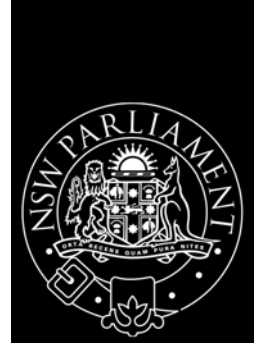


PARLIAMENT OF NEW SOUTH WALES



# Committee on the Office of the Ombudsman and the Police Integrity Commission

## STATUTORY REVIEW OF THE COMMUNITY SERVICES (COMPLAINTS, REVIEWS AND MONITORING) ACT 1993

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## Terms of reference

Section 53 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* states that the review of the Act is to determine if the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The objectives of the Act are found in Section 3:

- (a) to foster, in community services and programs, and in related services and programs, an atmosphere in which complaints and independent monitoring are viewed positively as ways of enhancing the delivery of those services and programs,
- (b) to provide for the resolution of complaints about community services and programs, especially complaints by persons who are eligible to receive, or receive, those services, by families and by persons advocating on behalf of such persons or families,
- (c) to encourage, wherever reasonable and practicable, the resolution of complaints at a local level,
- (d) to encourage, wherever reasonable and practicable, the resolution of complaints through alternative dispute resolution,
- (e) to provide independent and accessible mechanisms for the resolution of complaints, for the review of administrative decisions and for the monitoring of services, programs and complaint procedures,
- (f) to encourage compliance with, and facilitate awareness of, the objects, principles and provisions of the community welfare legislation,
- (g) to provide for independent monitoring of community services and programs, both generally and in particular cases.





## Chair's foreword

The *Community Services (Complaints, Reviews and Monitoring) Act 1993* provides protections for some of the most vulnerable members of our community: children and young people, older people and people with disabilities. These protections are delivered through the monitoring of community services, investigations and the framework for the resolution of complaints. The policy objectives set out in the legislation aim to create an environment in which complaints are viewed as opportunities for improvement. This is essential to continuous improvement in community services.

In order to conduct the statutory review the Committee had to determine the extent to which the policy objectives remain valid and whether the terms of the Act remain appropriate to securing the objectives of the Act. To canvass the views of relevant stakeholders the Committee wrote directly to over 2000 organisations, held 3 days of public hearings and took a total of 42 submissions. A wide range of stakeholders representing people from indigenous and culturally and linguistically diverse backgrounds, people with disabilities, children and young people and others were among those who participated in the statutory review.

On the whole, the Committee is satisfied that the policy objectives of the Act remain valid. However, some legislative amendments could be made to enhance the achievement of the objectives, including broadening the public reporting powers of the Ombudsman, greater provisions for the use of advocates and enhancements to information sharing. In particular the Committee found that people with disabilities living in boarding houses needed greater protections to ensure their quality of life.

In 2002 changes to the Act provided for the amalgamation of the Community Services Commission with the Office of the Ombudsman. The Committee was especially pleased to learn that initial opposition to the merger has largely dissipated. The Committee commends the Office of the Ombudsman for their collaborative work with the NSW Department of Ageing, Disability and Home Care, the NSW Department of Community Services and other providers of community services. The Committee will continue to take an interest in the issues raised during the statutory review and believes the recommendations contained in this report will make a positive contribution to the achievement of the objectives of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

The Committee is of the view that it is of the utmost importance that consumers of community services in NSW have access to high quality community services appropriate to their needs. Effective monitoring, investigations and complaint handling are essential to achieving and maintaining this objective.



Angela D'Amore MP  
Chair



## List of recommendations

RECOMMENDATION 1: That agencies give consideration to employing indigenous staff to field complaints from indigenous recipients of community services. (page 12)

RECOMMENDATION 2: That all relevant agencies employ culturally appropriate means of resolving complaints. (page 12)

RECOMMENDATION 3: That the NSW Department of Community Services consider creating an 1800 free call number that consumers can use to make a complaint. (page 13)

RECOMMENDATION 4: That the Office of the Ombudsman continue to undertake a range of outreach activities to address the barriers preventing those in the community services jurisdiction from making complaints. (page 14)

RECOMMENDATION 5: That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended by replacing the term 'handicapped persons' with the term 'person with a disability'. (page 15)

RECOMMENDATION 6: That section 3(1)(g) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to include reference to professional clinical advice so that part g reads: 'to provide for independent monitoring of community services and programs, both generally and in particular cases (professional clinical advice is to be sought where appropriate).' (page 16)

RECOMMENDATION 7: That section 3(1)(f) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to insert 'and education' after the word 'awareness' and the following words after the word 'legislation': 'Education is a critical element in raising awareness of the role of legislation in guiding the community toward desired outcomes (e.g. equity, equality and social justice).' (page 16)

RECOMMENDATION 8: That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be updated to reflect the nomenclature of departments arising from the changes made to the structure of the NSW Department of Ageing, Disability and Home Care. (page 16)

RECOMMENDATION 9: That consideration be given to amending the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to include a definition of community services that is not defined by way of reference to another piece of legislation. (page 17)

RECOMMENDATION 10: That the Office of the Ombudsman continue to assist in developing a culture in the community services jurisdiction where complaints are viewed by service providers as opportunities for improvement. (page 19)

RECOMMENDATION 11: That the Office of the Ombudsman continue to assist agencies to develop their internal complaints handling policies and procedures in line with best practice. (page 20)

List of recommendations

RECOMMENDATION 12: That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to enhance the public reporting function of the community services jurisdiction of the Office of the Ombudsman by permitting a report to be issued, at the Ombudsman's discretion, during and/or at the conclusion of a review or inquiry. (page 24)

RECOMMENDATION 13: That the resources of the Official Community Visitors program be increased to facilitate a greater number of visits taking place. (page 30)

RECOMMENDATION 14: That the Office of the Ombudsman continue to actively recruit Official Community Visitors from Aboriginal and other culturally and linguistically diverse backgrounds. (page 33)

RECOMMENDATION 15: That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to impose sanctions for obstructing, hindering or restricting Official Community Visitors in the exercise of their functions. (page 34)

RECOMMENDATION 16: That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to put beyond doubt that members of the Child Death Review Team have a duty to provide the Ombudsman with information and assistance. (page 36)

RECOMMENDATION 17: That the Minister for Disability Services consider clarifying the nature of decisions that can be appealed to the NSW Administrative Decisions Tribunal under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. (page 48)

RECOMMENDATION 18: That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to make clear that there is provision for the use of advocates by complainants in the complaints resolution process. (page 53)

## List of acronyms

AbSec	Aboriginal Child, Family and Community Care State Secretariat (NSW) Inc
ADR	Alternative dispute resolution
ADT	NSW Administrative Decisions Tribunal
CAMA	<i>Community Services (Complaints, Appeals and Monitoring) Act 1993</i>
CSC	Community Services Commission
CS-CRAMA	<i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i>
CVS	Community Visitors Scheme
DADHC	Department of Ageing, Disability and Home Care
DoCS	Department of Community Services
DSA	<i>Disability Services Act 1993</i>
HACC	Home and community care
OCV	Official Community Visitor
SAAP	Supported Accommodation Assistance Program
WWCC	Working with children check



## Chapter One - Introduction

### Provision for the statutory review

- 1.1 Section 53 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA) provides for a review of the legislation:
- (1) The Joint Committee (within the meaning of the *Ombudsman Act 1974*) is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
  - (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Community Services Legislation Amendment Act 2002*.
  - (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years
- 1.2 The policy objectives to be reviewed for their validity are contained in section 3 of the Act:
- (a) to foster, in community services and programs, and in related services and programs, an atmosphere in which complaints and independent monitoring are viewed positively as ways of enhancing the delivery of those services and programs,
  - (b) to provide for the resolution of complaints about community services and programs, especially complaints by persons who are eligible to receive, or receive, those services, by families and by persons advocating on behalf of such persons or families,
  - (c) to encourage, wherever reasonable and practicable, the resolution of complaints at a local level,
  - (d) to encourage, wherever reasonable and practicable, the resolution of complaints through alternative dispute resolution,
  - (e) to provide independent and accessible mechanisms for the resolution of complaints, for the review of administrative decisions and for the monitoring of services, programs and complaint procedures,
  - (f) to encourage compliance with, and facilitate awareness of, the objects, principles and provisions of the community welfare legislation,
  - (g) to provide for independent monitoring of community services and programs, both generally and in particular cases.

### Stakeholder review of the merger of the Community Services Commission into the Office of the Ombudsman

- 1.3 As a prelude to the statutory review the previous Committee conducted a stakeholder inquiry and subsequently tabled a report in October 2006 entitled: *Stakeholder Review of the Merger of the Community Services Commission into the Office of the Ombudsman*. The conclusions reached in the stakeholder review are contained below:

The changes that resulted from the merger were significant and required considerable effort and resources on the part of the Ombudsman's Office to consolidate this new area of jurisdiction.

Introduction

The Ombudsman has stated that the focus of the Community Services Division's work is critical issues for vulnerable consumers in the community services sector and that to this end, the Division is conscious of the need to make strategic and well-informed decisions about where its resources are best utilised and where service improvement is best targeted.<sup>1</sup> The Committee notes that such decisions involve difficult questions of balance. The approach to be taken in this regard is directly relevant to the extent to which the objectives of the Act can be realised.

The Committee considers that although a major thrust of the Division's work is recommending strategic improvements and monitoring agencies' progress in achieving them, the submission by the Ombudsman has provided evidence of initiatives taken to improve the Office's individual complaint handling processes and responsiveness, to increase accessibility for children and young people and to engage with both providers and users of community services.

The Ombudsman's special investigative powers and his capacity to make a special report to Parliament appear to have been appreciated by stakeholder groups and to have been of benefit to the community services sector.

In light of the information provided to the Committee during the review, the following issues are identified as matters warranting further assessment and evaluation during the statutory review, insofar as they pertain to the fulfilment of the Act's objectives:

- the extent of the implementation of the Ombudsman's recommendations made in reports to Parliament and arising from investigations;
- the percentage of formal complaints which are resolved;
- the level of complainants' satisfaction with the handling of their complaints;
- the level of public recognition of the role of the Ombudsman in relation to community services.

In relation to access, the Committee is also of the view that, if the Deputy Ombudsman's audit initiative in relation to indigenous issues is extended across the Ombudsman's jurisdiction, any results relevant to the community services area should be considered in the statutory review or, if the auditing has not commenced, that the feasibility of extending the reach of this initiative be considered.

Of particular concern to the Committee is the extent to which, under the new legislative scheme, the Ombudsman is able to:

- promote access to advocacy support for people receiving, or eligible to receive, community services to ensure adequate participation in decision making about services they receive<sup>2</sup>; and
- facilitate immediate responses to emergency situations not adequately dealt with by DoCS or other service providers.

## Conduct of the statutory review

- 1.4 On 20 July 2007 the Committee called for submissions as part of the statutory review. In order to canvass a wide range of stakeholders, the Committee resolved to write to all services funded by the Department of Ageing, Disability and Home Care (DADHC) and the Department of Community Services (DoCS). Over 750 DADHC and over 1400 DoCS funded services, as well as over 120 peak bodies in the community service sector, were invited to make a submission.

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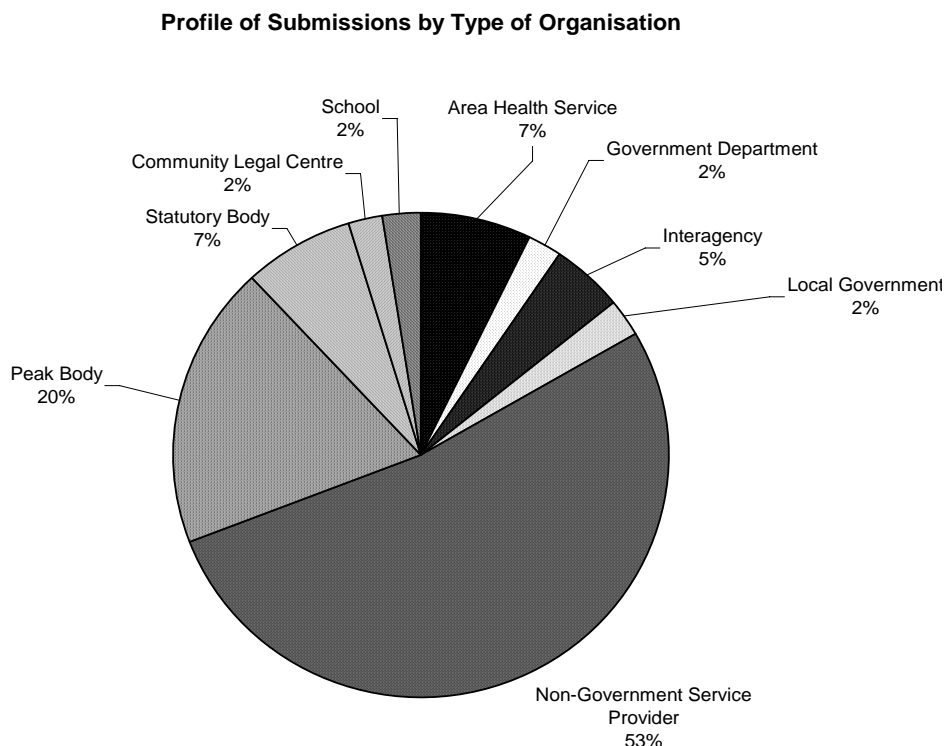
<sup>1</sup> NSW Ombudsman, *Community Services Review: Submission to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission*, June 2006, pp.24 and 25

<sup>2</sup> *Community Services (Complaints, Reviews and Monitoring) Act 1993*, section 11(1)(j)



## Submissions received

- 1.5 The Committee received a total of 42 submissions (for a full list of submissions received please see Appendix 1). The graph below indicates the types of organisations that responded:



- 1.6 A wide range of issues were raised in submissions, some of which were outside the terms of reference for the statutory review. A substantial number of the submissions were supportive of the objectives of CS-CRAMA, for example the submission from the Inner West Neighbour Aid Inc commented that:

...the legislation [is] fair, comprehensive and appropriate.<sup>3</sup>

The Official Community Visitors (OCV) program also received wide-spread support in the submissions.

## The special commission of inquiry into child protection services in NSW

- 1.7 At the same time as the Committee was conducting its inquiry, a special commission of inquiry was established, on 7 December 2007. Under the authority of the *Special Commission of Inquiry Act 1983* the Hon James Wood AO QC was appointed to:

...conduct an inquiry to determine what changes within the child protection system are required to cope with future levels of demand once the current reforms to that system are completed and specifically to examine, report on and make recommendations in relation to:

- i. the system for reporting of child abuse and neglect, including mandatory reporting, reporting thresholds and feedback to reporters;

<sup>3</sup> Submission Number 1, Inner West Neighbour Aid Inc

Introduction

- ii. management of reports, including the adequacy and efficiency of systems and processes for intake, assessment, prioritisation, investigation and decision-making;
- iii. management of cases requiring ongoing work, including referrals for services and monitoring and supervision of families;
- iv. recording of essential information and capacity to collate and utilise data about the child protection system to target resources efficiently;
- v. professional capacity and professional supervision of the casework and allied staff;
- vi. the adequacy of the current statutory framework for child protection including roles and responsibilities of mandatory reporters, DoCS, the courts and oversight agencies;
- vii. the adequacy of arrangements for inter-agency cooperation in child protection cases;
- viii. the adequacy of arrangements for children in out of home care;
- ix. the adequacy of resources in the child protection system,  
and establish a Special Commission of Inquiry for that purpose.

1.8 The Special Commission of Inquiry is required to report by 30 June 2008 and so the Committee has not been able to take its recommendations into consideration when drafting this report. The implementation of any recommendations made by the Special Commission of Inquiry may impact on the work of the Office of the Ombudsman and may have implications for the recommendations made as a result of the statutory review. Consequently, the Committee will monitor the outcomes of the Special Commission of Inquiry and examine the proposed reforms if necessary.

## Chapter Two - Background

### The Community Services Commission

2.1 Prior to its merger with the Office of the Ombudsman in December 2002, the Community Services Commission (CSC) operated as an independent statutory body overseeing community service providers, a role which it performed from its inception in 1993.

2.2 The CSC was constituted by the *Community Services (Complaints, Appeals and Monitoring) Act 1993* and was headed by the Community Services Commissioner. Its responsibilities included complaint handling, monitoring, education and development. The CSC also conducted inquiries. The New South Wales Law Reform Commission summarised the CSC's role as including:

- receiving, assessing, resolving and investigating complaints made under s12;
- helping service providers improve their complaints procedures;
- helping consumers make complaints;
- providing information, education and training, and helping others to do so, in making, handling and resolving complaints; and
- reviewing the causes and patterns of complaints and identifying ways in which the causes could be removed or minimised
- inquiring into matters affecting service providers and consumers (on its own initiative or at the request of the relevant Minister); and
- monitoring and reviewing the delivery of community services
- promoting and assisting the development of standards for the delivery of community services;
- educating service providers, clients, carers and the community generally about the standards; and
- promoting, liaising with and helping advocacy services and supporting the development of advocacy programs.

In addition to the functions listed in s 83, the CSC can review, on application or on its own initiative, the situation of a child in care or a person in care. It may also give advice and assistance to the Review Council.<sup>4</sup>

2.3 The jurisdiction of the CSC included:

- the Department of Community Services;
- the Ageing and Disability Department;
- a person or organisation funded by, or authorised by, the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services to provide a service;
- the Home Care Service of New South Wales or a person or organisation funded by it to provide a service; and

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<sup>4</sup> New South Wales Law Reform Commission, 1998, Issues Paper 15, Review of the Community Services (Complaints, Appeals and Monitoring) Act 1993 (NSW), 3.4

## Background

- a person or organisation deemed to be a service provider by agreement of a State or Federal Minister under an arrangement between the relevant Minister and the Minister for Community Services.
- a service rendered under the community welfare legislation or
- a service rendered by a person or organisation authorised by the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services to provide a service.<sup>5</sup>

## Review by the NSW Law Reform Commission

2.4 In 1998 the New South Wales Law Reform Commission received a reference to review the *Community Services (Complaints, Appeals and Monitoring) Act 1993*. The terms of reference are contained below:

1. Review the *Disability Services Act 1993* (NSW) (the DSA) and the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) (the CAMA) to determine whether the policy objectives of the Acts remain valid and whether the terms of the Acts remain appropriate for securing those objectives;
2. Conduct the review having regard to the obligations arising under s 29 of the DSA and s 126 of the CAMA and the provisions of the *Subordinate Legislation Act 1989* (NSW);
3. Review the *Disability Services Regulation 1993* (NSW) to determine whether there is a need for a regulation and if so whether the policy objectives of the DSA Regulation remain valid and whether the terms of the DSA Regulation remain appropriate for securing those objectives; and
4. Conduct the review of the DSA, with consideration given to the resource or financial implications for the current legislation and regulation and any proposed legislative or regulatory amendments.<sup>6</sup>

2.5 The final report on the review was released in May 1999. One of the key issues identified in the report related to the jurisdiction of the CSC. This was discussed in the previous report of the Committee<sup>7</sup>:

The Law Reform Commission noted in its review, however, that jurisdictional problems with the legislation had emerged. It reported that the Crown Solicitor had advised the NSW Ombudsman that the child protection functions carried out by the Department of Community Services did not fall within the definition of 'community service' for the purpose of the community welfare legislation and were thus outside the Community Services Commission's jurisdiction. The CSC argued that, as child protection issues constituted a significant part of its work, the CAMA definitions of 'community service' and 'service provider' should be amended to clarify that all child protection matters were included in its jurisdiction.<sup>8</sup>

2.6 In relation to jurisdictional issues and the subsequent review which took place the Committee's report went on to say:

In November 2000 the Government obtained its own advice from the Crown Solicitor that certain complaints were outside the jurisdiction of the CSC, in particular, complaints

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<sup>5</sup> *ibid* 3.23

<sup>6</sup> NSW Law Reform Commission website <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/tor#97> date accessed 7/1/08

<sup>7</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Report No. 14/53, October 2006, *Stakeholder Review of the Merger of the Community Services Commission into the Office of the Ombudsman*, page 4

<sup>8</sup> NSW Law Reform Commission, *op cit*, Chapter 3, par 3.158

about certain child protection and out of home care matters. Until these jurisdictional issues could be resolved, the Ombudsman dealt with the complaint and investigative work which had to be diverted from the CSC.

Subsequently, the Cabinet Office co-ordinated a review, prompted in part by the jurisdictional issues concerning the Commission, which aimed to improve the system of monitoring community service providers in New South Wales...

Following on from the review, in October 2001 the Cabinet Office circulated for comment by community services sector stakeholders a proposal to transfer the powers of the CSC to the Ombudsman.<sup>9</sup>

- 2.7 In June 2002 the Community Services Legislation Amendment Bill was introduced in the NSW Parliament. The Bill provided for the amalgamation of the then independent CSC with the Office of the Ombudsman and made substantial structural changes to the system of oversight of community service providers<sup>10</sup>. In her second reading speech the Honourable Carmel Tebbutt MLC, then Minister for Juvenile Justice and Minister Assisting the Premier on Youth, described the Bill as offering the following benefits:

It removes the jurisdictional uncertainty that currently exists for the Community Services Commission under the *Community Services (Complaints, Review and Monitoring) Act 1993*. It strengthens the independence of the monitoring, review and complaints handling functions. The Ombudsman can independently report to Parliament and is accountable to a joint parliamentary committee.

The bill creates a single responsible organisation with sufficient powers, skills and resources to undertake its functions. It reduces the chance of gaps in the investigation and handling of complaints. It provides clients with better access to the oversighting system through a single entry point. It enhances the capacity of the Coroner to provide the best system of investigating individual deaths of vulnerable children and people with disabilities. It also ensures the effective transfer of information about these deaths between agencies. The bill provides maximum opportunity for using information from individual deaths to target the monitoring and review of service providers, and to influence changes to systems and practices. It increases resources for improving services to the community by reducing corporate overheads and time spent on interagency duplication. Additional resources will be provided to the Coroner and the Ombudsman to deal with their expanded roles under this proposal.

- 2.8 A Community Services Division was created within the Office of the Ombudsman and a Deputy Ombudsman was appointed as the Community Services Commissioner. The independence of the OCV program was retained in the amalgamation, though it is now a service coordinated by the Office of the Ombudsman.

