office welcomes views and comments from members of the public and bodies outside the Commonwealth. The Office maintains a website www.agedcarecommissioner.net.au which not only provides access to a range of documents and fact sheets but also provides a free-call telephone number [1800 500 294] and email addresses, feedback@agedcarecommissioner.net.au and info@agedcarecommissioner.net.au

Each year the Commissioner meets with a variety of consumer and industry groups and conducts stakeholder focus groups every three years. Draft reports relating to appeals and complaints are provided to relevant parties for comment and at the conclusion of each investigation each party receives a satisfaction survey form and stamped addressed envelope for the return of completed forms.

7.3 Categories of Documents

The Office holds documents on a range of topics, which can be broadly categorised as:

- reference material used by staff, including guidelines, manuals, and operational advice
- documents relating to internal administration and management – financial, personnel records and standard office procedures
- electronic records maintained on case management and satisfaction survey databases
- correspondence, briefing papers and Minutes to the Minister and senior departmental officers
- documents relating to ombudsman inquiries
- submissions to public inquiries
- working papers covering functions and issues handled by the Office
- documents relating to the examination of appeals and complaints
- instruments of delegation and appointments, media releases
- legal advices
- correspondence to members of the public and records of meetings
- protocols and Memoranda of Understanding
- training materials
- annual reports
- mailing lists.

Records are retained for varying periods, depending on their administrative and historical value and are disposed of in accordance with standards and practices approved by the National Archives of Australia.

7.4 Inquiries and Gaining Access

People wishing to make initial inquiries about access to documents held by the Office and/or FOI processes should contact the Communications Officer on the free-call number 1800 500 294. Alternatively people may speak to FOI contact officers, Department of Health and Ageing, Canberra on (02) 6289 1666.

A formal request for access to documents under the FOI Act must be made in writing, accompanied with a \$30 application fee and addressed to:

The FOI Coordinator
Department of Health and Aging
GPO Box 9848
CANBERRA ACT 2601

In certain circumstances the fee is not required or can be remitted. If remittance is sought it is appropriate to provide supporting evidence with the application.

In accordance with the *Electronic Transitions Act 1999*, freedom of information requests may be emailed to **FOI@health.gov.au**. However, as a request must be accompanied by an application fee, in most cases no action will be taken until the application fee is received or a request has been made for the remission of the application fee.

To facilitate a prompt response and to enable officers to meet all obligations under the FOI Act, applicants should provide as much information as possible about the documents they are seeking. A telephone number and/or an email address should also be included in case departmental officers need further clarification. Applicants may be liable to pay further charges at rates prescribed by the *Freedom of Information (Fees and Charges) Regulations*.

Glossary

ABS	Australian Bureau of Statistics
ACAT	Aged Care Assessment Team
Act	<i>Aged Care Act 1997</i>
Agency	Aged Care Standards and Accreditation Agency Ltd
AGS	Australian Government Solicitor
AIHW	Australian Institute of Health and Welfare
CACPs	Community Aged Care Packages
CMS	Case Management System
Commissioner	Aged Care Commissioner
Department	Department of Health and Ageing
EACH	Extended Aged Care at Home
Minister	The Hon. Mark Butler MP,
NRA	Notice of Required Action
OACQC	Office of Aged Care Quality and Compliance
Office	Office of the Aged Care Commissioner
PCC	Post Case Conference
Scheme	Complaints Investigation Scheme
Secretary	Secretary, Department of Health and Ageing
Standards	Accreditation Standards in Schedule 2 to the <i>Quality of Care Principles 1997</i> made under the Act

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Aged Care Commissioner

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