## Opposition to the merger of the CSC and the Office of the Ombudsman

- 2.9 At the time the merger was proposed opposition was expressed by several organisations within the community services sector. Evidence of this opposition is found in the 2001-2002 annual report of the Physical Disability Council of NSW:

Along with other peak and State-wide disability advocacy organisations, PDCN formed the view that the merger proposal would not be in the best interests of people with physical disability. We favoured the retention of an effective, autonomous Community

<sup>9</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Report No. 14/53, October 2006, *Stakeholder Review of the Merger of the Community Services Commission into the Office of the Ombudsman*, page 4

<sup>10</sup> NSW Legislative Council, Tuesday 18 June 2002, page 3199

Background

Services Commission, responsive to the needs of users of specialist disability and community services.<sup>11</sup>

2.10 The previous Committee's report *Stakeholder Review of the Merger of the Community Services Commission into the Office of the Ombudsman* identified the main grounds for opposition to the merger as:

- the Office of the Ombudsman's neglect of the advocacy role previously performed by the CSC, and
- the lack of profile of the Office of the Ombudsman among consumers of community services and a view that immediate action was not being taken to assist vulnerable consumers in urgent need<sup>12</sup>.

2.11 Several submissions received as part of the statutory review indicate that much of the initial opposition to the merger has largely dissipated. The Disability Council of NSW states in its submission that:

...the matter (of the merger) has been settled for some time now and we doubt that any stakeholder would call for a separation of the two former independent bodies.<sup>13</sup>

2.12 The Council added a qualification that the fit of organisational cultures of the formerly independent agencies needed to be monitored with a view to promoting internal commitment to transparency, openness and accessibility<sup>14</sup>.

2.13 In their submission to the Committee the Intellectual Disability Rights Service indicate that there have been particular benefits to the merger, including:

Complaints can be made about issues which apply to more than one government agency or agencies which fall outside the CRAMA. The Ombudsman can also use powers available to him under the *Ombudsman Act 1974* (NSW).

2.14 The one submission overtly critical of the merger came from People with Disability Australia. In their view:

...CRAMA has become less effective and under-utilised since amalgamation.<sup>15</sup>

## An overview of the sector

2.15 The jurisdiction of the Community Services Division of the Office of the Ombudsman includes the following:

- NSW Department of Ageing, Disability and Home Care;
- NSW Department of Community Services;
- Non-government services funded, licensed or authorized by the Minister for Community Services, Minister for Ageing and Minister for Disability Services.<sup>16</sup>

2.16 Funded services include child care, family support, out-of-home care, home and community care (HACC), disability accommodation and support, and supported accommodation or Supported Accommodation Assistance Program (SAAP) services.

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<sup>11</sup> Physical Disability Council of NSW, 2001-2002 Annual Report, page 25

<sup>12</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, October 2006, Report No. 14/53, *Stakeholder Review of the Merger of the Community Services Commission into the Office of the Ombudsman*, page 11

<sup>13</sup> Submission Number 40, The Disability Council of NSW

<sup>14</sup> *ibid*

<sup>15</sup> Submission Number 24, People with Disability Australia

<sup>16</sup> Office of the Ombudsman website <http://www.ombo.nsw.gov.au/complaints/commservices.html> date accessed 16/7/2007

Licensed services include boarding houses, child care and out-of-home care services<sup>17</sup>.

- 2.17 A range of non-government services provide community services, including both profit and not-for-profit providers. The following diagram offers a break down of providers by type of community service provided<sup>18</sup>:

<b>5.19 BUSINESSES/ORGANISATIONS WITH COMMUNITY SERVICE ACTIVITIES — 1999–2000</b>			
	For profit organisations	Not for profit organisations	Total
Non-government organisations			
Community service industries			
Nursing homes	154	123	278
Child care	818	506	1 324
Accommodation for the aged	*18	158	176
Residential care services n.e.c.	*29	219	248
Non-residential care services n.e.c.	**9	813	822
<i>Total</i>	1 029	1 819	2 848
Other industries	—	132	132
<i>Total</i>	1 029	1 952	2 980
Government organisations	..	..	176
<b>Total</b>	..	..	<b>3 156</b>

*Source: ABS data available on request, Community Services Survey, 1999–2000.*

- 2.18 According to the Australian Bureau of Statistics the number of non-government organisations is growing. A survey conducted by the Bureau reports that the number of businesses/organisations with community service activities reached 3156 in 2000. Of this total number, 62% were not-for-profit providers, 33% were for-profit providers and 6% were government organisations<sup>19</sup>.
- 2.19 The client group serviced by the community services sector includes older people, people with disabilities, carers and children. This group represents a sizable proportion of the population and is also increasing. 2006 census data suggests that in New South Wales:
- there are 1 232 717 children aged zero to fourteen years
  - there are 278 241 people who need assistance because of a disability, long-term disability or old age
  - a total of 546 601 people provided unpaid assistance to a person with a disability.<sup>20</sup>
- 2.20 The number of people providing unpaid assistance to a person with a disability highlights the crucial and complementary role of carers in delivering assistance, along with community service providers, to people in need. The submission to the

<sup>17</sup> *ibid*

<sup>18</sup> Australian Bureau of Statistics, Community Services Survey 2000

<sup>19</sup> Australian Bureau of Statistics, 2004 NSW Yearbook, page 71

<sup>20</sup> Australian Bureau of Statistics, 2006 Census of Population and Housing, Cat. No. 2068.0

## Background

review from Carers NSW indicates that the number of carers in NSW is closer to 750 000.<sup>21</sup>

- 2.21 According to 2001 census statistics there were approximately 270 000 people employed in community service occupations in NSW<sup>22</sup> and a similar number of volunteers, as indicated in the graph below:

<b>Employment and volunteers in community service industries: type of service provision by industry, 1999-2000</b>						
	<b>Nursing homes</b>	<b>Child care services</b>	<b>Accommodation for the aged</b>	<b>Residential care services, nec</b>	<b>Non-residential care services, nec</b>	<b>Total</b>
<b>Employment at end of June</b>						
Direct CS provision	75,298	38,346	35,569	19,022	52,446	220,681
Other	9,221	2,763	6,833	3,136	26,388	48,341
Total employees	84,519	41,109	42,402	22,158	78,834	269,022
<b>Volunteers during June</b>						
Direct CS provision	11,523	3,987	11,406	14,363	131,685	172,964
Other	4,229	7,357	5,471	6,258	80,055	103,370
Total volunteers	15,752	11,344	16,877	20,620	211,741	276,334
<i>Source: Community Services, Australia, 1999-2000 (Cat. No. 8696.0), ABS 2001</i>						

- 2.22 The growth of the community services sector is also evidenced by the increase in spending on community and disability services in NSW. In the 2007-08 budget the total amount of funding for community service activities increased substantially. The DoCS budget increased by 11.6% to \$1.2 billion. Spending by DADHC will increase 7.7% to almost \$1.9 billion<sup>23</sup>. The public funding of disability services is increasingly being directed to non-government organisations<sup>24</sup>.
- 2.23 Various aspects of the community services sector have implications for complaint handling in the sector. The sector is large and growing in size, located across a large geographical area and with different accountability mechanisms and different internal complaint handling systems. Service providers operate in a range of settings, both paid and unpaid.

<sup>21</sup> Submission Number 4, Carers NSW

<sup>22</sup> Australian Institute of Health and Welfare website [http://www.aihw.gov.au/labourforce/comm\\_services.cfm](http://www.aihw.gov.au/labourforce/comm_services.cfm) date accessed 26/11/2007

<sup>23</sup> 2007-2008 Budget Speech, delivered by the Hon. Michael Costa MLC, Treasurer, NSW Legislative Assembly 19/6/2007

<sup>24</sup> Submission Number 40, Disability Council of NSW



## A history of complaint handling in the sector

- 2.24 The Committee considers that it is important to acknowledge the particular features of complaint handling in the community services sector in order to best understand the operating environment of the Office of the Ombudsman and to effectively review the legislation governing the handling of complaints, the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.
- 2.25 There is evidence of a reluctance among recipients of community services to make complaints about the services they receive. A recent study in the Northern Territory has highlighted particular issues for some users of services. The Committee noted a discussion paper on the establishment of a community visitor/advocacy service for users of health and community services in the Northern Territory which referred to a history of low levels of complaints being received and suggested that this historical trend is likely to continue<sup>25</sup>.
- 2.26 Several factors contribute to this low level of complaint-making. One is the vulnerability of many consumers of community services. People with intellectual disabilities, children, young people, some people with mental illness and others can lack the capacity to make a complaint about a community service provider. The Intellectual Disability Rights Service submission highlighted that consumers of community services may be non-verbal, have difficulties communicating or may not have contact with family or advocates who could help them make a complaint.<sup>26</sup>
- 2.27 The Committee received submissions that many community service consumers fear a service will be withdrawn if they make a complaint<sup>27</sup>. This is particularly the case in rural and remote areas of NSW where there is an increased likelihood that there is only one service provider in the area<sup>28</sup>. Carers NSW said in its submission that long waiting lists for community services contributed to reluctance among consumers to make a complaint<sup>29</sup>.
- 2.28 In their submission, People with Disability Incorporated Australia claimed that:  
...many vulnerable people with disability, such as those in licensed residential centre (boarding houses) and other residential centres are not protected from retribution if they do make a complaint.<sup>30</sup>
- 2.29 Both the fear of and the act of retribution would decrease the likelihood of complaints being made. The Committee appreciates the importance of anonymity and other measures aimed at protecting consumers of community services when making a complaint.
- 2.30 The nature of the assistance provided by some community services and the frequency with which some community services are delivered can increase the dependency of the consumer on the service provider. This makes them particularly susceptible to a fear of services being withdrawn if a complaint is made. A prime example of this is a consumer who receives personal care services, which are essential to the functionality of the consumer and are delivered on a daily basis.

<sup>25</sup> Northern Territory Health and Community Services Complaints Commission, Establishment of a Community Visitors/Advocacy Service for Users of Health and Community Services, 2003-2004 Annual Report

<sup>26</sup> Submission Number 31, Intellectual Disability Rights Service

<sup>27</sup> Submission Number 4, Carers NSW, Submission Number 31, Intellectual Disability Rights Service, Submission Number 32, Council of Social Service of NSW, Submission Number 40, Disability Council of NSW

<sup>28</sup> Submission Number 4, Carers NSW

<sup>29</sup> *ibid*

<sup>30</sup> Submission Number 24, People with Disability Australia Incorporated

Background

- 2.31 Another factor contributing to the low level of complaint-making is raised in the submission from Carers NSW:

Many of the complaints that carers raise are generated by systemic issues such as lack of funding to provide appropriate levels of service and high costs of services to the consumer.<sup>31</sup>

These kinds of issues are outside the jurisdiction of the Act.

- 2.32 Another factor is the reluctance of consumers from culturally and linguistically diverse backgrounds to make complaints. Carers NSW indicated that the reluctance arose from:

..[the] stigma and prejudice surrounding disability and notions of entitlement and citizenship rights.<sup>32</sup>

- 2.33 Indigenous consumers were also identified as particularly reluctant to make complaints. The Executive Officer of the Aboriginal Child, Family and Community Care State Secretariat (NSW) Inc (AbSec) provided the following evidence at the public hearing on 13 March 2008:

**CHAIR:** At Tuesday's public hearing the Department of Community Services acknowledged that there was room for improvement in the delivery of culturally appropriate complaints handling. It discussed the possibility of employing indigenous complaints officers to deal specifically with complaints by indigenous people. What are your views on this issue?

**Mr PRITCHARD:** I think it is absolutely necessary. I think we demonstrated in our submission that there can be real problems for Aboriginal people when they attempt to contact an organisation to make a complaint and then they may be dealing with somebody who is not very culturally sensitive. Especially with DOCS, because of the past history in welfare, if they do not get a feeling of immediate comfort they will most probably drop the complaint.

- 2.34 The Committee supports the suggestion made by AbSec in relation to the employment of indigenous staff in the complaints handling area and, therefore, recommends:

**RECOMMENDATION 1:** That agencies give consideration to employing indigenous staff to field complaints from indigenous recipients of community services.

- 2.35 This does not detract from the obligations of all staff involved in the handling of complaints to provide a culturally appropriate service. To this end, the Committee recommends:

**RECOMMENDATION 2:** That all relevant agencies employ culturally appropriate means of resolving complaints.

- 2.36 The Committee appreciates that addressing the reluctance of indigenous people to complain about community services is a complex area that will require long-term commitment and effort by all relevant bodies. The employment of indigenous staff in

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<sup>31</sup> Submission Number 4, Carers NSW

<sup>32</sup> *ibid*

the complaint handling area will not overcome some barriers that prevent some indigenous people from making a complaint about a community service provider.

- 2.37 The Committee also appreciates the particular difficulties which arise for community service consumers living in rural and remote areas and in particular for indigenous consumers, where a consumer wishing to make a complaint may live in the same community as those providing the service.
- 2.38 One particular practice raised by AbSec which prevents indigenous people from making complaints is when calls made to the DoCS complaints line are diverted in periods of delay to an electronic voice message system. It is understood that:
- ...not all Aboriginal people have access to phone services and may be reluctant to leave other peoples' numbers because of the 'shame' factor. This phone access problem can be exacerbated in rural and remote communities where distance may have been a factor – where travelling can be involved in making the initial phone call. It is appropriate that the service is a 1800 free call number.<sup>33</sup>

**RECOMMENDATION 3:** That the NSW Department of Community Services consider creating an 1800 free call number that consumers can use to make a complaint.

- 2.39 A lack of awareness among consumers was identified in several submissions<sup>34</sup> as a factor contributing to the low level of complaints received about the community services sector, in particular:
- a lack of awareness of rights;
  - a lack of awareness of when to make a complaint;
  - a lack of awareness of where to direct a complaint.
- 2.40 Submissions also drew attention to the complexity of the complaint system as an inhibiting factor<sup>35</sup>. The Committee learnt that the Complaints Resolution and Referral Service, the National Disability Abuse and Neglect Hotline and the Office of the Ombudsman all field complaints from users of disability services<sup>36</sup>. In order to make a complaint, the consumer needs to know the service provider's source of funding so that the complaint can be directed to the appropriate body. Many consumers navigating the complaints handling system may not know this type of information. The Committee encourages the development and maintenance of arrangements between all complaint handling bodies in the community services area to ensure the effective sharing of certain information.
- 2.41 All these factors contribute to the seemingly low number of formal complaints made by people with disabilities. The Intellectual Disability Rights Service state in their submission that:
- This number [of formal complaints made] cannot truly reflect the number of issues needing to be resolved via an external complaints body. There are many thousands of people with an intellectual disability who are users of community services.

<sup>33</sup> Submission Number 38, AbSec, page 2

<sup>34</sup> Submission Number 4, Carers NSW, Submission Number 31, Intellectual Disability Rights Service, Submission Number 32, Council of Social Service of NSW

<sup>35</sup> Submission Number 4, Carers NSW, Submission Number 31, Intellectual Disability Rights Service, Submission Number 18, Multicultural Disability Advocacy Association

<sup>36</sup> Submission Number 18, Multicultural Disability Advocacy Association

Background

- 2.42 The Committee has received detailed evidence (including a submission and evidence provided at the public hearing on 18 March 2008) from the Office of the Ombudsman about the substantial work done to promote awareness of their services among consumers of community services. The Committee values this work and is of the view that it is important that the Office of the Ombudsman continues to raise the awareness of consumers of community services about their rights and opportunities to make complaints.
- 2.43 This is especially important in light of the barriers, identified above, which prevent consumers of community services from making complaints. The submission from the Council of Social Service of NSW suggests that these barriers persist and that:
- There remains a gap in the engagement with the consumers at the individual and community level.<sup>37</sup>
- 2.44 The Committee, therefore, recommends:

**RECOMMENDATION 4:** That the Office of the Ombudsman continue to undertake a range of outreach activities to address the barriers preventing those in the community services jurisdiction from making complaints.

## Proposed legislative amendments

- 2.45 The Committee received a range of proposals for legislative amendments to the Act aimed at addressing issues like efficiency and bringing the legislation up to date.
- 2.46 One issue raised with the Committee concerned the addition of new functions in the Act in 2002, which don't appear to have a connection with the original objects of the Act. The submission from the NSW Commission for Children and Young People argued that the objects of the Act had gone largely unchanged since the passage of the Act in 1993 and reflected the focus at that time on complaints mechanisms and independent monitoring.
- These objects remain valid for these functions [complaint handling and independent monitoring], but they do not reflect the functions incorporated in the Act by the *Community Services Legislation Amendment Act 2002*.<sup>38</sup>
- 2.47 The functions contained in Part 3 of CS-CRAMA are as follows:
- Division 1 General functions**
- 11 Community services functions of Ombudsman**
- (1) The Ombudsman has the following functions:
- (a) to promote and assist the development of standards for the delivery of community services,
  - (b) to educate service providers, clients, carers and the community generally about those standards,
  - (c) to monitor and review the delivery of community services and related programs, both generally and in particular cases,

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<sup>37</sup> Submission Number 32, Council of Social Service of NSW

<sup>38</sup> Submission Number 12, NSW Commission for Children and Young People

- (d) to make recommendations for improvements in the delivery of community services and for the purpose of promoting the rights and best interests of persons using, or eligible to use, community services,
- (e) to inquire, on his or her own initiative, into matters affecting service providers and visitable services and persons receiving, or eligible to receive, community services or services provided by visitable services,
- (f) to receive, assess, resolve or investigate complaints under Part 4,
- (g) to assist service providers in improving their complaints procedures,
- (h) to assist in the making of complaints under Part 4 by persons receiving, or eligible to receive, community services,
- (i) to provide information, education and training, and to encourage others to do so, relating to the making, handling and resolution of complaints about the delivery of community services,
- (j) to promote access to advocacy support for persons receiving, or eligible to receive, community services to ensure adequate participation in decision making about the services they receive,
- (k) to review the causes and patterns of complaints under Part 4 and identify ways in which those causes could be removed or minimised,
- (l) to review the situation of a child in care or a person in care or a group of children in care or a group of persons in care under section 13,
- (m) to review the systems of service providers for handling complaints under section 14,
- (n) to review the causes and patterns of reviewable deaths under Part 6 and identify ways in which those deaths could be prevented or reduced.

2.48 The functions listed above that involve activities other than complaint handling and monitoring are significant. The extent to which the objectives of CS-CRAMA capture these functions is questionable. The NSW Commission for Children and Young People are of the view that:

...the objects of the Act be extended beyond complaints and monitoring to include preventing or reducing reviewable deaths and improving service delivery in community services.<sup>39</sup>

2.49 The Committee recognises that consideration could be given to modifying the objectives of the Act to better reflect the community service functions of the Office of the Ombudsman.

2.50 DADHC advocated in their submission that the term 'handicapped persons' be replaced with 'person with a disability' in order to reflect contemporary community attitudes towards disability and ensure consistency with the terminology in the *Disability Services Act 1993*.

**RECOMMENDATION 5:** That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended by replacing the term 'handicapped persons' with the term 'person with a disability'.

2.51 Other legislative amendments recommended by DADHC included:

<sup>39</sup> *ibid*

Background

- 1) That objective (g) have the following sentence added so that it reads: To provide for independent monitoring of community services and programs, both generally and in particular cases (*professional clinical advice is to be sought where appropriate*)
- 2) That objective (f) be amended so that it reads: To encourage compliance with, and facilitate awareness *and education* of, the objects, principles and provisions of community welfare legislation. *Education is a critical element in raising awareness of the role of legislation in guiding the community toward desired outcomes (e.g. equity, equality and social justice)*
- 3) Amendments to reflect the changes to the Department's structure (including the incorporation of Home Care)

2.52 Given the frequent interaction that DADHC have with CS-CRAMA the requested amendments are recommended by the Committee to assist in improving the operation of the legislation.

**RECOMMENDATION 6:** That section 3(1)(g) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to include reference to professional clinical advice so that part g reads: 'to provide for independent monitoring of community services and programs, both generally and in particular cases (professional clinical advice is to be sought where appropriate).'

**RECOMMENDATION 7:** That section 3(1)(f) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to insert 'and education' after the word 'awareness' and the following words after the word 'legislation': 'Education is a critical element in raising awareness of the role of legislation in guiding the community toward desired outcomes (e.g. equity, equality and social justice).'

2.53 DADHC drew attention to the fact that CS-CRAMA does not refer to the department by its current name (following the restructure of the department including the incorporation of Home Care into the department). Section 4 of the Act refers separately to the Ageing and Disability Department and the Home Care Service of NSW. These anachronisms should be corrected.

**RECOMMENDATION 8:** That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be updated to reflect the nomenclature of departments arising from the changes made to the structure of the NSW Department of Ageing, Disability and Home Care.

2.54 The Ombudsman recommended that the definition of a community service under CS-CRAMA be amended to avoid the difficulties that arise when reference is made to other legislation:

Under section 22 of CS-CRAMA, a person may make a complaint about the conduct of a service provider in relation to the "provision, failure to provide, withdrawal, variation or administration of a community service." Our Act defines a "community service" as:

- a service rendered under the community welfare legislation; or

- Commonwealth/State arrangement (referred to in para (f) of the definition of service provider.)

In relation to (a) above, the welfare legislation referred to in our Act is likely to change over time. Instead of, or in addition to, specifying each piece of community welfare legislation, it would be desirable for our Act to include within the definition of a “community service”, any service provided by a service provider<sup>40</sup> of the kind for which that provider has been funded, authorised or licensed to provide.<sup>41</sup>

**RECOMMENDATION 9:** That consideration be given to amending the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to include a definition of community services that is not defined by way of reference to another piece of legislation.

<sup>40</sup> CS-CRAMA s4 Definition **service provider** means:

- (a) the Department of Community Services, or
- (b) the Ageing and Disability Department, or
- (c) a person or organisation funded by the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services to provide a service, or
- (d) a person or organisation authorised or licensed by the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services to provide a service, or
- (e) the Home Care Service of New South Wales or a person or organisation funded by the Home Care Service to provide a service, or
- (f) a person or organisation that is covered by an arrangement (made after the commencement of this section) between the Minister for Community Services and a State or Commonwealth Minister, under which arrangement that State or Commonwealth Minister agrees to the person or organisation being a service provider for the purposes of this Act, or
- (g) an authorised carer or designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (h) the proprietor or occupier of premises that consist of a residential centre for handicapped persons.

<sup>41</sup> Answers to questions taken on notice, Office of the Ombudsman





## Chapter Three - Performance

3.1 This chapter will focus predominantly on aspects of the performance of the Office of the Ombudsman in fulfilling the objectives of CS-CRAMA.

### Promotion of better practice complaint handling among community service providers

3.2 The extent to which community service providers view complaints positively is a significant factor in better practice complaint handling. The Committee received evidence from the Association of Children's Welfare Agencies that non-government children's community service providers welcomed the feedback that complaints provide:

The non-government community services sector that we represent has a healthy respect for the making of complaints and understands the need for good complaint management processes.<sup>42</sup>

3.3 However other submissions suggested that community service providers from other sectors did not view complaints so positively<sup>43</sup>. For example:

The Disability Council is not yet persuaded that all service providers have fully embraced a culture of welcoming complaints within a regime of quality assurance monitoring. We believe that there is still some distance to travel before every stakeholder can be satisfied that complaints and complainants are judged to be positive indicators of enhanced forms of service delivery.<sup>44</sup>

3.4 The Committee recognises that there is an inherent potential for complaints to elicit defensive responses from individuals and organisations. This can create an organisational culture that is not conducive to the resolution of complaints, as the Council of Social Service of New South Wales describes:

...complaints systems evoke strong reactions and can result in a defensive mode of blame and counter-blame.<sup>45</sup>

3.5 The Office of the Ombudsman undertakes a number of initiatives aimed at maximising the number of organisations possessing a culture where complaints are viewed positively and as opportunities to improve the service. The Committee encourages the Office of the Ombudsman to continue its efforts in this area.

**RECOMMENDATION 10:** That the Office of the Ombudsman continue to assist in developing a culture in the community services jurisdiction where complaints are viewed by service providers as opportunities for improvement.

<sup>42</sup> Submission Number 19, Association of Children's Welfare Agencies

<sup>43</sup> Submission Number 36, Maari Ma Health Aboriginal Corporation

<sup>44</sup> Submission Number 40, Disability Council of NSW

<sup>45</sup> Submission Number 32, Council of Social Service of New South Wales

**RECOMMENDATION 11:** That the Office of the Ombudsman continue to assist agencies to develop their internal complaints handling policies and procedures in line with best practice.

3.6 While this aspect of the work of the Office of the Ombudsman is highly valuable, the ultimate responsibility for the creation of an environment that is welcoming of complaints rests with the individual service provider. As the Disability Council of NSW stated in their submission:

There are, however, natural limits to what any monitoring agency can achieve through education and promotion. Ultimately, therefore, each service-providing organisation must accept its own responsibility to foster feedback, including transparent complaints mechanisms, in accordance with the objectives of the Act.<sup>46</sup>

3.7 The facilitation of feedback from consumers of community services creates an environment where complaints are viewed positively and better practice complaint handling is fostered. The Committee, therefore, examined the extent to which both the Office of the Ombudsman and other community service providers facilitate feedback from consumers.

### **Assessing satisfaction with services provided by the Office of the Ombudsman**

3.8 The Office of the Ombudsman provides services to two main groups: organisations in the community services sector and consumers of community services. Organisations are provided with training and educational services while consumers are provided with complaint handling services and educational services.

3.9 The Office of the Ombudsman has assessed the satisfaction of both of these groups with the services it provides to them. In May 2007 consultants were engaged to develop a client satisfaction framework for the Office's Community Services Division and to pilot that framework through a client survey of formal and informal complainants, child and family and disability peak agencies, and official community visitors<sup>47</sup>.

3.10 The survey sample included 46 complainants, 23 informal complainants, 22 peak agencies, 3 community service providers and 9 community visitors. The sample size is considered by the consultants to provide:

...a reliable snapshot of satisfaction among clients of the Community Services Division. However, due to the relatively small sample sizes the complainant responses should be treated cautiously... Assuming 600 formal complaints per year, the confidence intervals are about + 13%. Also because not all complainants could be contacted or agreed to participate, there may be some selection bias.<sup>48</sup>

3.11 The topic areas addressed in the survey included:

- accessibility (contacting our office) and helpfulness
- timeliness - whether we consider matters brought to our attention promptly

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<sup>46</sup> Submission Number 40, Disability Council of NSW

<sup>47</sup> Submission Number 42, Office of the Ombudsman

<sup>48</sup> *ibid*

- referral to appropriate organisations - where we are unable to handle a matter ourselves, explain why and identify any other appropriate organisation that may be able to provide assistance
- fairness and impartiality
- transparent actions, and
- service system solutions and improvements – whether we seek solutions and improvements that will benefit the broader community.<sup>49</sup>

### 3.12 The survey of client satisfaction reported:

...very positive views of peak agency stakeholders, community visitors and community service agencies. Peak agency stakeholders in particular, were reported as having an improved perception of the CSD's engagement with the sector in recent years. The consultants noted that among peak agency stakeholders, ongoing professional relationships with the CSD senior staff have led to "*better communication, collaborative practices and has fostered a view of the Ombudsman's Office as a partner agency*".<sup>50</sup>

### 3.13 This is a particularly pleasing outcome in light of the initial opposition to the merger of the CSC and the Office of the Ombudsman.

### 3.14 The summary table below provides an overview of the results of the survey:

Topic Area	% of respondents in agreement
Satisfaction with the outcome of a complaint	40%
That it is easy to find out how to contact the Office of the Ombudsman	79%
That it is straightforward to reach the right person in the office	71%
That the person they mainly dealt with in the office was courteous	98%
That the person understood their concerns	75%
That the person was competent to deal with their concerns	78%
That the person listened to their concerns	87%
That the complaint was dealt with in a reasonable timeframe	74%
That the reasons for not being able to deal with a complaint were explained	72%
That another appropriate organisation was identified if the complaint could not be dealt with	65%
That the Office of the Ombudsman was fair and impartial in dealing with their complaint	78%
That actions and decisions about their complaint were adequately explained to them	70%
That they were kept informed about the progress of their complaint	65%

### 3.15 The Committee also learnt the Office of the Ombudsman sought feedback in relation to the following education and training sessions: DoCS Childcare Directors training, child and family information sessions, presentation to PANOC services and CSD education and training workshops<sup>51</sup>. It is appropriate that feedback is sought in relation to individual sessions and that there is periodic assessment of the general satisfaction of stakeholders.

<sup>49</sup> ibid

<sup>50</sup> ibid

<sup>51</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, June 2008, *Report on the Fourteenth General Meeting with the NSW Ombudsman*, p 148

Performance

- 3.16 The Committee notes that within the community services sector efforts have been made to facilitate feedback from consumers. Examples of this include a survey of Home Care customers conducted by an independent market research company.<sup>52</sup>
- 3.17 Assessing how satisfied consumers are with the community services they receive is a means of identifying areas of dissatisfaction which may develop into complaints. This gives service providers a valuable opportunity to address areas of concern to consumers, thereby, preventing potential complaints from arising.
- 3.18 The Committee would like to see wide-spread periodic assessment of the satisfaction of consumers of community services. The Committee encourages all service providers to give consideration to introducing consumer satisfaction assessments if they have not already done so.

### Keeping complainants informed

- 3.19 While in general terms the results of the survey indicate that the Office of the Ombudsman is performing well in the handling of community services complaints, there are some results which are of potential concern, for example, the extent to which complainants are kept informed during the complaint handling process. This issue was raised in a submission from the Multicultural Disability Advocacy Association:
- One difficulty we have experienced is that the Ombudsman does not keep in regular contact with the advocate or the person who made the complaint, to let them know what is happening with their complaint. The first contact a person or advocate may have after making a complaint is the service provider telephoning to say what action they have taken in response to the complaint.<sup>53</sup>
- 3.20 The submission from the Office of the Ombudsman had this to say in relation to the issue:
- Throughout 2007, and following on from the client satisfaction review and our own reviews of particular complaints, we identified complainant feedback as a priority focus and we have introduced a range of internal processes to ensure that staff provide a high and appropriate level of feedback to complainants.<sup>54</sup>
- 3.21 The Committee is pleased that the Office of the Ombudsman identified the issue of feedback to complainants throughout the complaints handling process as a priority and that action is being taken to address the issue. The Committee will monitor the progress of this issue as it performs its oversight function in relation to the Office of the Ombudsman.

### Providing culturally appropriate and accessible services

- 3.22 Ten years ago the Office of the Ombudsman established an Aboriginal Complaints Unit. The unit currently has four staff who work with each of the business teams within the Office of the Ombudsman including the community services division<sup>55</sup>.

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<sup>52</sup> Productivity Commission, 2007, *Report on Government Services*, Chapter 12 – Community Services, 12.56

<sup>53</sup> Submission Number 18, Multicultural Disability Advocacy Association

<sup>54</sup> Submission Number 42, Office of the Ombudsman

<sup>55</sup> NSW Ombudsman website <http://www.ombo.nsw.gov.au/atsi.html> date accessed 4/4/2008

- 3.23 The Committee received a submission from AbSec which strongly supported the work of the Office of the Ombudsman in delivering a service which is accessible and appropriate to indigenous people:
- The Ombudsman's Office has a well established Aboriginal complaints handling unit which AbSec accesses and recommends to complainants who have exhausted early stage complaint resolution procedures... This service is culturally appropriate and accessible to Aboriginal people and the Ombudsman's office would appear to be the most appropriate monitoring body for later stage complaints lodged by Aboriginal people.<sup>56</sup>
- 3.24 The provision of culturally appropriate and accessible services is also an important issue for consumers from culturally and linguistically diverse backgrounds. The Committee received evidence from the Multicultural Disability Advocacy Association which suggested that the Office of the Ombudsman is delivering a service which is accessible to culturally and linguistically diverse groups:
- In our experience the Ombudsman's Office also uses interpreters whenever it is appropriate.<sup>57</sup>
- 3.25 The Association went on in its submission to outline the involvement of the Office of the Ombudsman in the consumer forums run by the Association aimed at educating consumers from non-English speaking backgrounds of their rights and how to make a complaint:
- We have arranged with the Ombudsman's office to conduct at least one rights training session every year for MDAA consumers and members.
- 3.26 Given the evidence the Committee received about the particular reluctance among consumers from indigenous and culturally and linguistically diverse backgrounds to make complaints, the work of the Office of the Ombudsman in the provision of appropriate and accessible services is highly important. The Committee supports this work and commends the efforts of the Office of the Ombudsman in this area.

## Addressing Systemic Issues

- 3.27 Criticisms made of the Office of the Ombudsman were often linked to its role in addressing systemic issues. People with Disability Australia stated that:
- We find that inquiries and reporting under CRAMA are now more private and less rigorous.<sup>58</sup>
- 3.28 Reporting on inquiries was an issue also identified by the Council of Social Service of NSW, which in its submission to the Committee, stated that:
- ...there are concerns, expressed through our members who represent people with disability, that there is less openness in reporting of both the process and the findings of inquiries.<sup>59</sup>
- 3.29 The Committee explored the issue with the Office of the Ombudsman at a public hearing, which indicated that:
- To the extent that we are able to within existing legislative requirements, we provide as much information as we can to all interested parties.<sup>60</sup>

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<sup>56</sup> Submission Number 38, AbSec

<sup>57</sup> Submission Number 18, Multicultural Disability Advocacy Association

<sup>58</sup> Submission Number 24, People with Disability Australia Incorporated

<sup>59</sup> Submission Number 32, Council of Social Service of NSW

<sup>60</sup> Transcript of evidence, 18/03/08, page 151

Performance

- 3.30 DADHC agreed with the Ombudsman's interpretation of the legislative provisions:  
There do not appear to be clauses that reflect an opportunity to feedback on high level policy and more general system-wide issues.<sup>61</sup>
- 3.31 The current statutory limitations on the Ombudsman's capacity to report publicly on issues in forums outside special reports to Parliament curtails his ability to address systemic issues.
- 3.32 There was a strong consensus in submissions to the review about the merits of strengthening the Office's capacity to address systemic issues. This included submissions from the Association of Children's Welfare Agencies, the Council of Social Service of NSW and the Disability Council of NSW. In its submission to the Committee the Disability Council of NSW state that:  
It is highly valuable, therefore, that the Ombudsman/CSD act proactively to monitor and investigate organisational, departmental and sector wide practice. If we are to work to reduce then to eradicate systemic problems and barriers to high quality service then Ombudsman/CSD must work to develop its systemic role.<sup>62</sup>
- 3.33 The Committee is also of the view that the Office of the Ombudsman has a critical role to play in remedying systemic problems in the community services sector.
- 3.34 At the public hearing on 18 March 2008, the Ombudsman stated:  
I would strongly support the Committee exploring whether my office should be given greater discretion to release information about our work where that work relates to systemic issues. This is one issue that has persisted for stakeholders and it is one that I am keen to address.
- 3.35 A legislative amendment to CS-CRAMA to give the Office of the Ombudsman the ability to issue a report both during and at the conclusion of a review or an inquiry would facilitate a greater role for the Office in addressing systemic issues. This would allow the Ombudsman to enhance his public reporting function in the community services jurisdiction by creating an alternative to making a special report to Parliament.

**RECOMMENDATION 12:** That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to enhance the public reporting function of the community services jurisdiction of the Office of the Ombudsman by permitting a report to be issued, at the Ombudsman's discretion, during and/or at the conclusion of a review or inquiry.

### Number of investigations conducted in the disability area

- 3.36 At the public hearing on 13 March 2008 People with Disability Australia referred to an apparent inequity in the number of investigations conducted in both the disability and the children's sectors:  
You only have to look at the annual reports to actually compare the figures of investigations for children versus people with disability. We are not saying that it is not important to investigate complaints around children because it very much is, but children are not the only vulnerable people within our community and it is also the charge of the Ombudsman's Office to actually look at those complaints.

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<sup>61</sup> Submission Number 33, Department of Aging, Disability and Home Care

<sup>62</sup> Submission Number 40, Disability Council of NSW

In the 2006 reviewable deaths annual report, the report talks about the 2006-2007 period as the Ombudsman initiating 17 new investigations, finalising 19 investigations and monitoring and implementing the recommendations of a further six investigations in the previous year. So that was about various aspects of care and protection systems for children compared to finalising three investigations and beginning two additional investigations about people with disability, so it is not equitable in our experience of raising complaints and the inquiries that occur from there.<sup>63</sup>

- 3.37 The Intellectual Disability Rights Service were critical of the volume of investigations conducted in the disability area:

There are only a handful of complaints the subject of direct investigation...there have also been a low number of reviews of the circumstances of people with a disability in care.

- 3.38 The Ombudsman was asked to respond to the comparison made by People with Disability Australia about the number of inquiries conducted in the disability and children's sectors at the public hearing on 18 March 2008. It was his opinion that:

...that is an inappropriate comparison to try to draw, quite frankly. It is not simply about numbers. It is about the nature of the work and the focus of the work. Without doubt, complaints in relation to disability issues are often far more amenable to resolution without the need for investigation, and also the vast majority of services and people who are visited by official community visitors are people who are disabled. So the official community visitors are able to deal with a lot of these things on the ground as well.

## Enforcing and monitoring the implementation of recommendations

- 3.39 Given the significance of many of the recommendations made by the Ombudsman it is understandable that some organisations have put forward a view that the recommendations should be enforceable and their implementation monitored<sup>64</sup>.

- 3.40 It has been suggested that it would be appropriate for the Ombudsman to enforce the implementation of his recommendations. However, this is not the intended role of the Ombudsman. Mr Barbour emphasised in his evidence to the Committee that his office's role is:

...recommendatory only, and ... ultimately it has to be left up to the agency and/or government to determine whether or not they are going to implement those recommendations.<sup>65</sup>

- 3.41 As the Ombudsman's Office highlighted in its submission:

Much of our work results in us making recommendations about systemic improvements. As we emphasised in our submission to the Committee for the stakeholder review, we do not have determinative power to enforce the recommendations that we make, and therefore a very important part of our work is to convince agencies of the benefits of, and need for, change.

In the vast majority of cases, agencies accept the findings of our reviews, inquiries and investigations and our subsequent recommendations. We closely monitor agency progress in implementing the recommendations, until we are satisfied that the issue that we identified has been resolved or there is a clear commitment by the agency to do so.

<sup>63</sup> Transcript of evidence, 13/3/2008, see page 136 (Appendix 3)

<sup>64</sup> Submission Number 31, Intellectual Disability Rights Service, Submission Number 36 Maari Ma Health Aboriginal Corporation, Submission Number 38, AbSec

<sup>65</sup> Transcript of evidence, 18/3/2008, see page 160 (Appendix 3)

Performance

We regularly report on the progress made by agencies in implementing our recommendations - in our annual report, in our reviewable deaths annual reports and in special reports to Parliament.

- 3.42 Recommendations which are not voluntarily implemented could only be enforced through punitive measures such as the removal of funding or cancellation of accreditation or operating licenses. These actions are appropriately undertaken by funding and accreditation/licensing bodies.



## Chapter Four - Monitoring of community services

### The Official Community Visitors program

- 4.1 The OCV program has a role in visiting:  
...accommodation services for children and young people, and people with a disability that are operated, funded or licensed by the Department of Community Services or the Department of Ageing, Disability and Home Care, where the residents are in full-time care. At 20 June 2007, there were 1,230 visitable services in NSW accommodating 6,582 children, young people and people with a disability.<sup>66</sup>
- 4.2 Chapter Two of this report referred to low levels of complaints being made by consumers of community services. This increases the importance of initiatives like the OCV program, which does not rely on consumers initiating complaints. The program provides opportunities for issues affecting those least able to make a complaint to be addressed and resolved.
- 4.3 The OCV program was preceded by the Community Visitors Scheme (CVS) which began in October 1995. Prior to the CVS a much smaller scheme fulfilling a similar role had been in place<sup>67</sup>. Section 8(1) of CS-CRAMA sets out the functions of an OCV:
- An Official Community Visitor may:
- (a) at any reasonable time, enter and inspect a place at which a visitable service is provided, and
  - (b) confer alone with any person who is resident or employed at such a place, and
  - (c) inspect any document held at such place which relates to the operation of a visitable service, and
  - (d) provide the relevant Minister in relation to the provider of the visitable service and the Ombudsman with advice or reports on any matters relating to the conduct of such a place, and
  - (e) exercise such other functions as may be prescribed by the regulations for the purposes of this section.
- 4.4 There is historical and current support for the OCV program. In 1999 the review of the *Community Services (Complaints, Appeals and Monitoring) Act 1993* by the NSW Law Reform Commission found strong support for the CVS from a wide range of stakeholders including:  
...peak consumer bodies, advocacy bodies, families of people with disabilities, service providers, government advisory bodies, the CSC, and the Community Visitors themselves.<sup>68</sup>
- 4.5 The Committee received several submissions in support of the OCV program, including submissions from New Haven Farm Home Ltd, Central West Community Care Forum, Multicultural Disability Advocacy Association NSW, ACWA, NSW Office for Children, Intellectual Disability Rights Service, Council of Social Service of NSW,

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<sup>66</sup> Official Community Visitors Annual Report 2006-2007, page 6

<sup>67</sup> NSW Law Reform Commission, 1999, Report 90, *Review of the Community Services (Complaints, Appeals and Monitoring) Act 1993 (NSW)*, Chapter 4, 4.1

<sup>68</sup> *ibid*, Chapter 4, 4.13

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NSW Department of Aging, Disability and Home Care and the Disability Council of NSW.

- 4.6 New Haven Farm Home Ltd offered the perspective of a service provider with first hand experience of the OCV program. Their submission outlined the positive contribution that the OCV program makes to their work:

I am of the opinion the Official Community Visitors Program has fostered an atmosphere in which complaints and independent monitoring are viewed positively. This happens for both service users who may raise an issue and achieve a positive outcome and in my case as a service manager because I gain some comfort and reassurance from an external body advising me in a way which either reinforces that the practices of my organization are effective, reasonable and appropriate, or provides guidance as to what we could do better.<sup>69</sup>

- 4.7 They go on to add that in their experience OCVs have always been independent, impartial and accessible and that the OCV program fulfils a vital function<sup>70</sup>.

- 4.8 In their submission, the Central West Community Care Forum discussed the advocacy role that they see the OCV program fulfilling for vulnerable groups:

Official Community Visitors provide an independent voice for those who might not otherwise be heard. The role of the community visitor should not be downgraded in any way. There needs to be a maintenance of powers via community visitors that allow for vulnerable groups to continue to have a voice.<sup>71</sup>

- 4.9 The submission from the Disability Council of NSW contained strong support for the OCV program:

The Official Community Visitors programme is vital to furthering the objectives of CRAMA and should be further developed, extended and enhanced.<sup>72</sup>

- 4.10 One of the few criticisms made of the OCV program is that the feedback needs to be more strategic and that more information needs to be provided on the nature of unresolved issues in order to increase the program's efficiency and effectiveness<sup>73</sup>.

- 4.11 The Committee learnt from the Office of the Ombudsman that there is a new data classification system being developed for use by OCVs which will offer the following benefits:

As was reported in our 2006 – 2007 annual report, we have engaged an independent contractor to develop data classification systems, in order to better record and report on disability and out-of-home care issues identified by OCVs.

When developed, the OCV data classification system will:

- improve the consistency of OCV reports about service issues.
- introduce a risk prioritisation framework, enabling OCVs to identify and report service issues that:
- impact the immediate safety, care or welfare of residents of visitable services, requiring urgent action by services
- result in a potential risk to the safety, care or welfare of residents, requiring prompt action by services
- affect the quality of life of residents or relate to service's systems, including policies, procedures, staff training, etc, requiring remediation over time by services.

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<sup>69</sup> Submission Number 2 New Haven Farm Home Ltd

<sup>70</sup> *ibid*

<sup>71</sup> Submission Number 9, Central West Community Care Forum Inc

<sup>72</sup> Submission Number 40, Disability Council of NSW

<sup>73</sup> Submission Number 32, Council of Social Service of NSW

- enable OCVs to report service issues relating directly to the disability and out of-home care service standards, providing opportunity to inform the accreditation and monitoring activities of DADHC, through its Integrated Monitoring Framework (IMF), and the Office of the Children's Guardian (OCG).
- enable analysis and reporting about service issues and trends, to assist targeting of limited OCV resources to services where high needs are identified; reporting about trends and patterns in service issues to DADHC, the OCG and services; and enhance public reporting.<sup>74</sup>

4.12 It is anticipated that this new data classification system will have a significant impact on the ability of OCVs to address concerns about the nature and depth of the feedback they provide.

4.13 The following table shows the number of visits made by the Community Visitors Scheme in its first nine months of operation (1995-96) and indicates that 56% of the total number of residential services were visited at least once<sup>75</sup>:

	Total Number of Residential Services	Total Number of Visits
Children and Young People	67	155
Children with a Disability	70	130
Adults with a Disability	514	572
Not classified	164	33
<b>Total</b>	<b>815</b>	<b>890</b>

4.14 The table below contains data on the number of visits conducted by OCVs in 2006-2007<sup>76</sup>:

Number of visits made by Visitors												
Target group	Number of services			Number of residents			Number of activity hours			Number of visits		
	04/05	05/06	06/07	04/05	05/06	06/07	04/05	05/06	06/07	04/05	05/06	06/07
Children & young people	119	96	107	263	246	213	1,231	921	1,040	363	414	370
Children & young people with disability	47	42	41	159	144	133	506	422	481	162	134	142
Children, young people & adults with a disability	26	22	18	236	125	71	340	316	180	76	109	54
Adults with disability (including boarding houses)	1,019	1,211	1,064	5,880	6,117	6,165	7,673	5,580	7,806	2,463	1,971	2,598
<b>Total</b>	<b>1,211</b>	<b>1,371</b>	<b>1,230</b>	<b>6,538</b>	<b>6,632</b>	<b>6,582</b>	<b>9,750</b>	<b>7,239</b>	<b>9,507</b>	<b>3,064</b>	<b>2,628</b>	<b>3,164</b>

<sup>74</sup> Submission Number 42, Office of the Ombudsman

<sup>75</sup> NSW Council on the Cost and Quality of Government, Performance Reports, Community and Social Services 06.01

<sup>76</sup> Official Community Visitors Annual Report 2006-2007, page 27

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- 4.15 The Committee received evidence from the Office of the Ombudsman indicating that roughly 85% of residential services received at least one visit from an OCV in 2006-2007<sup>77</sup>.
- 4.16 The Council of Social Service of NSW indicated in their submission to the Committee that there are concerns about the low numbers of OCVs and in turn the infrequency with which visits are conducted, particularly to disability services<sup>78</sup>. This issue was explored with an official community visitor at the public hearing on 13 March 2008:
- Ms SYLVIA HALE:** ...It appears that around three hours per service would be the norm and at times more than a year passes between visits. Does that correspond with your experience?
- Ms SHAW:** Yes, absolutely. I would say that one of the reasons for that is that there are not enough community visitors. The scheme itself, I think, is much smaller than it needs to be.
- 4.17 The Disability Council of NSW also indicated that more frequent and detailed visiting arrangements for OCVs would be beneficial<sup>79</sup>.
- 4.18 There is a strong case for increasing the number of services receiving at least one visit per year from an OCV. This would require additional resources. To this end, the Committee recommends:

**RECOMMENDATION 13:** That the resources of the Official Community Visitors program be increased to facilitate a greater number of visits taking place.

- 4.19 An expansion to the OCV program would enable a greater number of visits to take place thereby ensuring a greater degree of monitoring, enhanced opportunities to resolve potential complaints and an increase in the other benefits currently provided by the program.

### Definition of visitable services

- 4.20 Section 8 of CS-CRAMA defines a visitable service as:
- (a) an accommodation service provided by the Department of Community Services or the Department of Ageing, Disability and Home Care, or by a funded agency where a person using the service is in the full-time care of the service provider, or
  - (b) a residential centre for handicapped persons, or
  - (c) a service prescribed by the regulations as a visitable service.
- 4.21 Submissions received by the Committee argued that the definition should be amended to expand the range of visitable services. The Council on the Ageing advocated OCVs visiting older people in informal or part-time care arrangements<sup>80</sup>.
- 4.22 The Multicultural Disability Advocacy Association also advocated expanding the definition of a visitable service:

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<sup>77</sup> Office of the Ombudsman, Answers to Questions Taken on Notice

<sup>78</sup> Submission Number 32, Council of Social Service of NSW

<sup>79</sup> Submission Number 40, Disability Council of NSW

<sup>80</sup> Submission Number 25, Council on the Ageing

...it is especially important to people from NESB with disability that the definition of a 'visitable service' be expanded to take into account various foster care arrangements often found in NESB communities.<sup>81</sup>

- 4.23 The views of the Office of the Ombudsman in relation to the possible expansion of the definition of a visitable service were sought at the public hearing on 18 March 2008:

In some cases, as we have indicated in our submission, we would argue that that would be a benefit, particularly given some of the new accommodation models and particularly in situations where the lessee of leased accommodations is actually the person receiving care, so technically it is a private home situation but they are actually under full-time care. That sort of situation would seem to fit very comfortably within the notion of what ought to be a visitable service. There are problems around it, as we have identified with the legal advice we have received.

- 4.24 These problems also relate to foster care arrangements being included in the definition of a visitable service:

...that raises a very significant issue and one that from a positive perspective needs to be addressed by Parliament. The notion of Official Community Visitors entering private homes is clearly a significant expansion of the concept of visitable services as we currently know it. It is happening in Queensland, as I referred to earlier. But that program, given the sheer number of foster carers, requires a very, very significant increase in the number of Official Community Visitors and funding to support them.

- 4.25 Two community visitor programs operate in Queensland. One is run by the Department for Justice and Attorney-General and focuses on protecting the interests of adults who have impaired capacity or a mental or intellectual impairment and cannot make their own decisions and who live in the following facilities:

- an authorised mental health facility with in-patient services
- a hostel registered as 'level three' supported accommodation, or
- a residence with other people who also receive support from Disability Services Queensland or a paid service provider<sup>82</sup>.

- 4.26 The other is run by the Queensland Commission for Children and Young People and Child Guardian. This program is of particular interest to the Committee because if the definition of a visitable service were expanded to include foster care settings then the NSW model of community visiting would more closely resemble the Queensland model.

- 4.27 The program run by the Commission for Children and Young People and Child Guardian in Queensland involves community visitors making visits to children in two main types of accommodation. They include visitable homes, where children in the custody or guardianship of the Director-General of the Department of Child Safety are placed with someone other than their parents, and visitable sites, ie government-funded residential facilities. The Queensland *Commission for Children and Young People and Child Guardian Act 2000* defines visitable services as:

- (a) a child residing at a residential facility or detention centre, or at an authorised mental health service under the *Mental Health Act 2000*;

<sup>81</sup> Submission Number 18, Multicultural Disability Advocacy Association

<sup>82</sup> Department of Justice and Attorney-General Queensland website <http://www.justice.qld.gov.au/71.htm> date accessed 8/4/2008

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- (b) a child in the custody or guardianship of the chief executive (child safety) under the *Child Protection Act 1999* who, under section 82 of that Act, has been placed in the care of an approved carer or someone else other than a parent of the child;
  - (c) a child who, under a care agreement under the *Child Protection Act 1999*, has been placed in the care of someone other than a parent of the child.
- 4.28 Discussions with the Queensland Commission for Children and Young People and Child Guardian indicate that at present a total of 180 community visitors visit approximately 5000 children in more than 2500 visitable homes. There are 12 zone coordinators and 22 central office staff who support community visitors in their work. The budget for the program this financial year is \$11 million<sup>83</sup>.
- 4.29 The Committee is of the view that there are grounds to justify the exploration of appropriate ways in which the definition of a visitable service may be expanded. However, pending the report of the Wood Special Commission of Inquiry into Child Protection Services in NSW, the Committee does not wish to make any specific recommendations at this stage. These issues may warrant further examination by the Committee in light of any relevant findings in the Wood Special Commission of Inquiry.

### **Culturally specific Official Community Visitor positions**

- 4.30 AbSec recommended the creation of designated OCV positions to enable Aboriginal OCVs to visit Aboriginal services<sup>84</sup>. The Committee appreciates that while this may be preferable it may not be possible.
- 4.31 The Multicultural Disability Advocacy Association do not take the same position as AbSec in relation to culturally specific positions for OCVs. Instead they support the active recruitment of OCVs from different ethnic backgrounds to reflect the cultural diversity of the general community<sup>85</sup>. Two peak bodies, the Council of Social Service of NSW and the Disability Council of NSW, support the targeted recruitment of OCVs from Aboriginal and other culturally and linguistically diverse groups<sup>86</sup>.
- 4.32 The Committee explored this issue with the Office of the Ombudsman, which outlined efforts undertaken to recruit OCVs from a diverse range of backgrounds and indicated that no barriers prevented the recruitment of OCVs from Aboriginal or other culturally and linguistically diverse backgrounds:
- Preference is given to people who have:
- Aboriginal or CALD background;
  - an understanding of accountability and reporting mechanisms;
  - a willingness to travel across NSW; and
  - knowledge about the needs of people with disabilities and/or children in care.
- These criteria and preferences are publicly stated in advertisements we use to recruit new OCVs. Attachment 6 is a copy of an advertisement that was placed in several newspapers in 2007. We advertise in the Sydney Morning Herald, regional newspapers

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<sup>83</sup> Email from Mr Dennis Palmer, Manager Operations, Community Visitor Program, The Commission for Children and Young People and Child Guardian Queensland, dated 18 April 2008

<sup>84</sup> Submission Number 38, AbSec

<sup>85</sup> Submission Number 18, Multicultural Disability Advocacy Association

<sup>86</sup> Submission Number 40, Disability Council of NSW, Submission Number 32, Council of Social Service of NSW

and specifically target the Koori Mail. We also placed pointer advertisements in the community section of the Sydney Morning Herald.

We believe that our OCV requirements facilitate applications from CALD and Aboriginal and Torres Strait Islander communities, people with disabilities and people with limited educational or professional experience.<sup>87</sup>

- 4.33 The Committee is satisfied that the Office of the Ombudsman appreciates and has responded to the importance of a diverse and representative range of backgrounds among OCVs and is satisfied that such efforts will continue in the future.

**RECOMMENDATION 14:** That the Office of the Ombudsman continue to actively recruit Official Community Visitors from Aboriginal and other culturally and linguistically diverse backgrounds.

## Identification of Official Community Visitors

- 4.34 New Era Independent Living Centre Inc raised the issue of service providers being able to verify the authenticity of individuals acting as an Ombudsman's delegate:

In the normal course, employees of service providers are charged with ensuring that not only are clients' interests protected but that personal information and records concerning them are kept completely confidential. In our view it is consequently very important that the credentials of the Ombudsman's delegate are clear and unambiguous. We would like to see Section 17 amended so that the nature and form of the authority/identification of persons acting as delegates acting for the Ombudsman are clearly described.

- 4.35 An Official Community Visitor provided the Committee with the following evidence about the use of identification cards at its hearing:

We will arrive at a house, introduce ourselves if we are not already known to the staff—often times we will not be because they are different when we go—and ensure that they understand what our role is. We carry an identification card that sets out on the back of it exactly what we are allowed to do in terms of talking to residents and looking through paperwork and so forth.<sup>88</sup>

- 4.36 The Committee also clarified the issue with the Office of the Ombudsman. Their response indicates that Ombudsman officers and Official Community Visitors carry identification when exercising powers of entry to premises<sup>89</sup>.

- 4.37 The Committee is satisfied that the current practices for identifying OCVs are sufficient.

## Enforceability of access and entry powers

- 4.38 The Ombudsman suggested that the ability of OCVs to utilise their access and entry powers under CS-CRMA, particularly when visiting licensed boarding houses, was compromised by legislative weaknesses in the Act:

A number of situations have arisen in our work that have highlighted some weaknesses in the legislation, with regard to the potential enforcement of OCV's access and entry

<sup>87</sup> Office of the Ombudsman, Answers to Questions Taken on Notice

<sup>88</sup> Transcript of evidence 13/03/2008, see page 108 (Appendix 3)

<sup>89</sup> Office of the Ombudsman, Answers to Questions Taken on Notice

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powers and also the power to inspect documents. This has particularly been the case in the licensed residential centres (LRC – boarding houses).<sup>90</sup>

- 4.39 In order for the powers of OCVs to be fully operational and consistent with the powers of Ombudsman staff under section 37(1) of the Ombudsman Act the Committee considers it necessary to amend CS-CRAMA to impose sanctions for obstructing, hindering or restricting OCVs in the exercising of their functions.

**RECOMMENDATION 15:** That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to impose sanctions for obstructing, hindering or restricting Official Community Visitors in the exercise of their functions.

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<sup>90</sup> Submission Number 42, Office of the Ombudsman



## Chapter Five - Information sharing

- 5.1 In order to fulfil their legislative obligations, information must be shared between the Office of the Ombudsman and agencies such as the Commission for Children and Young People, DADHC, DoCS and the Children's Guardian. The issues related to information sharing between the Office of the Ombudsman and each of the agencies listed above will be dealt with in the coming paragraphs.

### The Children's Guardian

- 5.2 The Children's Guardian, in their submission, raised information sharing between the Children's Guardian and the Office of the Ombudsman as an issue requiring the Committee's attention. However, at the public hearing on 11 March 2008 the Children's Guardian informed the Committee that:

Since the submission to the Committee, further discussions [with the Office of the Ombudsman] have occurred. I am now satisfied that our broad function of promoting the best interests of children in out-of-home care allows relevant information to be disclosed to the Ombudsman under section 254 of the *Children and Young Persons (Care and Protection) Act 1998*. I understand that the Ombudsman is satisfied that relevant information can be disclosed to the Children's Guardian under section 34 of the Ombudsman Act and section 24 of the Community Services (Complaints, Review and Monitoring) Act.<sup>91</sup>

### The Commission for Children and Young People

- 5.3 The submission made by the Office of the Ombudsman raised the issue of information sharing between members of the Child Death Review Team (a research team convened by the Commissioner for Children and Young People) and the Office in relation to the Ombudsman's reviewable deaths function under part 6. It is the Ombudsman's view:

...that it should be placed beyond doubt that members of the Child Death Review Team have a duty to provide the Ombudsman with information and assistance relevant to our Part 6 function.<sup>92</sup>

- 5.4 Two legislative amendments were suggested: either listing the Child Death Review Team and the Commissioner for Children and Young People under section 38 of CS-CRAMA or amending the *Commission for Children and Young People Act 1998* so that:

...the Convenor of the Child Death Review Team may disclose information relevant to our death review function generally, rather than only concerning the death of a particular child.<sup>93</sup>

- 5.5 The Commissioner for Children and Young People took a question on notice on this issue at the public hearing on 13 March 2008. It was the Commissioner's opinion that the current legislative provisions are sufficient and that they give the Commissioner the ability to provide to the Ombudsman any records that a member of the Child

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<sup>91</sup> Transcript of evidence, 11/3/2008, see page 87 (Appendix 3)

<sup>92</sup> Submission Number 42, Office of the Ombudsman

<sup>93</sup> *ibid*

Information sharing

Death Review Team may obtain in their capacity as a member of that team. In summary:

I do not believe that any benefit would result from extending the obligations in section 38 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to Child Death Review Team members.

- 5.6 Nevertheless, members of the Child Death Review Team have a duty to provide the Ombudsman with information and assistance, and the Committee considers that CS-CRAMA should be amended to put this obligation beyond doubt.

**RECOMMENDATION 16:** That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to put beyond doubt that members of the Child Death Review Team have a duty to provide the Ombudsman with information and assistance.

## Official Community Visitors

- 5.7 Several organisations requested greater access to information regarding the work of the OCVs. At the public hearing on 11 March 2008 the Children's Guardian said it was the major issue raised in her office's submission. She went on to say that:

The Association of Children's Welfare Agencies and a number of out-of-home care agencies have suggested there would be value in integrating official community visitor feedback into the accreditation process. Whilst I have power to require the out-of-home care agencies provide me with community visitor reports, I am concerned that decentralising responsibility for providing reports may result in some relevant reports not being passed on.<sup>94</sup>

- 5.8 The Children's Guardian also raised the issue of procedural fairness for service providers the subject of a report by an OCV which is then passed onto an accreditation agency:

As with all information considered by my office, visitor information will not be taken into account before affording out-of-home care agencies full procedural fairness. My focus is to work with out-of-home care agencies in improving the quality of their services and by giving them a chance to address substantive concerns. If an agency fails to address those concerns then, and only then, would I consider other action such as imposing conditions on their accreditation. In turn, relevant material in accreditation reports, annual progress reports and case file audit reports prepared by my office could assist and inform official community visitors on particular issues to focus on when visiting out-of-home care services. The new memorandum of understanding with the Ombudsman can address how this information could be provided to official community visitors, subject to appropriate confidentiality safeguards being put in place.

- 5.9 The Children's Guardian advocated for legislative change to CS-CRAMA to facilitate the sharing of reports by OCVs with the Children's Guardian.
- 5.10 DADHC requested greater access to information about investigations conducted by the Office of the Ombudsman and visits by OCVs:
- In regard to responsibility of the Ombudsman, this could be expanded to include providing reports for Departments that fund services on visits/investigations and concerns held by the Ombudsman regarding service providers.

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<sup>94</sup> Transcript of evidence, 11/3/2008, see page 88 (Appendix 3)

- 5.11 At the public hearing held on 11 March 2008 the DADHC Director-General clarified this in his evidence:
- We also believe that there is an opportunity where the Ombudsman does a review and they receive those findings—it could be of a non-government organisation or one of our own—that we can actually share that information a bit easier, but that is something that really can be worked through between the agency and the Ombudsman's Office itself.
- 5.12 The Committee is satisfied that in relation to the sharing of information about investigations conducted by the Office of the Ombudsman that this level of information sharing can be achieved through negotiation and administrative arrangements rather than by way of legislative amendments.
- 5.13 This issue was explored with an Official Community Visitor during the public hearing on 13 March 2008:
- CHAIR:** There have been suggestions made in submissions to the Committee for your reports to be fed back to funding bodies. Would you be in favour of that?
- Ms SHAW:** That is a difficult one. I think it would really confuse our role if our reports were to go back to funding bodies. I say specifically "our reports" because the focus of our work is a local-level resolution. We might raise an issue and our aim is to get it sorted out, it is not to get that agency into trouble, for example. However, there are issues from time to time that I desperately would like to share with funding bodies and other accrediting agencies, for example. That would be in a situation where I have been raising issues with an agency for a considerable period and I can see that either they have not got the capacity or willingness to address it. In those situations I would like to be able to share information but it would not be through sharing my reports.
- CHAIR:** Do you think there would be negative consequences for the resolution of issues of concern if those reports were made available?
- Ms SHAW:** It is difficult to say. I am sure there are people who would be concerned that that may happen. The way that it works at the moment—and it was interesting to note the last speaker, talking about how the merger has gone between the Community Services Commission and the Ombudsman's Office—I did work at the Community Services Commission in 1995, when it was first set up, for six months as a complaints officer. I do not want to offend anybody who was part of that but I know when I left after that six months "toothless tiger" was a term that was being used a lot. Now, I know as a visitor going out to visit that just the knowledge that I have the ability to take information to either the Ombudsman or the Minister gets people doing their work. About sharing information, you need to be very careful and it needs to be looked at very closely.
- 5.14 The Committee concurs with Ms Shaw when she suggested that the issue needs to be looked at very carefully and that a great degree of care is needed to ensure that OCVs remain focussed on resolving issues where possible and appropriate at the local level in conjunction with service providers, and that service providers and OCVs enjoy an open and frank relationship conducive to improving services and resolving complaints in a collaborative fashion.
- 5.15 It is the Committee's view that legislative amendments may be counter-productive and have the effect of making the work of OCVs more difficult. Currently OCVs are able to report directly to the Minister. This provides an avenue through which serious concerns about service providers can be raised and mitigates the need for OCVs to provide reports to funding and accreditation bodies. The Committee is therefore not, at this point, advocating for legislative amendments to CS-CRAMA in this area.



## Chapter Six - Jurisdiction

- 6.1 The Committee received evidence from several organisations advocating for an expansion of the jurisdiction of the community services division of the Office of the Ombudsman. Particular target groups and settings not currently within the jurisdiction of the Ombudsman include: people in part-time care, older people being provided with informal care and children living in informal foster care arrangements

### Older people

- 6.2 Older people were identified by the Council on the Ageing (COTA) as a group deserving of greater protections. COTA drew attention to the lack of legislative provisions for the mandatory reporting of elder abuse in Australia<sup>95</sup>. COTA suggested amendments to include a specific reference to older people in CS-CRAMA<sup>96</sup>.
- 6.3 The Office of the Ombudsman indicated that:  
Regarding mandatory reporting of elder abuse, we would note that any regime of this kind would need to be accompanied by significant investigative resources, particularly as elder abuse would cover both criminal and non criminal conduct.<sup>97</sup>

### Community services delivered outside institutional settings

- 6.4 The Disability Council of NSW urged the Committee in their submission:  
...to consider means by which the protections afforded to people with disability in most human services could be extended to all people living in circumstances in which they are dependent (to small or large amounts) on the 'community care' services of others.<sup>98</sup>
- 6.5 The types of settings in which community care services are now delivered have changed considerably since the legislation governing complaints about community services was first developed. As described in Chapter Two, the number and proportion of services being delivered in the community (including people's homes) has grown considerably. This raises the issue of how to effectively monitor and conduct investigations into community services. This issue has been partly addressed earlier in Chapter Four in the discussion of a possible expansion of the definition of a visitable service. However, the issue cannot be dealt with exclusively by the OCV program.

### Proposed changes

- 6.6 People with Disability Australia Incorporated discussed the possibility of establishing a vulnerable persons' jurisdiction, thereby broadening the jurisdiction of the Office of the Ombudsman. Within the scope of the review, the Committee did not receive sufficient evidence on this matter to enable it to form a view about the merits of this proposal.

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<sup>95</sup> Submission Number 25, Council on the Ageing

<sup>96</sup> *ibid*

<sup>97</sup> Office of the Ombudsman, Answers to Questions Taken on Notice

<sup>98</sup> Submission Number 40, Disability Council of NSW

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- 6.7 People with Disability Australia proposed legislative amendments to broaden the range of issues that the Ombudsman can investigate to include:  
...the substance of the matter including, but not limited to, any relevant policy and procedure.<sup>99</sup>
- 6.8 The Committee explored this issue with the Office of the Ombudsman. The response indicated that in their view:  
With our broad review and investigative powers under CS-CRAMA, there are no legislative impediments to us examining relevant policies and procedures.<sup>100</sup>

## Boarding houses

- 6.9 People with disabilities live in both licensed and unlicensed boarding houses. Section 3(a) of the *Youth and Community Services Act 1973* provides that a boarding house must be licensed if two or more people with a disability live at the premises. Licensed boarding houses provide a higher level of care to residents than unlicensed boarding houses<sup>101</sup>. A mix of private owners and non-government organisations operate boarding houses in NSW<sup>102</sup>.
- 6.10 In reply to a question from the Budget Estimates Committee in October 2007, the Minister for Ageing, Minister for Disability Services indicated that:  
There are 50 licensed boarding houses in NSW with a total licensed capacity of 959 beds. The Department does not routinely collect data on the total number of people with a disability residing in licensed boarding houses, unless they are in receipt of a direct service. This data was, however, collected in August 2007 and is subject to change without notice to the Department.  
In August 2007, a total of 855 people were reported as residing at those premises, with a total of 807 people identified as having a disability.  
The status of residents in unlicensed boarding houses is not retained by the Department...  
The Department supported 22 people to relocate from unlicensed boarding houses into alternative accommodation options including:  
Department of Housing (11) and Office of Community Housing (1) accommodation;  
Residential aged care facilities (4);  
Group homes (3); and  
Family settings (3).  
The Department inspected 26 unlicensed boarding houses in response to complaints that they were operating in breach of the *Youth and Community Services Act 1973*.  
No Departmental officers have been refused entry to carry out inspections in unlicensed boarding houses for the purpose of determining whether or not premises were in breach of the *Youth and Community Services Act 1973*...  
The Department referred 14 unlicensed premises to local government authorities resulting in a number of orders to improve boarding house conditions.

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<sup>99</sup> Submission Number 24, People with Disability Australia Incorporated

<sup>100</sup> Office of the Ombudsman, Answers to Questions on Notice

<sup>101</sup> Karras, M, E McCarron, A Gray & S Ardasinski, *On the edge of justice: the legal needs of people with a mental illness in NSW*, Law and Justice Foundation of NSW, Sydney, 2006, page 68

<sup>102</sup> Transcript of Evidence, Public Hearing 11 March 2008, Mr Brendan O'Reilly, Director-General NSW Department of Ageing, Disability and Home Care

The Department did not refer any licensed boarding houses to local government authorities for possible breaches of health, building and fire safety standards.<sup>103</sup>

- 6.11 DADHC manage the licensing of boarding houses. The Director-General of the department, Mr Brendan O'Reilly, indicated at the public hearing on 11 March 2008 that there is an issue with the way the licensing system operates:
- When we talk about licensed boarding houses, we are virtually saying that if there are two or more people with intellectual disability within this boarding house, we have to have a licensing arrangement, but it is almost self-notification with regards to that. That is an issue.
- 6.12 The Committee also learnt from Mr O'Reilly at the hearing that DADHC can revoke licenses if serious issues emerge during the monitoring and reviewing of licensees that are not satisfactorily addressed<sup>104</sup>.
- 6.13 Licensed boarding houses also come under the jurisdiction of the Office of the Ombudsman:
- In terms of people with disabilities in boarding houses, licensed boarding houses or licensed residential centres, as they are referred to as well, are service providers and the providers of community services. As such, they fall within our complaints jurisdiction already. Boarding houses also provide residential care and, as such, they fall under part 6 of our reviewable death jurisdiction. They also are able to be visited by Official Community Visitors.<sup>105</sup>
- 6.14 When asked for their position in relation to boarding houses, the Office of the Ombudsman indicated that:
- In June 2006 we tabled a Special Report to Parliament entitled *DADHC: Monitoring standards in boarding houses*. In that report we spoke of our concerns around the enforceability of certain licensing conditions and problems in relation to unlicensed boarding houses. As the Youth and Community Services Act has not yet been amended, these issues remain current.
- 6.15 The adequacy of protections for this highly vulnerable group is a complex issue within the jurisdiction of several organisations that each has differing roles and responsibilities. One of the main legislative deficiencies is in the area of tenancy protections, where residents of both licensed and unlicensed boarding houses are susceptible to arbitrary eviction<sup>106</sup>. This compounds the reluctance to complain due to fear of retribution (discussed in Chapter Two of this report) by adding a fear that complaints could lead to eviction<sup>107</sup>.
- 6.16 A submission to the Committee from the Coalition for Appropriate Supported Accommodation for People with Disabilities (CASA) outlined serious concerns about the adequacy of protections for people with a disability living in licensed boarding houses. The submission referred specifically to the organisation's experience in 2002, involving the lodging of a complaint with the Ombudsman concerning

<sup>103</sup> Legislative Council Questions and Answers No. 32— Wednesday 28 November 2007, pages 1213-1214

<sup>104</sup> Transcript of evidence, Public Hearing 11/3/2008, DADHC, see page 65 (Appendix 3)

<sup>105</sup> Transcript of evidence, Public Hearing 18/3/2008, Office of the Ombudsman, see page 151 (Appendix 3)

<sup>106</sup> Karras, M, E McCarron, A Gray & S Ardasinski, "On the edge of justice: the legal needs of people with a mental illness in NSW", Law and Justice Foundation of NSW, Sydney, 2006, page 68

<sup>107</sup> NSW Ombudsman, Report under Section 26 of the Ombudsman Act. Department of Ageing, Disability and Home Care. Investigation of the Monitoring and Enforcement of Licensing Conditions for Residential Centres for Handicapped Persons, NSW Ombudsman, Sydney, 2004, para 8.13.

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unsatisfactory standards in licensed boarding houses and what they referred to as the:

...failure of the Department (DADHC) to proceed with prosecutions of operators who seemed in clear breach of the Act.<sup>108</sup>

- 6.17 In response to the issue the Ombudsman released its report, *DADHC: Monitoring Standards in Boarding Houses*. The Ombudsman referred in his findings to legal advice which cast doubt on the powers of the department to enforce the relevant legislation.
- 6.18 CASA expressed the following view in relation to the Ombudsman's report:  
CASA has appreciated the manner in which the Ombudsman has dealt with this important matter. However, we would also draw the attention of your Committee to the way in which such vital reports receive little attention once they are tabled in Parliament.<sup>109</sup>
- 6.19 This issue has a long history. CASA cite a 1993 report by the task force on private "for profit" hostels as the first report to call for new legislation in this area<sup>110</sup>.
- 6.20 The Committee appreciates that people with disabilities living in both licensed and unlicensed boarding houses are highly vulnerable and are therefore deserving of rigorous protection. The adequacy of the current regime goes directly to the ability of people with disabilities living in boarding houses to utilise the services provided by the Office of the Ombudsman under CS-CRAMA. In addition to Recommendation 15 which should make the powers of OCVs in relation to licensed boarding houses enforceable, the Committee is of the view that consideration be given to increasing the protections afforded to people with disabilities living in boarding houses in NSW.

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<sup>108</sup> Submission Number 3, CASA

<sup>109</sup> *ibid*

<sup>110</sup> *ibid*



## Chapter Seven - The appeals process

### Legislative provisions for appeals to the NSW Administrative Decisions Tribunal

- 7.1 Part 5 of CS-CRAMA provides for appeals of the following decisions to the Administrative Decisions Tribunal:
- (a) a decision that is a reviewable decision under section 193 of the *Adoption Act 2000*, section 36 of the *Adoption Information Act 1990*, section 20 of the *Disability Services Act 1993* or section 245 of the *Children and Young Persons (Care and Protection Act 1998*,
  - (b) a decision made by a person or body under the community welfare legislation where the legislation expressly provides that the decision is a reviewable decision for the purposes of this section,
  - (c) a decision that was made by a relevant decision maker and is of a class prescribed by the regulations for the purposes of this section,
  - (d) a decision made by any State Minister, any Commonwealth Minister or any public authority, not being a relevant decision maker, if it is within a class of decisions that, with the consent of the Minister or public authority, is prescribed by the regulations for the purposes of this section.
- 7.2 The details of the legislative provisions referred to in section 28(1)(a) Part 5 of CS-CRAMA are listed below:

<i>Section 193 of the Adoption Act 2000</i>	
(a)	a decision to refuse an application for accreditation under section 13,
(b)	a decision in relation to the adoption services that may be provided by an adoption service provider accredited under section 13,
(c)	a decision to impose a condition on the accreditation of an adoption service provider under section 17,
(d)	a decision to revoke or suspend the accreditation of an adoption service provider, other than a decision to revoke or suspend requested by the adoption service provider,
(e)	a failure or refusal to supply any adoption information to a person, or to authorise the Registrar or another information source to do so under Chapter 8,
(f)	a failure or refusal to enter the name of any person in a register under Chapter 8,
(g)	a failure or refusal to arrange a reunion or to take any action to locate a person under Part 5 of Chapter 8,
(h)	a failure or refusal to approach a person who has lodged a contact veto in accordance with a request made under section 161,
(i)	a decision made under or for the purposes of this Act by the relevant decision maker that is a decision within a class of decisions prescribed by the regulations for the purposes of this section.

*Section 36 of the Adoption Information Act 1990*

- (a) a failure or refusal to supply any birth certificate or prescribed information to a person, or to authorise the Registrar or another information source to do so under this Act,
- (b) a failure or refusal to enter the name of any person in a register under this Act,
- (c) a failure or refusal to arrange a reunion or take action to locate a person under Part 4,
- (d) a failure or refusal to approach a person who has lodged a contact veto in accordance with a request made under section 24,
- (e) a decision made under or for the purposes of this Act by the Director-General that is a decision within a class of decisions prescribed by the regulations for the purposes of this section.

*Section 20 of the Disability Services Act 1993*

- (a) a decision approving the provision of financial assistance if the approval to the provision of the assistance should not have been given under section 10 (2) because the provision of the assistance will not conform with the objects of this Act and the principles and applications of principles set out in Schedule 1,
- (b) a decision to provide financial assistance to an eligible organisation in relation to the provision of designated services if the terms and conditions on which the assistance is provided to the organisation do not comply with section 12,
- (c) a decision to provide financial assistance to a person or eligible organisation in relation to the conduct of an approved research or development activity if the terms and conditions on which the assistance is provided to the person or organisation do not comply with section 13,
- (d) a decision not to conduct a review under section 15 or to conduct a review that is not in accordance with the requirements of that section,
- (e) a decision to terminate future instalments of approved financial assistance if those instalments have been terminated otherwise than in accordance with section 16,
- (f) a decision belonging to such class of decisions as may be prescribed by the regulations.

*Section 245 of the Children and Young Persons (Care and Protection Act 1998*

- (a) a decision of the relevant decision-maker to authorise or not to authorise a person as an authorised carer, to impose conditions of an authorisation, or to cancel or suspend a person's authorisation as an authorised carer,
- (b) a decision of the relevant decision-maker to accredit or not to accredit a department or organisation as a designated agency,
- (c) a decision of the relevant decision-maker to grant to, or to remove from, an authorised carer the responsibility for the daily care and control of the child or young person,
- (d) a decision of the Minister to grant an employer's authority or to impose a condition on, to revoke or vary any condition of, to impose a further condition on or to suspend or revoke any such authority,
- (e) a decision of the Minister to declare under section 221 (2) that a person is taken to be the employer of a child,
- (f) a decision of the Minister to grant an exemption under section 224 (1), to limit the extent of any such exemption or to impose conditions on any such exemption,

- (g) a decision of the Director-General to transfer a child protection order to a participating State under Division 1 of Part 2 of Chapter 14A,
- (h) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations,
- (i) a decision of the Minister or the Director-General under section 246 with respect to the accommodation of a child or young person,
- (j) a decision of a relevant decision-maker to refuse to make a decision referred to in this section that the decision-maker is empowered and has been requested to make,
- (k) a decision of a designated agency to disclose high level identification information concerning the placement of a child or young person,
- (l) a decision of a designated agency to refuse to disclose information concerning the placement of a child or young person.

7.3 Decision makers are, according to the Act:

- (a) the Minister for Community Services,
- (b) the Minister for Ageing,
- (c) the Minister for Disability Services,
- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Department of Ageing, Disability and Home Care,
- (f) service provider (other than an authorised carer within the meaning of the Children and Young Persons (Care and Protection) Act 1998).

7.4 The NSW Administrative Decisions Tribunal website provides the following summary of the class of decisions which it can review<sup>111</sup>:

- granting to or removing from an 'authorised carer' the responsibility for the day-to-day care and control of a child or young person
- authorising or not authorising a person to be an 'authorised carer', imposing conditions on an authorisation or cancelling or suspending a person's authorisation
- providing financial assistance where the provision of assistance does not conform with the objects and principles of the Disability Services Act
- accrediting or refusing to accredit an adoption service provider or imposing conditions on their accreditation
- failing to provide information or assistance under the Adoption Act
- refusing to terminate the Minister's guardianship of a ward
- terminating a person's custody of a child who is a ward
- directing a licensee of a family day care children's service to remove the name of a family day carer from the register for the service
- suspending a family day care carer's name from the register for the service

<sup>111</sup> NSW Administrative Decisions Tribunal website

[http://www.lawlink.nsw.gov.au/lawlink/adt/ll\\_adt.nsf/pages/adt\\_community\\_services\\_divisiion#CSD1](http://www.lawlink.nsw.gov.au/lawlink/adt/ll_adt.nsf/pages/adt_community_services_divisiion#CSD1) date accessed 8/4/2008

## Difficulties appealing to the NSW Administrative Decisions Tribunal

- 7.5 It should be noted from the outset that the evidence the Committee received in this area relates exclusively to the problematic nature of appeals to the NSW Administrative Decisions Tribunal (ADT) against funding decisions made by the Minister for Disability Services.
- 7.6 Among the organisations who suggested that there are difficulties with appeals to the ADT was the Council of Social Service of NSW who reported in their submission that:  
Some disability advocates have raised issues around appeals to the Administrative Decisions Tribunal. They contend that in practice such appeals are not doable.<sup>112</sup>
- 7.7 The Disability Council of NSW made specific reference to difficulties in identifying whether appeals to the ADT regarding funding decisions by the Minister for Disability Services were permissible<sup>113</sup>. This ambiguity was said to be created by different interpretations of two pieces of legislation, namely s.20(a) of the *Disability Services Act 1993* and Part 5 of CS-CRAMA.
- 7.8 The submission made to the Committee by People with Disability Australia Incorporated concurred with the Disability Council of NSW and referred to their experience in taking appeals to the ADT regarding funding decisions by the Minister for Disability Services. Particular attention was drawn to the fact that:  
...an appeal that funding of a disability service is contrary to the *Disability Services Act 1993* can only be reviewed by the ADT if the Minister made a decision that can be reviewed.<sup>114</sup>
- 7.9 People with Disability Australia suggest that people with disability are unaware of their appeal rights, in part, it is claimed, because the NSW ADT does not advertise or promote its disability jurisdiction<sup>115</sup>.

## Summary of previous decisions

- 7.10 A review of the cases in the community services division of the ADT since the introduction of the Community Services Legislation Amendment Bill in 2002 reveals that a total of 95 matters were determined.
- 7.11 Just under half the matters before the ADT were related to decisions by the Commission for Children and Young People regarding declarations of prohibited persons (49%). The graph below summarises the main subject area of decisions of the ADT in the community services division over the last three years:

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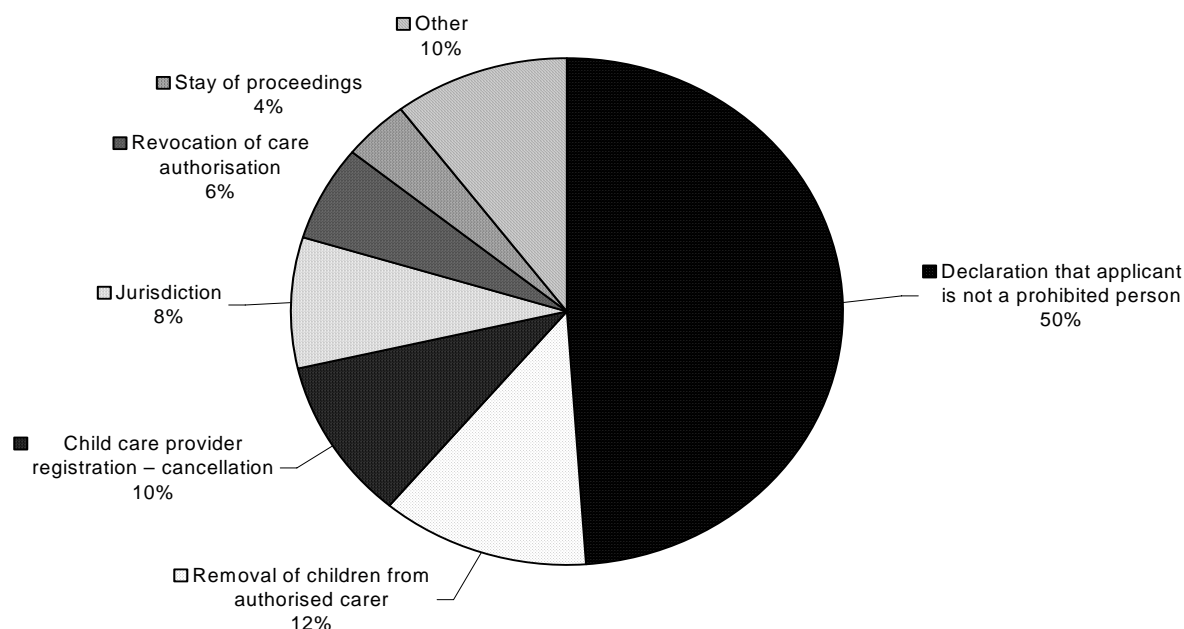
<sup>112</sup> Submission Number 32, Council of Social Service of NSW

<sup>113</sup> Submission Number 40, Disability Council of NSW

<sup>114</sup> Submission number 24, People with Disability Australia Incorporated

<sup>115</sup> *ibid.*

### Subject matter of cases NSW ADT 2005-2008



## NSW Administrative Decision Tribunal matter involving the Office of the Ombudsman

7.12 The matter of Ms Leonie Miller and the NSW Department of Community Services is to date the only matter involving the Office of the Ombudsman that has gone to the ADT. The Ombudsman outlined at the public hearing on 18 March 2008 that:

There is very little use of the Administrative Decisions Tribunal that involves or intersects with the Ombudsman. Indeed, only one matter involving us has ever gone to the Administrative Decisions Tribunal and we were not a party to those proceedings. The Administrative Decisions Tribunal's outcome of that was to enforce recommendations that we had made and to require the Department of Community Services to undertake, consistent with our recommendations, what it was that we had recommended.

7.13 Records indicate the reason for the decision:

Solicitor Leonie Miller was appointed by the Children's Court to act as legal representative for three children in care proceedings before the District Court of NSW. She complained to the NSW Ombudsman that officers of the Department of Community Services refused to permit her to interview the children. After investigating that complaint the Ombudsman recommended, among other things, that the Department issue an apology to Ms Miller and develop a policy and guidelines for staff on the role of a legal representative appointed to represent children in the care of the Department. Ms Miller contends that the Department did not implement those recommendations in full and now applies to the Administrative Decisions Tribunal for review of the Department's decision.<sup>116</sup>

<sup>116</sup> Miller v Director-General, Department of Community Services (No2) [2007] NSWADT 140

The appeals process

7.14 The ADT determined that the decision came within the scope of s.28 of CS-CRAMA and the following order was made<sup>117</sup>:

The decision not to fully implement the recommendations made by the Ombudsman as set out in his final report made under s 26 of the Ombudsman's Act 1974 dated 4 August 2006 is remitted to the Director-General, Department of Community Services under s 63(3)(d) of the *Administrative Decisions Tribunal Act 1997* with the following recommendations:

- (i) that Recommendation 2 made by the Ombudsman be adopted in full no later than 1 September 2007;
- (ii) that any revised guidelines and or policies arising from the implementation of Recommendation 2 be provided to all relevant staff including caseworkers;
- (iii) that staff be provided with further training on the role of a representative appointed under s 99 of the *Children and Young Persons (Care and Protection) Act 1998*"

7.15 While it is not directly relevant to the work of the Office of the Ombudsman, the Committee has identified that there is potential merit in ensuring consistency between section 20(a) of the *Disability Services Act 1993* and Part 5 of CS-CRAMA.

**RECOMMENDATION 17:** That the Minister for Disability Services consider clarifying the nature of decisions that can be appealed to the NSW Administrative Decisions Tribunal under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

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<sup>117</sup> *ibid*

## Chapter Eight - Issues arising

- 8.1 Three issues were raised in evidence to the Committee, which do not relate to the performance of the Office of the Ombudsman or to issues dealt with in other chapters. They include: the ability of one service provider to comply with community welfare legislation, the use of alternative dispute resolution and the role of advocates in dispute resolution.

### Community welfare legislation

- 8.2 Objective (f) in section 3 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* is:

to encourage compliance with, and facilitate awareness of, the objects, principles and provisions of the community welfare legislation.

- 8.3 The objects of the *Community Welfare Act 1987* are:

- (a) to promote, protect, develop, maintain and improve the well-being of the people of New South Wales to the maximum extent possible,
- (b) to promote the welfare of the family as the basis of community well-being,
- (c) to ensure the provision, to the maximum extent possible, of services for, and assistance to, persons disadvantaged because of:
  - (i) lack of adequate family or social support,
  - (ii) personal or family problems that inhibit adequate social functioning,
  - (iii) the breakdown of the family as a social unit,
  - (iv) lack of adequate food, shelter or other basic necessities,
  - (v) physical or intellectual impairment,
  - (vi) their being members of an ethnic group which has inadequate access to services or resources available in the community,
  - (vii) age, whether young, advanced or other,
  - (viii) lack of information about or access to services or resources available in the community, or
  - (ix) their residing in places which lack basic services essential to the proper functioning of those persons,
- (d) to promote the welfare of Aborigines on the basis of a recognition of:
  - (i) Aboriginal culture and identity,
  - (ii) Aboriginal community structures,
  - (iii) Aboriginal community standards,
  - (iv) the rights of Aborigines to raise and protect their own children, and
  - (v) the rights of Aborigines to be involved in the decision-making processes that affect them and their children,
- (e) to encourage the establishment of community welfare and other services necessary to promote, protect, develop, maintain and improve the well-being of persons,
- (f) to assist and encourage collaboration among persons and organisations engaged in the promotion of community welfare or the provision of community welfare services,
- (g) to promote and encourage research, education, instruction and training in matters relating to community welfare,

Issues arising

- (h) to promote and facilitate the provision by persons and organisations of services to complement any community welfare service,
- (i) to promote the involvement of the community in the provision of community welfare services and in the social development of the community, and
- (j) to co-ordinate the allocation of funds for community welfare services.

8.4 The *Community Welfare Act 1987* provides for: the development of community welfare (including general and disaster welfare) and social development, the establishment of committees and councils, and the functions belonging to the Minister and the Director General.

8.5 The Committee received one submission, from Aunties & Uncles Co-operative Family Project Ltd, directly related to this objective. That submission did not relate to the extent to which the Office of the Ombudsman either encouraged compliance with or facilitated awareness of community welfare legislation. Aunties & Uncles Co-operative Family Project Ltd referred to its ability to comply with community welfare legislation without the support of the Commission for Children and Young People in carrying out working with children checks on people who volunteer to the organisation<sup>118</sup>. It is understood that the organisation, which provides a mentoring service to children, is heavily reliant on volunteers. The submission outlined how:

These checks had been undertaken in partnership with the Department of Children's Services and had been in place for several years.<sup>119</sup>

8.6 The Committee raised the issue with the Commissioner for Children and Young People at a public hearing on 13 March 2008 and in response the Commissioner indicated that:

We have met with Aunties and Uncles. We can only operate within our legislation, and the legislation does not cover Aunties and Uncles for the background checking. They are required to fulfil the prohibited employment declarations. But they are not covered by the background checking aspect of the Working with Children check because they are not paid positions. Let me also say that Aunties and Uncles is one of the organisations that has really taken on board the Child Safe Child Friendly message and has structured its organisational practices to reduce risks to children. I think the benefit of that approach is perhaps borne out by the fact that they have had almost none, or they have certainly advised me when I asked them that they have very, very low numbers of their volunteers harming children.

8.7 The views of the Office of the Ombudsman on this issue were sought. The response indicated that:

Ideally we believe that it would be useful for the Commission for Children and Young People to conduct working with children checks (WWCCs) on volunteers. This is a large population of people who give freely of their time and make a significant contribution to many community service organisations. That said, for the most part, they have limited understanding of child protection issues and volunteer their time in contexts that provide opportunities to behave in ways that could be abusive to children.

In practice, we appreciate that conducting WWCCs for all volunteers who work in child related employment would be resource intensive and not necessarily commensurate with the estimation of risk. The benefit of screening all volunteers would not justify the huge resource commitment required to do so.

We believe however that the important consideration when determining who should be screened is the context in which that person will be working, rather than whether or not

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<sup>118</sup> Submission Number 19, Aunties & Uncles Co-operative Family Project Ltd

<sup>119</sup> *ibid.*



the person is a paid employee. This is the basis for determining which matters are required to be notified to the Ombudsman under Part 3A. As it stands, in some agencies, paid employees who have minimal contact with children are screened. On the other hand, volunteers who have unsupervised contact with vulnerable children for example, in mentoring programs, overnight respite care, or offer 'host family' arrangements to country or overseas students, are not currently screened. This is inconsistent considering the inherent risks associated with these types of contacts. We have raised this issue with the Commission for Children and Young People and are expecting to meet shortly.<sup>120</sup>

- 8.8 The Committee appreciates the nature of the concern raised by Aunties & Uncles Co-operative Family Project Ltd but do not have sufficient evidence to make a recommendation relating to this issue as part of this statutory review. In particular the Committee is not well enough informed to determine the extent of the risk posed by not conducting working with children checks on volunteers and how sufficient the completion of prohibited employment declarations are for meeting the obligations of the agency under community welfare legislation.

### Alternative dispute resolution

- 8.9 Section 3(d) of CS-CRAMA states that wherever reasonable and practicable, the resolution of complaints should be achieved through alternative dispute resolution. While the Committee broadly supports this principle, several concerns have been raised in submissions to the Committee about the use of alternative dispute resolution, particularly for complaints involving people with disabilities. The Council of Social Service of New South Wales refers to the alternative dispute resolution process as less formal than judicial proceedings but stressful for complainants with a disability. The Council of Social Service of New South Wales cite this as a barrier to people with disabilities making complaints:

In the case of people with disability the ADR approach may prove problematic; it has been suggested that the informal nature of mediation may, unless managed with integrity and skill, deliver poor outcomes given the unequal power relationship of the parties...

Another issue is whether there are skilled mediators able to undertake the work necessary for an effective ADR. Unless such mediators are readily available, even if there is an agreement to proceed to the ADR, there may be significant delays in resolving the complaint, compounding the stress and uncertainty for the complainant<sup>121</sup>.

- 8.10 AbSec in their submission to the Committee refer to a reluctance by DoCS to use external alternative dispute resolution service providers<sup>122</sup>. The Committee understands from AbSec that specialists in culturally appropriate alternative dispute resolution are sometimes necessary to ensure the resolution of a complaint by an indigenous person<sup>123</sup>. Given the potential benefit of an external party in the dispute resolution process and the scarcity of specialists in culturally appropriate dispute resolution within organisations it is important that external service providers are engaged where appropriate. Suggestions that this is not being done on a consistent basis are of concern.

<sup>120</sup> 14<sup>th</sup> General Meeting – Answers to Questions on notice – 18 March 2008

<sup>121</sup> Submission Number 32, Council of Social Service of New South Wales

<sup>122</sup> Submission Number 38, AbSec

<sup>123</sup> Public Hearing 13/3/2008

Issues arising

## The role of advocates

8.11 Advocates play an important role in assisting complainants in the resolution of complaints. In the community services sector the role of advocates can include addressing the power imbalance between complainants and providers of community services. It is important that community service providers respect the role of advocates in the complaints resolution process and that they facilitate the involvement of advocates when that is the wish of the complainants.

8.12 The Committee received evidence from AbSec about the particular barriers preventing indigenous people from making complaints about community services. In light of this it is especially important that agencies like AbSec who assist indigenous complainants in the resolution of complaints are able to participate fully in the process. AbSec indicated that they had experienced difficulties in participating in the complaints handling processes of DoCS:

...local CSC management have refused to discuss issues with AbSec staff. The managers usually claim privacy concerns and this continues even after the Aboriginal complainant has given permission to have AbSec negotiate on their behalf... It must be stated that these managers would appear to be in the minority and AbSec is unsure whether DoCS has any policy or procedural directives regarding complaint advocacy.<sup>124</sup>

8.13 AbSec attribute part of the reason for difficulties associated with participating in the complaints resolution process as advocates to a deficiency in CS-CRAMA. They recommend in their submission for a legislative amendment to correct this:

There would appear to be an anomaly in the Act, in that on occasions AbSec can act as an agent for an Aboriginal complainant when they are making a complaint to the Ombudsman under section 23 of the act:

### ***Who may make a complaint?***

*A community services complaint may be made by any person who demonstrates to the satisfaction of the Ombudsman that he or she has a genuine concern in the subject-matter of the complaint.*

AbSec can be obstructed on occasion from acting for the complainant in early stage complaint intervention with DoCs, even though **3 (1) (b) of the Act states**

*(b) to provide for the resolution of complaints ...[by].. persons advocating on behalf of such persons or families*

The Act is silent on **who** can act on behalf of disadvantaged groups in the initial phases of the complaints resolution process and **what** are legitimate reasons that the department/s can put forward for the disqualification of advocacy groups. Whilst on many occasions individual CSCs are willing to have AbSec advocate on behalf of Aboriginal complainants, it may be necessary to have an amendment to the act to ensure that DoCS does not have a perceived veto power over that proposed advocacy due to privacy concerns. This issue especially needs to be addressed if specific permission has been given to AbSec to act on behalf of the complainant. Indeed there may need to be an amendment to the Act to include a provision of compulsion on DoCS to allow independent agencies to advocate on behalf of disadvantaged groups.<sup>125</sup>

8.14 The Committee is of the view that it is necessary to ensure that the role of advocates in the complaints resolution process is assured. There is some ambiguity regarding the extent to which s.3(b) of CS-CRAMA ensures the inclusion of advocates within the complaints handling process:

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<sup>124</sup> Submission Number 38, AbSec

<sup>125</sup> *ibid*

To provide for the resolution of complaints about community services and programs, especially complaints by persons who are eligible to receive, or receive, those services, by families and by persons advocating on behalf of such persons or families.

and s.23(1):

A community services complaint may be made by any person who demonstrates to the satisfaction of the Ombudsman that he or she has a genuine concern in the subject-matter of the complaint.

provide a consistent approach to the involvement of advocates in the complaints resolution process. The Committee is of the view that the ambiguity in this regard should be resolved through legislative amendment to CS-CRAMA.

**RECOMMENDATION 18:** That the *Community Services (Complaints, Reviews and Monitoring) Act 1993* be amended to make clear that there is provision for the use of advocates by complainants in the complaints resolution process.



## Appendix 1 – List of submissions

<b>Submission No</b>	<b>Organisation</b>
1	Inner West Neighbour Aid Inc
2	New Haven Farm Home Ltd
3	CASA
4	Carers NSW
5	Dubbo Neighbourhood Centre Inc
6	Bellingen Shire Meals on Wheels
7	Nardy House Inc
8	Gosford City Council
9	Central West Community Care Forum Inc
10	Jobsupport
11	Care Connect Ltd
12	NSW Commission for Children and Young People
13	Jennings Lodge
14	New Era Independent Living Centre Inc
15	Confidential submission
16	Parkes Aged and Disabled Support Scheme
17	Sydney South West Area Health Service
18	Multicultural Disability Advocacy Association of NSW
19	Aunties & Uncles Co-operative Family Project Ltd
20	ACWA
21	Richmond Community Services Inc
22	Narrabri Home and Community Care Inc
23	Ability Incorporated Advocacy Service
24	People with Disability Australia Incorporated
25	COTA (NSW)
26	Confidential submission
27	NSW Women's Refuge Movement Resource Centre
28	Goulburn Family Support Service Inc
29	NSW Office for Children
30	Bathurst Emergency Accommodation Place Inc
31	Intellectual Disability Rights Service
32	Council of Social Service of New South Wales
33	Department of Ageing, Disability and Home Care
34	Hunter New England Area Health Service
35	Greater Southern Area Health Service
36	Maari Ma Health Aboriginal Corporation
37	Woolgoolga Neighbourhood Centre Inc
38	AbSec
39	Goori Home Modifications
40	Disability Council of NSW
41	Paraplegic and Quadriplegic Association of NSW
42	NSW Ombudsman



## Appendix 2 – List of witnesses

<b>Hrg date</b>	<b>Witness</b>	<b>Organisation:</b>
11/03/08	Mr Brendan O'Reilly, Director-General	NSW Department of Ageing, Disability and Home Care
	Ms Donna Rygate, Deputy Director-General, Strategy, Communication & Governance	NSW Department of Community Services
	Ms Kerryn Boland, Children's Guardian	NSW Office for Children
13/03/08	Mr Andrew Buchanan, Chairperson Mr Dougie Herd, Director	Disability Council of NSW
	Ms Rhondda Shaw, Official Community Visitor	Official Community Visitors Scheme
	Ms Alison Peters, Director	Council of Social Service of New South Wales
	Ms Janene Cootes, A/Executive Officer	Intellectual Disability Rights Service
	Mr Bill Pritchard, Executive Officer	AbSec
	Ms Elena Katrakis, Chief Executive Officer	Carers NSW
	Mr Matthew Bowden Ms Therese Sands Co-Chief Executive Officers (Acting)	People with Disability Australia Incorporated
	Ms Gillian Calvert, Commissioner	NSW Commission for Children and Young People
18/03/08	Mr Bruce Barbour, NSW Ombudsman Mr Steve Kinmond, Deputy Ombudsman (Community Services Division) & Community & Disability Services Commissioner	NSW Ombudsman





## Appendix 3 - Transcripts of proceedings

### HEARING 1

**NOTE:** The first hearing of the Statutory Review of the Community Services (Complaints, Reviews and Monitoring Act) 1993 took place on 11 March 2008 at Parliament House, Macquarie Street, Sydney.

**CHAIR:** I welcome everyone to today's public hearing which is being held as part of the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. This Act incorporated the Community Services Commission into the New South Wales Ombudsman's Office thus creating the community services division. Section 53 of the Act requires the Committee to review the Act and determine whether its policy objectives are valid and whether the terms of the Act remain appropriate for securing those objectives. The Committee is required to report on its review by 3 July 2008.

The Committee called for submissions on 20 July 2007 and it was from the information contained in those submissions that witnesses for today's public hearing and those on Thursday 13 March 2008 were called. Over these two days of public hearing the Committee will take evidence from a range of government agencies, peak bodies and a representative of the official community visitors scheme. The Committee will take evidence from the Ombudsman on Tuesday 18 March 2008. Today the Committee will take evidence from the Department of Ageing, Disability and Home Care, the Department of Community Services and the Office of the Children's Guardian.

**BRENDAN MICHAEL O'REILLY**, Director General, Department of Ageing, Disability and Home Care, Level 5, 83 Clarence Street, Sydney, sworn and examined:

**CHAIR:** The Committee has received a submission from your organisation. Is it your desire that that submission form part of your formal evidence?

**Mr O'REILLY:** Yes, it is.

**CHAIR:** Would you like to make an opening statement?

**Mr O'REILLY:** No thanks.

**CHAIR:** Would an expansion of the jurisdiction of the Ombudsman in relation to the policy and systematic issues be beneficial to the achievement of the policy objectives of the CRAM Act?

**Mr O'REILLY:** I think with the first merging of Community Services and the commission into the Ombudsman's office, obviously there are difficulties with any merger but it certainly worked effectively from the disability side of their roles and responsibilities.

**CHAIR:** Are people with disability living in boarding houses adequately protected by the current regime of monitoring and inspection?

**Mr O'REILLY:** I think the Ombudsman did a review into boarding houses. That came as a result of concerns expressed as my department amalgamated with home care services—what was formerly ADD, ageing and disability—and also the DOCS side of the disability equation. Boarding houses, I would say, fell off the department's agenda. The Ombudsman did an inquiry into that and we worked with the Ombudsman to re-establish teams for the monitoring purposes of residents of licensed boarding houses. That has proven to be very effective in that now we have a program of works for every boarding house to be monitored for the service standards and quality services to be reviewed, improved on, and action plans or part of plans for those services that we believe can improve their game.

**CHAIR:** One submission to the Committee stated that funding bodies are overly concerned with funded services having a complaints policy and that this fails to assess the performance of services in complaint handling. How effectively does the Department of Ageing, Disability and Home Care assess the performance of the services and funds in this area?

**Mr O'REILLY:** We do have what we call an integrated monitoring framework where all of our services are reviewed over a three-year period. That review incorporates a whole range of what we call activities or streams of business. I have some figures with regard to how many we have monitored, what the performance has been like, whether or not we believe the funding side of our business, the services, are up to standard, whether they need more support and in what areas they need to be improved upon. I did bring for the Committee's benefit if it was interested in this being tabled, what is the monitoring framework for the NGO sector that the department operates. Unfortunately it is a fairly detailed document but if the Chair so wishes I could table that.

### **Document tabled.**

In there is the number of organisations we have reviewed to date and the results of those reviews. We have not mentioned the organisations by name but by region.

**CHAIR:** Would a greater role for the Ombudsman in the policy and systematic issues be beneficial, in your opinion?

**Mr O'REILLY:** I believe having an independent statutory watchdog is critically important for the disability sector. The department has just under 13,000 staff. We will not always get it right. People's needs are often individual but they vary in complexity, because sometimes we have them on top of a disability as well. Sometimes it is the ability of the parents themselves to be able to provide support and care, and other times it is what standard of service the department provides. We have a complaint handling process that we have reviewed. We think it is good but it is not foolproof. I do not think there is any complaint arrangement that is foolproof. By having the Ombudsman and the opportunity for users of the system or members of the public to raise matters with the Ombudsman is critically important. We meet with the Ombudsman. We treat the reports they provide very seriously and some of the areas where the Ombudsman has undertaken some major reviews, for

instance, criminal justice clients, that is clients who are exiting the criminal justice system who have a disability, and also for clients who might not be fit to plead, there has to be a support process for them.

It is on record that three or four years ago a seniors officers group was established to progress that. Because of staff changes not only within the department but in other government departments it lost its momentum and was not achieving a great deal. The Ombudsman raised those issues, identified where the problems were. It gave the impetus for that group to be able to be formalised at a more senior level and action to be taken to address that service provision for those clients. Those clients are the more complex and difficult of our client grouping because of issues around public awareness and nervousness of having people in the community who have a criminal background, and there needs to be able to make sure the services that are provided are not only as good as we can get them but also that we identify some systemic issues. Often I think an agency, when handling day-to-day business can lose sight of a systemic issue. That is where the Ombudsman comes into play, because they can report on systemic issues to make the department aware that this is not a small problem in one region or in one particular case, it is an issue across the whole of the services system.

**Mr PAUL PEARCE:** I take you back to your comments in relation to boarding houses. I have a series of questions and I will ask them all because it will be a comprehensive answer. You have mentioned licensed boarding houses. Is there a number of people who reside in what in effect are unlicensed boarding houses as well? Is there a liaison with agencies as to their rights within those establishments? Quite often there will be some sort of record amongst local government or there may be some record in Fair Trading. Boarding house residents have very few rights in the legal sense, certainly they have zero rights under the Residential Tenancies Act. Have you considered the rights of those tenants because they are often vulnerable people, and have you raised with the Office of Fair Trading the necessity to incorporate any legal rights for those persons? They are the issues of those persons in boarding houses beyond just the monitoring. Does it go beyond that to look at their legal rights and what is a consequence of loss of boarding house stock, particularly in the inner city and the eastern suburbs area?

**Mr O'REILLY:** You are absolutely right about the relationship of other agencies with respect to boarding houses. This has been an issue for the Government to address with regard to what is the department's role, being DADHC's role, as the licensor of boarding houses, when there are also issues about tenancy protection. Where does the Office of Fair Trading fit into this? Where does the Department of Housing fit into this and where does local government fit into this? This matter has been raised with government. We are aware now that my Minister, Minister Keneally, with the support of the Treasurer is calling together those three jurisdictions to come up with a better approach to see how we can ensure with local government that each party of the boarding house regime is aware of its obligations.

When we talk about licensed boarding houses, we are virtually saying that if there are two or more people with intellectual disability within this boarding house, we have to have a licensing arrangement, but it is almost self-notification with regards to that. That is an issue. We also have the issue about the stock, the number of boarding houses. Because of their inner city locations a number of boarding houses close and you can have clients that not only do not have protection for accommodation arrangements, a whole service system then has to move into play to be able to provide appropriate accommodation for those people being displaced.

On top of that, we also have some boarding houses that do not comply and we have actually had to take legal action to be able to remove the licences, so it is a big issue; it is a complex issue. The land that the boarding houses are on is often very valuable because of its location and owners are making decisions based on financial return. We have secured funding from government for our boarding house reform project and also secured funding in those cases where boarding houses are closing that we actually have funds to be able to provide support to those residents, but it is a complex issue. We are very hopeful now that having the parties around the table where the Minister has invited each of her colleagues to actually participate in a boarding house reform project that will actually see some improvement there.

**Mr PAUL PEARCE:** Has there been any discussion or do you believe there should be discussion about capital funding for additional stock?

**Mr O'REILLY:** Part of the funding we receive from Treasury or when a boarding house closes is for accommodation options. That can include capital to be able to provide, particularly in the non-government sector, where we may tender them to be able to provide different models of accommodation for those people. Sometimes it is difficult to actually work out what will be the ramifications of the boarding house closure because some of the clients are health-related, some are disabilities-related and where does local government fit into the scheme of things there, but we are hopeful that with the collegiate approach across the agencies that that issue, where there is a shortfall in funding for capital, would be a joint submission to Treasury by the three or four agencies.

**Mr PETER DRAPER:** Brendan, thanks for coming in today. You mentioned earlier that following—to quote you—boarding houses falling off the agenda at one stage, a program of works has now been put in place to monitor services that can improve their game. Can you give us an indication of what services you believe can improve and what improvements they can make?

**Mr O'REILLY:** When the department five or six years ago actually amalgamated those various arms into the Department of Ageing, Disability and Home Care, there was a big push for regionalisation, for the powers to be out into the regions—we have six regions. I think what happened is that staff assigned to boarding house monitoring actually went into the regions and then got overtaken with other work. I think the review actually showed pretty clearly that was a problem for the department; that we were not monitoring those boarding houses. We did not actually visit the boarding houses as regularly as we should have.

We re-formed those teams and worked out whose specific job it was to actually go out to the boarding houses, speak with the proprietor and meet the clients. It could be things such as whether or not fire alarms are working in the boarding house, or how secure are the medication packs or opportunities for boarding house residents to enjoy or participate in an activity outside boarding house life. They are the sorts of things that the monitoring review teams for boarding houses do, and work with the proprietors to be able to develop those ideas.

**Mr PETER DRAPER:** Do you think that the Act allows the department to effectively monitor and review services?

**Mr O'REILLY:** That has been a fairly well debated question in the whole of the sector, whether or not we actually can enforce our obligations under the Act. We believe that the Act can be improved. We also believe that we have lifted our ability under the Act to remove licences in cases where there has not been compliance and we have removed those licences. On the one hand, yes, we believe that we can actually, in extreme cases where boarding house operators are not complying and have no intention to comply, take the appropriate action to have the licence removed but it really should not get to that stage. Other players have to be aware of what their role and responsibilities are as well.

If we are not doing the right thing, we should also be picked up by the Department of Housing, the Ombudsman or someone else. I honestly believe now that there has been dramatic improvement in the boarding house monitoring side, since we re-formed the teams a couple of years ago, and we also have evidence to show of the action plans that have been developed for the boarding houses, so that part is working well. I think the part that still requires sorting out is definitely the role of each agency, including where local government fits into it.

**Mr MALCOLM KERR:** You mentioned that the Act could be improved. How can it be improved, in your view?

**Mr O'REILLY:** In our submission we mention just a few things, for instance, updating to reflect the changes to the department's structure and including Home Care into the Department of Ageing and Disability; the terms referring to "handicapped person" should be removed. It is "people with disabilities". They are not major changes to the Act, however we believe they should be made. We also believe that there is an opportunity where the Ombudsman does a review and they receive those findings—it could be of a non-government organisation or one of our own—that we can actually share that information a bit easier, but that is something that really can be worked through between the agency and the Ombudsman's Office itself.

**Mr MALCOLM KERR:** Mr Pearce mentioned the stock of boarding houses being reduced in the inner city and eastern suburbs. How significant is that reduction?

**Mr O'REILLY:** I am happy to provide the Committee with how many have closed over the last couple of years.

**Mr MALCOLM KERR:** You will take that question on notice?

**Mr O'REILLY:** I am pleased to do that. Obviously during the real estate boom it was a big issue where a number of boarding houses did make the decision that they would move out of that line of business so the site could be developed.

**Mr MALCOLM KERR:** Are any boarding houses coming into business?

**Mr O'REILLY:** There are not a lot.

**Mr MALCOLM KERR:** So once they close that is the end, in effect?

**Mr O'REILLY:** Yes. As part of the reforms that we have been trying to introduce over the last few years we actually did an accommodation survey and we went out to the public

and said, Look, at the moment disability is predominantly group homes. Is that the right way and what are we going to do about the ageing population for people with disabilities, because we have concentrated on young people in nursing homes. We also have old people in young people's homes, so what are those models? We received 128 submissions from providers, carers and the general public and working through that we have come up with a whole range of accommodation models.

Some are not as popular with some parts of the sector as others but, nevertheless, there is now a whole range of accommodation. Part of it—and people may be aware of the mental health model, the housing and accommodation support initiative [HASI] model—is the disability model based on a similar arrangement for people with disabilities being able to move into community housing arrangements. That has been funded under the program for reforms. There is a stream of arrangements. Boarding houses do have a place in our sector because we know that a number of people, irrespective of what accommodation you may offer, would prefer to live in the inner city in that sort of environment, so there will always be a need. They will move out of what is provided; they will vote with their feet and move back to another arrangement, so boarding houses will always be part of this sector, or licensed residential centres.

**Mr MALCOLM KERR:** Has the survey you mentioned been made public?

**Mr O'REILLY:** Yes, it was in 2004-05.

**Mr MALCOLM KERR:** What do you see as the future of boarding houses?

**Mr O'REILLY:** Some in the sector actually are quite annoyed about the term "boarding house". They do not find that to be appropriate. It is residential lodgings or whatever, but my personal view is that there will always be a need for that sort of accommodation. That is what people want. But it is a matter of ensuring that the accommodation that is provided also has services attached to it; it is not just accommodation. It has to be services to the residents.

**Mr MALCOLM KERR:** Accepting that the need will never be fully met, are we in a situation where the supply to meet that need is decreasing while probably the demand for it is increasing, I suspect?

**Mr O'REILLY:** Yes. I think it is fair to say that the supply is decreasing. That is why we want to work with the Department of Housing, where it could well be a model that is run through the Department of Housing as well under this DHASI model and I think that will be the way forward if the private sector decides not to be party to it. Also, the non-government sector could run a similar arrangement.

**Mr MALCOLM KERR:** Are there any areas in the State where there is an acute shortage of this sort of accommodation?

**Mr O'REILLY:** I could not say, to tell you the truth. We do not have figures on how many people want to move into a boarding house.

**Ms SYLVIA HALE:** There has been a review of the Residential Tenancies Act taking place for quite some time. I wrote to the Minister for Fair Trading asking why there was no

reference to the rights for protections for boarders and lodgers included in that review and she responded that it was not the appropriate reform for those issues. Do you have any idea, because I do not, as to what would be the appropriate forum so that boarders and lodgers could be granted some protections?

**Mr O'REILLY:** Obviously I cannot comment on the reasons why the Minister responded that way. But I know that our Minister, Minister Keneally, has raised this matter with the Treasurer as well: that we need to address this issue in a more holistic way. We need the players around the table, including Fair Trading, Housing, Disability Services and local government, and to work through this issue comprehensively. That is what we are currently moving towards.

**Ms SYLVIA HALE:** You said earlier that in some extreme cases licences had been removed. How many, and over what period of time?

**Mr O'REILLY:** I would have to get you the exact figure, and I am happy to provide the Committee with that. I am aware of one last year, in December.

**Ms SYLVIA HALE:** What sorts of concerns provoke the removal of a licence?

**Mr O'REILLY:** When we do the monitoring—and I have tabled part of the information—the concerns were that matters of importance had been raised with the licensee about issues regarding fire safety, about medication and the handling of medication, about hygiene matters with regard to personal hygiene, bathrooms, and that sort of thing. We were satisfied that there had not been an appropriate response to that, despite a number of warnings and a number of further visits, and in the end we said, "That is it, we are taking the licence."

**Ms SYLVIA HALE:** When you revoke the licence you simultaneously make arrangements for accommodation?

**Mr O'REILLY:** That is right.

**Ms SYLVIA HALE:** Are those arrangements on a relatively long-term basis, or are they short term?

**Mr O'REILLY:** They are normally on a long-term basis. But I do not want the Committee to think that in any way that is an easy matter, because we are talking about individuals and every individual has different needs. Also, a number of the residents have formed strong friendships over the years and obviously would like to be accommodated together. So all those compatibility issues also need to be worked through. It normally takes us about four to six months to work through that. It is not only the residents; sometimes it is their family members as well, so you have to work with those who have a genuine interest in the wellbeing of the resident.

**Ms SYLVIA HALE:** You have mentioned a number of times the importance of involving local government in the resolution of some of these issues. Is that because of zoning or planning issues? Why do you think local government is important in this?

**Mr O'REILLY:** The issues are around what is fire safety. The department does not look at the fire safety arrangements as such and whether or not the type of fire alarm, or the sprinkler system, or whatever is appropriate. We have to make sure that there is one, and that it works. Often local government will need to be in touch with them and ask when was the last inspection on fire safety. One of the problems we have is that we have to clearly define who does what with regard to the boarding house sector generally: what is the department's responsibilities, what is Fair Trading's responsibilities, what is local government's responsibilities. We all have a piece of the action with regard to boarding houses. That is why the Minister wants the roundtable.

**Ms SYLVIA HALE:** My experience has been that on occasion local government is reluctant to act to enforce fire safety, for example, because there is a perception that if it closes down a boarding house people will have nowhere to go and it will, in the long term, simply exacerbate the problem because that boarding house will not be replaced. Is that your experience: reluctance to act on the part of local government because of compassionate reasons?

**Mr O'REILLY:** I would not have hard evidence of that; it would be a perception. But I think human nature being of the way it is, that could form part of the thinking.

**The Hon. LYNDIA VOLTZ:** With regard to aged care facilities, we have spoken about the inner-city area. With the ageing population, particularly baby boomers in the inner city areas, I assume there limited aged care facilities in the inner city. Where is the expected overflow to go? Is it putting pressure on the coastal towns, such as Taree and Lake Macquarie, where I suspect there are probably more aged care facilities?

**Mr O'REILLY:** We will always blame the Commonwealth for the lack of aged care places, of course. One of the things we know is that it is difficult for a person with an intellectual disability who is ageing to get into a nursing home. That is reality. What we have had to do there—we have never done this before; it has been done in one other State—is that we have looked at an aged care model for people with disabilities. Fortunately, on the one side, because of improved service standards and care, medical interventions, and health plans, the clients are living longer. Fifty years ago the lifespan of a person with an intellectual disability was about 23 years. Now that is equivalent to a person with no disability, though their health care needs come in earlier. Last Friday week the Minister announced the purchase of six hectares of land at Wyong, near the hospital, where we will be building a model for people with disabilities to be able to have aged care-type services. It will not be dormitory living or anything like that; it will be 10 bedrooms to a home, with ensuites, dining rooms and kitchens.

**The Hon. LYNDIA VOLTZ:** It is a supported accommodation model?

**Mr O'REILLY:** That is right. It is a 100-bed facility that we are creating on that site, so that we can provide that service to the ageing and disability population. That is our first one. I think, just knowing where the ageing population is heading, there will need to be models, but not as big, in rural communities as well. That will be part of the forward capital estimates in years to come.

**The Hon. LYNDIA VOLTZ:** The people in that supported accommodation may have intellectual disabilities and physical handicaps. Do you have any role with regard to people



with personality disorders? I know it is difficult, and that there is a fine line between what is a medical disability and whether a personality disorder fits within a disability.

**Mr O'REILLY:** There is always debate between Health and us about whether it is a mental health problem or a personality disorder. Nevertheless, personality disorders do exist, and they fall under our umbrella of services, not under Health. We have a number of clients in our service system who require 24/7 care because they are at risk to themselves or to others in our service system. Personality disorder is DADHC's responsibility.

**The Hon. LYNDA VOLTZ:** With regard to the planning of new releases, under the Callan Park Act aged care was prohibited. I am conscious of the fact that a lot of the facilities are in the inner city, such as boarding houses, and that that style of accommodation is not now being built. Do you have a role in the release of new areas, particularly in country towns, which have a severe shortage? In a country town it is very difficult to deal with people when there is none of that kind of accommodation. Do you have a role in that planning level?

**Mr O'REILLY:** We do. But I think you are right in saying that rural areas generally have not—we never provided aged care-type arrangements, which require some nursing care, to people with disabilities. We have never been in that business, until we were able to show the age projections, the number of clients in our service system, and the fact that this is what is needed. If we wait until there are far more aged care places in the service system, these clients will never be able to move into age-appropriate arrangements. So this was the first step, and it is a very big step. This is a major project that the department has embarked upon, with regard to the Wyong one.

There are some clients in our large residential set, which we still have operating, who, because they have been there so long, are institutionalised. Parents are very concerned about their sons, daughters, brothers or sisters living in the community, and there is always that debate with the parents. We know that community living is by far a better lifestyle and provides better supports for people with disabilities, but we cannot ignore the fact that some parents genuinely believe that they are very satisfied with the congruent care model that is operating. It takes a lot of education and lot of transition planning for people to move into the community. I think that in coming years, as we continue closing our large residential centres, which were formerly known as institutions, the aged care model will be a major arrangement for our sector, just as group homes are.

**The Hon. CHARLIE LYNN:** What proportion of boarding houses are owned by government, private and the non-government sector?

**Mr O'REILLY:** We do not own boarding houses. They are all owned by private operators.

**The Hon. CHARLIE LYNN:** What is the general proportion between private and non-government organisation ownership?

**Mr O'REILLY:** I can get you those figures.

**Mr PAUL PEARCE:** The Hon. Charlie Lynn raised the issue I intended to raise, that is, that the Department of Housing does not own boarding house stock. I have always felt

that that was a gap in the role of the Department of Housing in providing housing. Earlier you referred to the fact that there were concerns about certain terminology in the sector being used. Could I suggest that there is a concern that the terminology becomes confused. Trying to find a definition of a boarding house is not an easy exercise. There is a workable definition which was recognised about 20 years ago in a legal case based around the Federal Social Security Act. There is a definition there of facilities being provided, a manager on site, et cetera. Once that becomes further confused, unfortunately, the way the courts, particularly the Land and Environment Court, considers these matters, boarding house will simply be flung out, whatever the council regulations or the LEP provisions may be to protect those boarding houses. When that debate comes up I will flag that an extra level of confusion will not assist the preservation of the stock.

With regard to the removal of licences, Ms Sylvia Hale raised some of those issues. I think there is an issue there that the local government inspector, particularly fire inspectors, do not want to see people put out of boarding house stock. That is the reality. With regard to privately owned boarding houses, is there any evidence of what is effectively a demolition by neglect taking place by some of the owners—basically to circumvent the social responsibilities they have taken on? Boarding house owners receive a range of support from your department; quite often local government gives them advantages in terms of rates, they get land tax benefits, et cetera.

**Mr O'REILLY:** I think it is important that I say that not all boarding houses are terrible. There are some great operators, and people genuinely—

**Mr PAUL PEARCE:** May I say, they tend to focus around an individual who is very committed, and when that individual goes—

**Mr O'REILLY:** That is right. And that is the risk. The transfer of the licence is something we have to look at very carefully because, as you said, often it is the ability of the manager or the person running the boarding house who is doing it—not for profit but out of a social justice responsibility. I do not have evidence of operators deliberately winding down their capital or their stock. Our biggest problem is when we go in and the operator cannot see a problem. We say, "Wait a moment, here it is", and we lay it out to them. But most of the people we sit down with, and explain our concerns and problems to, willingly sign up to a targeted improvement timeframe. Then when they come back and sit down with us we can say, "Great, that has been done and that has been done." In some instances it does not work and we have to take that final step.

**Mr PAUL PEARCE:** Quite often where you identify those problems there is a significant cost impost on the owner whatever may be their willingness to do it. Do you have any suggestions as to the assistance that might be provided to the boarding houses?

**Mr O'REILLY:** In the past we virtually said, "It is up to you. It is your responsibility. You are running this operation." Our argument is that we also do the same for non-government organisations where we recognise there is a cost of capital associated with the provision of support services. We built that into the funding model and that is what we have to move towards for some boarding houses, definitely.

**Ms SYLVIA HALE:** When I was in Bathurst about three or four weeks ago, I was taken on a tour of the old hospital site, particularly a rehabilitation centre that had been

closed down. It was the Combined Pensioners and Superannuants Association members who took me there. They were particularly concerned that this site was to be sold off for private redevelopment when they believed that it was an appropriate site for use for aged care or other appropriate activities. Would you approach your associates in the Department of Health with a view to redeveloping such a site, if it were available, or would the budgetary expenditure be too great for you to contemplate?

**Mr O'REILLY:** It could be. I am not aware of that particular example. Our capital plans are normally three years out but every now and again something will come up that we think if we do not act now we will lose the opportunity. So we have some flexibility with Treasury approval to redirect funds. Obviously we have to have a business case that actually shows that there is a demand for this sort of model: that we have the clients in need that can use that site. If that is the issue there, if I could get the details, we will look at it.

**Ms SYLVIA HALE:** Thank you.

**CHAIR:** There are some further questions we have regarding your submission. Would you object to taking those questions on notice?

**Mr O'REILLY:** No, not at all.

**CHAIR:** The Committee secretariat will be in touch with you regarding those questions. Thank you for appearing before us today. Your evidence has been most helpful and of great assistance to the Committee.

**(The witness withdrew)**

**DONNA THERESE RYGATE**, Deputy Director General, Strategy, Communication and Governance, New South Wales Department of Community Services, 4-6 Cavill Avenue, Ashfield, sworn and examined:

**CHAIR:** Ms Rygate, I understand that Dr Neil Shepherd retired last Thursday?

**Ms RYGATE:** Wednesday, yes.

**CHAIR:** And that the new Director General, Ms Jenny Mason, takes over the position today. Your appearance before the Committee is to provide information regarding the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993.

**Ms RYGATE:** Yes.

**CHAIR:** Would you like to make an opening statement?

**Ms RYGATE:** Yes. Thank you for the opportunity to be here this morning. I know that the aim of the statutory review of the Community Services (Complaints, Reviews and Monitoring) Act is about determining if the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for securing those objectives. In terms of the policy objectives, you will not hear any argument from the Department of Community Services [DOCS] about the value of feedback, including complaints, and the value of independent monitoring in enhancing service delivery. We also support the efficient resolution of complaints, particularly at a local level, and alternative dispute resolution.

DOCS is just coming to the end of a five full year \$1.2 billion reform program. We have been keen to receive all the feedback that we can on the services we provide and the way we do business, so we can incorporate that into the reforms. That is not going to change.

DOCS is one of the most publicly accountable government agencies in New South Wales, with its actions overseen by numerous watchdogs. In a general sense, DOCS is overseen by the New South Wales Parliament, the New South Wales Department of Premier and Cabinet, the Treasury, the Auditor General, the Administrative Decisions Tribunal, the Independent Commission Against Corruption [ICAC], the Privacy Commissioner, and the Public Guardian.

In addition, there are oversight functions performed by the Children's Court, the Office of the Children's Guardian, the Ombudsman, the Commissioner for Children and Young People and the Coroner. Most of the oversight work in DOCS is managed by our Complaints Assessment and Review Branch. That branch was established in 2004 as a central point following significant changes to legislation that led to increased external oversight and demanded new reporting and information exchange capabilities of DOCS. The purpose of establishing the branch was to provide relief to the field by a meeting of the department's legislative requirements generated by the oversight regime.

As you know, the department undertakes its own complaints-handling function in accordance with the requirements of the Act. Where a complainant is not satisfied with our actions, the Ombudsman takes complaints about DOCS and, of course, there is no strict

requirement that the complainant approached the agency first—they can go straight to the Ombudsman. There are a number of ways in which we work with the Ombudsman on complaints about DOCS. The Ombudsman can respond to a complaint about us by declining the complaint at the outset, requesting information either informally or formally to assist in making a decision about further action; he can formally refer the complaint to DOCS to resolve and to report the outcome back to the Ombudsman—that is the local-resolution process; he can refer the complaints to be investigated or the Ombudsman can investigate them directly; and the Ombudsman can also review the complaints-handling procedures of services and report the outcomes of that to the Minister.

In most instances with DOCS the Ombudsman contacts the local Community Services Centre directly—DOCS Community Services Centres are in most towns and suburbs, or a good few of them—in order to facilitate the local resolution of simple matters. They are called informal requests, although the Ombudsman is required to cite the power under which he is seeking information when doing that. Where a matter is complex, or is escalated, the Ombudsman will direct a formal request to the head office. The Ombudsman might make a decision to investigate a matter arising out of a complaint or on its own volition. Where that happens we are given notice of the decision to investigate and we can provide a statement of information or documents. Preliminary findings and recommendations are provided for comment. The draft report is also provided.

Where the Ombudsman finds that the conduct subject to the investigation is contrary to law, unreasonable, unjust or oppressive, the Ombudsman makes a report, which could include recommendations. In order to determine whether or not the Ombudsman is going to investigate a matter with us, preliminary inquiries are usually made under section 13AA of the Ombudsman Act. In 2006-07 we got 99 formal written preliminary inquiries under section 13AA from the Ombudsman and 9 notices under section 18 requiring us to provide information about surviving siblings of a deceased child known to DOCS. Of those 108 matters I think we probably were successful in providing good information back to the Ombudsman and resolving the issues, because only two resulted in an investigation.

The Ombudsman can also review the situation of a child or group of children in care or a person or group of persons with disability in care and advise on changes to promote their welfare or interests. The Ombudsman has to give a copy of the report of that sort of review to the relevant Minister and the service provider. The decision to undertake that sort of review often results from trends in complaints or the observations of people like the official community visitors. The process typically entails an individual review of each person in the group and that is conducted through a file review, interviews of caseworkers, casework managers, carers and key workers and, where appropriate, the child or young person. If the Ombudsman makes adverse comment, there is an opportunity to respond to a draft report prior to completion of the individual review. The Ombudsman then invites submissions on the draft overall observations and proposed recommendations prior to releasing a final report of the outcome of the group review. The Ombudsman then usually monitors the progress of implementation of any recommendations about individual or systemic matters.

There was one group review in 2006-07 that concerned the circumstances of 49 children under 5 in out-of-home care. Although the Ombudsman made no recommendations about individual children, he did identify certain areas of practice that require some improvement. We have a number of initiatives underway to address those concerns. The

Ombudsman has asked us to report on the initiatives developed prior to the review to address the practice issues.

Moving to the awful issue of child deaths, there is a very sophisticated framework for oversight of child deaths in New South Wales. All deaths of children and young people are the subject of some level of review. Prior to the introduction in 2002 of the changes to the Community Services (Complaints, Reviews and Monitoring) Act, all deaths—not just those of children known to DOCS—were reviewed by the New South Wales Child Death Review Team, under the auspices of the New South Wales Commission for Children and Young People. The Child Death Review Team continues to have a broad research function aimed at the prevention or reduction of the number of deaths in New South Wales of children from birth to 17 years.

If the death is of a child or young person known to DOCS, the death may be reviewable—you would be very familiar with the definition of that. The definition of "reviewable" in New South Wales is a lot broader than that used in other jurisdictions. For example, in Victoria a child death is only reviewable if the child who dies is a child protection client within three months of their death. Closed cases are not deemed reviewable. If you take into account the high rate of child protection reporting in New South Wales, which is about two and a half times that in Victoria, the pool of children whose deaths would be reviewable present as extremely large.

The Ombudsman has powers and functions to monitor and review the reviewable deaths to formulate recommendations as to policies and practices to be implemented by government and service providers for the prevention or reduction of deaths of certain children and to maintain a register of review all deaths occurring in New South Wales, classifying the death according to cause. DOCS works with the Ombudsman under a memorandum of understanding. That work includes the provision of files responding to requests for information, providing the Ombudsman with copies of our own death review reports, monitoring and implementation of the Ombudsman's recommendations and providing responses to issues raised by the Ombudsman. I understand that since being given responsibility for this particular function, the Ombudsman has looked at the deaths of about 496 children and young people in New South Wales, around 90 per cent of whom were reviewable because the child or the sibling had been reported to DOCS within three years preceding their death. It is not really surprising that 90 per cent of the reviewable deaths would be known to DOCS, given that the definition of reviewable deaths in the legislation was framed to give statutory expression to the term "known to DOCS".

Following the Ombudsman's review of a child's death, the Ombudsman can take several courses of action. The Ombudsman can refer concerns to DOCS for attention and action, or initiate preliminary inquiries or investigations under the Act. There were 31 investigations arising from the Ombudsman's review of the deaths of individual children between June 2004 and December 2007 and, as you all would know, there have been four annual reports on the work of the reviewable child deaths function.

In preparing for today we were asked to think about what might need to change in the legislation and in terms of what needs to change you would be aware that there is a Special Commission of Inquiry currently underway into all aspects of the child protection system. It is not an inquiry just into DOCS, it is a very wide-ranging inquiry into the whole child protection system that encompasses the relevant activities of many other agencies, including oversight agencies such as the Ombudsman. It is looking at oversight that happens under a wide

range of legislation and it also covers the activities of all sorts of agencies like the Department of Education and Training, Housing, Health, Police, the Children's Court and many others.

The commission has been set up under the Special Commission of Inquiry Act 1983 and it is operating independently of DOCS or any other agency. There are going to be a total of nine public forums in Sydney and at least a dozen planned for different locations throughout the State. There have already been a couple of the Sydney ones held, and they are in Wagga today, I believe, and did Bourke and other places like that last week. Commissioner Wood is really interested in hearing what everyone has got to say about the child protection services in this State and about all of the systems that surround that, including the system of oversight. So, in addition to the public forums, there have been and will continue to be meetings with representatives from relevant agencies and people have been invited to make submissions to the commission. We look forward to participating in those forums, including the one on oversight, and to benefiting from the views of all of the interested parties on that.

A specific area of possible change in relation to the Complaints, Reviews and Monitoring [CRAM] Act is in relation to the provisions that relate to the Administrative Decisions Tribunal. As you know, there are decisions reviewable by the Administrative Decisions Tribunal that are referred to in a number of different pieces of legislation and also in regulations. Our legal people tell me this can be very confusing for people who are not familiar with the legislation. So, any simplification of the legislative framework would be helpful but we would not be keen to actually alter the current arrangements as to how things are actually done on the ground, because they work really well. That is the feedback on that.

The other aspect of the Act is about the definition of "service", because the Supreme Court is looking at what is a service in a very broad sense. We are finding that the selection of foster carers is described as a service to the carer, and that can create a whole range of complications. So, as part of your review one of the things we would suggest is looking at providing some greater clarity on the appropriate divide between regulatory activity and service activity, with only the latter being caught by the Act, and we think that that might assist.

**CHAIR:** Thank you for that comprehensive opening statement.

**Ms RYGATE:** Well, we did not put in a submission.

**CHAIR:** I think that has helped in giving an understanding to our Committee members. How do reports and findings that the Ombudsman makes currently feed into the monitoring and funding of services?

**Ms RYGATE:** Are you talking about reports and findings of a systemic nature or individual ones?

**CHAIR:** Systemic.

**Ms RYGATE:** We obviously have a very strong interest in all of the reports and findings made by the Ombudsman. Most of the Ombudsman's reports will come centrally to the Complaints Assessment and Review Branch that is part of my division. Where it is in

relation to a specific other part of the business—say, for example, in relation to a funded service—we will also make sure that those reports are drawn to the attention of the line part of the organisation that is responsible for that. We take very seriously the need to both respond to findings and recommendations and to follow-up on those things to make sure that we are doing whatever it is that we have been advised we need to do.

If the Ombudsman makes recommendations about a particular service, typically our Service Funding Strategy Branch, that is part of one of our other divisions, will have a very close look at that; we will have a look at what our monitoring is telling us is happening with that service, and address any specific issues with that service, either as part of their funding agreement or informally, depending on what the issue might be. There is a really comprehensive process of reporting back to the Ombudsman as well to make sure that those things do not fall between the cracks. We do quite regular reports on all sorts of things back to the Ombudsman, about things they have raised with us previously, just to make sure that nothing slips through.

**CHAIR:** Do you think there is any way the process could be improved, in your opinion?

**Ms RYGATE:** I think that at the moment the process is fairly comprehensive. I think that the powers are extensive and I certainly put the view that the Ombudsman is very active in this role. I do not know that there are any particular enhancements that we would like to invite. We are very supportive of the work that is done and particularly supportive of the sort of work that the Ombudsman can do about another agency's issues. So, for issues that affect clients that are beyond the remit of any one of us, the Ombudsman has a really great capacity to look across the system and to make some suggestions that make that work better.

**CHAIR:** How would concerns raised by the Ombudsman regarding funded services be handled by DOCS?

**Ms RYGATE:** That kind of goes back to the answer before last. We would get the Ombudsman's report; we would get that straight to the Service Funding Strategy people. Depending on what the concerns were, they would work out an appropriate way to deal with that. We might also engage a region if it is a service that is providing particular services on the ground in a particular area. Certainly we would not ignore them. We take them up with service providers. We have got a very rigorous system of monitoring service providers, and part of that is about making sure that they have in place appropriate complaints mechanisms of their own as well. There are all kinds of guidelines, and there are thousands of them on the Internet site that you can have a look at, about that requirement to have all this stuff in place, and we make sure that they do and we make sure that where issues are raised they are addressed.

**CHAIR:** Can you describe the extent to which the internal complaints handling of DOCS complies with the policy objectives of the CRAMA?

**Ms RYGATE:** That is a very interesting question and I am glad you asked it. One of the things we have been looking at fairly recently is about how we handle complaints within DOCS. We have done some independent review work that has examined our systems, processes, functions and also the workload and roles, both at our central Complaints Unit



and also at our Helpline, around the question of whether the sort of call centre function of complaints would be better co-located with another call centre type function.

We have done process mapping to document the functions that are related to complaints intake procedures and we have liaised with the Ombudsman about how we can improve our complaints handling. We did have some discussion with the Ombudsman about whether it would be possible for the Ombudsman's office to come in and have a look at our complaints system and also look at the ideas we have for changing this to see whether they comply with best practice. While the Ombudsman's office was unable to do that in the timeframe we were proposing, they actually provided us with some advice about appropriate external parties that could do that work for us. We are committed to trying to provide much better service delivery in our complaints system and, as a matter of fact, yesterday I sent our new Director General a bundle of papers about how complaints works and what some ideas might be for changing that to get much better service for our clients.

**Mr PAUL PEARCE:** Thank you for that fairly extensive response. When you ran through at the commencement of your address the relative oversight functions, what agencies were involved and the complaints procedure, what rang alarm bells with me is how out of all of that would you be able to identify systemic matters as opposed to individual problems. Also, that fairly complex structure—and I am talking about the general ones not the specific child death ones, where clearly there are higher-level requirements—how would that relate to the frustrations that we as members of Parliament experience when people come in the door with complaints or issues relating to DOCS: the timetabling of an answer; the fact that we just have to say it has gone here, it has gone here, it has gone here and it is over there, that does not satisfy the user one iota? A lot of what you said struck me, and feel free to answer this otherwise, that there was a lot of emphasis being placed on process here. I cannot actually see how there is a clear outcome structure coming out of this from the user's perspective or from any other party who is seeking to resolve problems within the DOCS structure.

**Ms RYGATE:** You are absolutely right that it is incredibly complex and that there is an enormous amount of oversight, and I am sure there are very good historical reasons why we find ourselves with so many people looking over our shoulder.

**Mr PAUL PEARCE:** You also seem to have significant internal processes as well as the external processes.

**Ms RYGATE:** The reason we have the internal system we do is because there are so many different angles and different bodies coming at us in this particular direction. It is important to us to try and coordinate that and get it sort of centralised—have it all come to the one place—for a lot of different reasons; most importantly so that we can pick up both on the individual issues that really need attention and make sure that they get the attention they deserve and problems are solved for people, but also so that we can have a look at what all of these different sources of feedback are telling us about our system and make sure that that advice is fed into policy and program development.

The other important part of that is about trying to make our process internally as rational as we can so that people in the field have the capacity to get on and deliver services to clients rather than become experts in responding to complaints. What we need them to do is to tell us what is going on out there, what is happening, and we talk about what we need to do about it. But the process of writing back to the Ombudsman and how you do it and

how you respond to this notice and that notice and all of that, is much better handled and much more efficiently handled by a central and smaller group.

It is a fairly complex structure and I can understand how you and your constituents could be frustrated when they have got an issue with us, but from my point of view the structure as we currently have, which is a fairly centralised intake for these kinds of complaints issues and then getting those particular balls out to the appropriate point in the back line to be dealt with, is more efficient than the alternative. But, you are absolutely right, the thing that we all want out of this is not a whole bunch of process—we would like to have a lot less process really—but you need the processes where people are raising issues to actually address them.

We need to focus on outcomes and I think that part of our role centrally is about making sure that the bits of the organisation who are actually delivering the service or developing the policy or monitoring the funded service or whatever, actually know what those issues are in some kind of distilled way so that they can get on and do something useful about those. The other part of the outcomes is that there is a fairly extensive reporting process within the organisation and to oversight bodies like the Ombudsman about what actually happens at the end and what difference is made. You would know from the annual deaths reports, for instance, there is a big chunk of that that is all about what has happened with previous recommendations. We are very keen to be on record about all of the different things that we do to respond to the concerns that are raised with us.

**Mr MALCOLM KERR:** In the New South Wales Ombudsman's Report on Reviewable Deaths in 2006, Volume 2, in recommendation 3, in relation to the cooperation with police, it is mentioned that DOCS anticipates that recommendations for improvements to reporting will be made in late 2007. Did the department meet the late 2007 deadline in relation to that provision?

**Ms RYGATE:** Did you say that was recommendation 3?

**Mr MALCOLM KERR:** Recommendation 3 at page 78. What I was quoting from appears on page 79.

**Ms RYGATE:** We have a number of different projects underway with the police to address that issue. Since the Ombudsman's recommendations were developed we have had the announcement of the Special Commission of Inquiry, which has meant that us, the police and all the other relevant agencies are providing advice through that process about what needs to happen and what should change. We have not liked to put in place major changes pending the outcome of the inquiry, because there is little point in putting in a new system and changing it six months down the track, depending on what the Commission has to say. But, we have provided a report to the Ombudsman at the end of last month about the work we are doing on those issues so that he knows where we are up to with those recommendations.

**Mr MALCOLM KERR:** That report relates to recommendation 3, does it?

**Ms RYGATE:** It relates to all of them. In relation to the recommendation you are talking about, police have done some work on the characteristics of events involving child at risk incidents. We have had ongoing discussions with them about police standard operating

procedures, particularly around domestic violence, and further work is happening right now about the child protection SOPs. The quality of information issue is currently being finalised and we expect that a final report on that should be available within the next couple of weeks. A number of things have been put in place prior to that but, as I say, given that we have the Special Commission of Inquiry and that that interface issue is one of the major things it is looking at—it was a big focus of its first public forum held a couple weeks ago—we are all anxious to see what it comes up with and recommends. It is a really good opportunity.

**Mr MALCOLM KERR:** Going to recommendation 4 of that report, on page 79, I think the Department of Community Services was going to have completed and initiated five quality reviews in two areas listed in recommendation 4. It says by the end of 2007 DOCS advise it will have completed and initiated quality reviews, and it mentions the completion of the hotline, data entries, et cetera. Do you have that there?

**Ms RYGATE:** Yes, about the help line quality reviews, yes.

**Mr MALCOLM KERR:** What is the status of that?

**Ms RYGATE:** The quality reviews of the help line, we have done rolling reviews over 2007, and my understanding is that those reviews are under control, happening, happened. We are completing the program we advised the Ombudsman we were going to complete.

**Mr MALCOLM KERR:** You might want to take this on notice?

**Ms RYGATE:** Yes, I can get you the specifics about each little bit of it.

**Mr MALCOLM KERR:** Just what is referred to there, I am wondering if you could take on notice and give us what the current status of that is. I think DOCS is committed to conducting five quality reviews each calendar year, is that correct?

**Ms RYGATE:** Yes, that is right.

**Mr MALCOLM KERR:** What are the steps that have been taken to ensure that is done in a thorough and timely fashion?

**Ms RYGATE:** I am not entirely familiar with the specifics of those quality reviews that are undertaken.

**CHAIR:** You can take that on notice.

**Ms RYGATE:** Thanks.

**Mr MALCOLM KERR:** You might answer whether the department at the start of 2000 was ahead or behind in relation to its commitments to these recommendations?

**Ms RYGATE:** I suspect you will get an interesting answer when you ask the Ombudsman that next week as well. Our report to the Ombudsman about the implementation of recommendations in the 2006 report and recommendations in previous reports is very comprehensive and certainly my view would be we are well on track. I do not

think I would ever claim to be ahead, because that is dangerous, but certainly I believe we are well on track and we are meeting our commitments.

**Mr MALCOLM KERR:** You mentioned that you think the Ombudsman might give an interesting answer?

**Ms RYGATE:** I would be interested to know what they have to say. I think I might come along and sit in the gallery next week. I hope they give us a big tick.

**Mr MALCOLM KERR:** What would be the basis of them giving you a big tick?

**Ms RYGATE:** The basis of them giving us a big tick would be that they are confident we have acknowledged the issues they have raised, that we are taking appropriate action and action is happening in a timely way.

**Mr MALCOLM KERR:** I think your department is committed to developing robust indicators to assist in tracking assessments and providing a guide as to the capacity of the system. Would that be true?

**Ms RYGATE:** Yes. We have done an awful lot of work over the past five years as part of the reform program. We have introduced a new client information system that gives us much better data capacity and we have done a lot of work with our field force mostly about making sure the data is entered in a comprehensive and sensible way so we can get much better information and, if you are a regular viewer of the DOCS website, you will notice there is vastly more data available publicly than there ever was before and we are keen to put all of that out there and more if we can.

**Mr MALCOLM KERR:** Has there been any discussion with the Ombudsman's office about whether that meets their requirements, those indicators?

**Ms RYGATE:** There are discussions with the Ombudsman's office about that sort of issue very frequently, yes, and as you know, they make various recommendations from time to time about us trying to develop a data capacity to report on particular aspects of the system.

**Mr MALCOLM KERR:** Have they made suggestions as to how they could be improved?

**Ms RYGATE:** Not in a technical sense, but in the sense of saying it would be good if we could find out about X, Y and Z, yes.

**Mr MALCOLM KERR:** Can you tell us what X, Y and Z are?

**Ms RYGATE:** There is a recommendation in the 2006 report about child protection cases where assessments are not able to be completed due to resource constraints, for instance. That is a really complex thing to do in a data sense with our system. There is ongoing interaction with the Ombudsman's office about how we address that particular issue. That is a good example.

**Mr MALCOLM KERR:** Are there any other examples?

**Ms RYGATE:** There are probably numerous examples but none of them springs to mind just at the moment.

**Mr MALCOLM KERR:** Perhaps on notice some might spring to mind?

**Ms RYGATE:** Yes, no worries, there are many, many.

**Mr PETER DRAPER:** You mentioned previously the Administrative Decisions Tribunal and how you would like to see a simplification of the framework. Can you expand on that for me please, what it means?

**Ms RYGATE:** Now you are asking me to remember what the lawyers told me. There is stuff in all sorts of different Acts and regulations about decisions that are reviewable by the Administrative Decisions Tribunal, including key parts of the CRAM Act about what the Administrative Decisions Tribunal can be looking at. Any simplification of the legislative framework, that is sort of rationalising it, having it in one place or making sure it is consistently expressed and simple, would be a good thing but, as I said, we were not keen to alter how the Administrative Decisions Tribunal works because we find that that process is a very good one. We are particularly pleased about the way the Administrative Decisions Tribunal uses mediation. That is a much more constructive process for us and for our clients, so we are keen to maintain it. Rather than have it spread all over the place, anything that can be done to consolidate the bits about what can go to the Administrative Decisions Tribunal and how it works.

**Mr PETER DRAPER:** You mentioned earlier about your internal complaints handling.

**Ms RYGATE:** Yes.

**Mr PETER DRAPER:** Are they culturally appropriate, in your opinion?

**Ms RYGATE:** I think there is more to do there. I think there is definitely more to do. We have an Aboriginal strategic commitment 2006-2011 that outlines how DOCS is going to work as an organisation to provide better services to Aboriginal people. It sets some clear areas for action and is closely linked to both business planning and resource allocation, so relevant directorates, regions and divisions are expected to include Aboriginal components. This links with the answer I gave before about our review of our own complaints handling processes. We have been working on that for a while now and one of the key things we would like to do as part of providing a better complaints service is specifically to address the needs of Aboriginal complainants.

In my view, the system now is not particularly culturally friendly and I think it needs to be better, given that almost 30 per cent of the kids in out of home care are Aboriginal and most of our complaints are about out of home care issues. There are all sorts of reasons why we need to make that work better. Questions around that are whether we need to have designated Aboriginal complaints handling officers. In one sense that is a very sensible thing to do but in another sense, given the fairly small complaints operation how you would work that is something we are still trying to work out. We also need to address the different forms in which we can take complaints. Aboriginal people are not always comfortable ringing up and talking to the anonymous person on the phone, kind of approach.

**The Hon. CHARLIE LYNN:** Do you have Aboriginal field staff?

**Ms RYGATE:** Yes. We have a large number of Aboriginal staff. The target for the State Government is to have 2 per cent of your workforce Aboriginal, and we are upwards of 7 per cent now and we are trying to do better. We have a huge program in place to try to increase the number of Aboriginal staff to support those staff and skill them up where that needs to happen.

**Mr PETER DRAPER:** Can I just go back to reporting? As a local member of Parliament one of the biggest frustrations that comes to me, particularly with schools when they identify a child that they believe is at risk and ring to report and then an assessment is made over the telephone as to the seriousness of the risk to that child. There is a strongly held perception that the criteria need to change. Can you give me your opinion on that?

**Ms RYGATE:** Yes. Again, that is one of the issues that is being looked at very carefully by the Wood Commission. Assessment is not just what happens at the Helpline. That is the first line of assessment where cases are looked at based on what history is available in the computerised system to try to get some sense of both risk and urgency. The next stage of assessment happens when the case is referred to a Community Services Centre where those people who are there on the ground will have access—

**Mr PETER DRAPER:** If it is referred, that is the issue, I think.

**Ms RYGATE:** Yes. Where it is referred the people on the ground have access both to paper files and also to local knowledge of families. Many of our customers are repeat customers, so that is a key part of the assessment process.

**Mr PETER DRAPER:** Has an investigation ever been done into how many of the calls that come in are referred and how many are not?

**Ms RYGATE:** Yes. I do not remember the number. My understanding is that is publicly available on our website. Part of us looking at the whole reporting system and the whole intake and assessment system in conjunction with the Special Commission is about whether there are better models to do precisely what you are talking about, making a decision about which case needs attention or would be recommended for attention subject to resource availability and which one would not.

**Mr PETER DRAPER:** Is that the issue, resource availability?

**Ms RYGATE:** No, not at the Helpline. That decision is not about resource availability. The decision as to whether it is referred for a field response by the CSC is a function of urgency, seriousness and resource availability. Unfortunately, that has always been the case and is the case in every child protection system in the world.

**The Hon. CHARLIE LYNN:** Just following up on that, the ability of your resources to react to everything you get, it seems from what I have read in reports and so forth that you are quite overwhelmed and not able to respond adequately to everything. What is the situation with resources?

**Ms RYGATE:** I do not think you would find any child protection agency who said it had enough resources. That is one of the key questions, again, that Wood is looking at. There is a specific term of reference about the resourcing in the system and whether it is appropriate. We are hoping that the Commission will come up with some sort of sensible response on that. Certainly we are better resourced than we have been. The five-year reform program has provided us with almost a doubling of caseworker positions, which makes things a little better but in the same time frame we have gone up to 286,000 reports last year, so it is really great that we have got an independent, completely rigorous process, having a look at that and what that means, and what on earth we can do about it.

**The Hon. CHARLIE LYNN:** What sort of linkage do you have in relation to non-government organisations, such as Father Chris Riley's Youth Off the Streets program and those sorts of organisations?

**Ms RYGATE:** The Department of Community Services funds an enormous number of non-government organisations to deliver services. In this current financial year more than \$700 million in our budget goes out the door to non-government organisations and funded services. They include groups like Father Riley's Youth Off the Streets, although I am not intimately familiar with which bits of the services we fund but my understanding is that we fund particular services to deliver services to some of the really most challenging kids, so we have a close funding relationship, quite appropriately, with all of those bodies.

**The Hon. LYNDA VOLTZ:** Returning to Aboriginal communities, part of the problem with reporting for Aboriginal communities is that it actually falls under DOCS itself and that complaints may actually come back through non-service providers such as the Department of Aboriginal Affairs and the Office for Women as opposed to the Department of Community Services and Police because structurally the relationship of Aboriginal communities is poor and there is a reluctance, particularly on the part of women, to report through those agencies. Have you structurally looked at a way in which DOCS could step aside while technically it is still a DOCS function? Has that been looked at as part of the complaints system?

**Ms RYGATE:** I think probably the most recent exercise that has been looking at those kinds of issues is the work that the Ombudsman's Office currently has underway with Aboriginal carers. We have not seen the outcome of that, but that will provide us with some really important pointers about how comfortable those people are in raising issues and concerns with us, and similarly about how they think the system works in terms of them engaging with the Ombudsman's Office. I am optimistic that there might be some pointers added that work and help us to refine our processes a bit. You are right that we are always going to carry the legacy of being some of the people who stole the stolen generations and no matter how much we regret that and are sorry for those past actions, that will influence our relationships with people today.

**The Hon. LYNDA VOLTZ:** Also, there is the issue about indigenous workers who live in those communities?

**Ms RYGATE:** Yes.

**The Hon. LYNDA VOLTZ:** And their ability to function when the complaints are made?

**Ms RYGATE:** Absolutely. That is one of the big issues we are trying to address in our retention strategy for Aboriginal staff. In some small rural communities being a white DOCS workers is a little bit similarly challenging because your kids go to school with the kids who are clients and you see the mum and dad whose children you have removed at the supermarket, but it is much more confronting and much more difficult for Aboriginal workers because of the weight of Aboriginal community expectation on them. We are trying to find some ways to provide them with better levels of support to deal with that. There is the issue about whether it is better for them to work in their own community or to work in another Aboriginal community that is not part of their group. It is very complicated.

**The Hon. LYNDIA VOLTZ:** Just on the resourcing issue, the five-year-plan provides for an additional 850 caseworkers and 150 home care workers, so it is about 1,000 people you have to recruit over a five-year period. There are certain limitations on that. Are you reaching your limitations and targets, given your case management limitations?

**Ms RYGATE:** Well, that is right. It reminds me of last time we were here for estimates. The package originally had 875 caseworkers. We have added in another 150 for out-of-home care, which I think takes the total ask for particularly out-of-home care caseworkers to 300. I do not think that that would mean we would have caseloads comparable to the non-government organisation sector, which only has a specific number of cases and does not have to take whatever comes through the door. We have really comprehensive programs underway about recruitment but we are finding it hard in some locations to get people, no matter how hard we try, and as a couple of you will remember from estimates, we talked about the sorts of things that we are trying to negotiate with government overall about trying to provide some incentive packages, for instance, to encourage people to work in the Far West of New South Wales. We desperately need people out there and we need to give them a reason to want to go there to do what, in reality, is incredibly difficult work.

**Mr MALCOLM KERR:** Has Neil Shepherd relinquished his role as director general?

**Ms RYGATE:** He retired after 42 years in the public service.

**Mr MALCOLM KERR:** What day did he retire?

**Ms RYGATE:** Wednesday.

**Mr MALCOLM KERR:** It would be fair to say that your department's relationship with the Ombudsman is quite extensive?

**Ms RYGATE:** Yes, that is absolutely true.

**Mr MALCOLM KERR:** I take it that the role of the director general involves quite a deal of liaison with the Ombudsman's Office?

**Ms RYGATE:** Yes.

**Mr MALCOLM KERR:** Has a successor been appointed to Dr Shepherd?



**Ms RYGATE:** Yes, a woman by the name of Jennifer Mason. She has most recently been running the Department of Juvenile Justice but she has now commenced with us as the director general.

**Mr MALCOLM KERR:** Do you know her background?

**Ms RYGATE:** I know what I have read in the paper, probably not a great deal more than you have.

**Mr MALCOLM KERR:** What did you read in the paper?

**Ms RYGATE:** That she was running the Department of Juvenile Justice, that she previously had worked with the Attorney General and I think also the Ombudsman's Office; not a great deal more than that. Certainly, if you get into any issues around her appointment, I do not think I am the appropriate person to ask. I work for her.

**Mr MALCOLM KERR:** So you were not on the selection committee at all?

**Ms RYGATE:** God, no.

**The Hon. LYNDA VOLTZ:** Point of order: I hardly think this is appropriate for this Committee that is looking into complaints reporting.

**CHAIR:** That question is not appropriate to our terms of reference. I ask the member to ask appropriate questions.

**Mr MALCOLM KERR:** Did Dr Gül Izmir retire this year?

**Ms RYGATE:** No, she has not actually left the department yet. As I understand it, she is taking up a position in some sort of international consultancy. I think it is around economics-type issues.

**Mr MALCOLM KERR:** Has she been replaced as yet?

**Ms RYGATE:** No, she has not actually left yet.

**Mr MALCOLM KERR:** Are there many positions in the department that are vacant at the moment?

**Ms RYGATE:** Yes, there are always a number of positions vacant because people move on, get promoted, change roles or whatever, but I do not have the specifics of how many vacancies there are. Certainly, we explored some of these issues at estimates and there was a question on notice on this, so I believe that information would be available to the Committee.

**Mr MALCOLM KERR:** There was the death of a Tyra Kuehne, a four year old who died following a dog attack. Are you familiar with that case?

**Ms RYGATE:** We had a question about that at estimates and the Minister for Community Services went on record about these sorts of forums not being appropriate for

the discussion of individual cases. Minister Greene indicated that matters involving confidential details regarding children and families should not be subject of public discussion. He also noted that where matters are the subject of criminal prosecution, they are sub judice, so in responding to any question that you might have today, I am bound by the Minister's stated position.

**CHAIR:** Mr Kerr, I ask you to rephrase your question because that is not within the terms of what we are looking at today.

**Mr MALCOLM KERR:** I will ask not about an individual case but generally where parents believe they do not have any blame for the death of a child and that a member of your department has contributed to the death, what avenues of complaint are available to those parents?

**Ms RYGATE:** There are all the normal avenues of specific complaint available to the parents: to the Ombudsman, to ourselves. If they believe that there is any level of criminality or whatever, I am sure they are free to make a complaint to the police, and there is an extensive system of review of child deaths; obviously police investigations, Coroner's investigations, the work of the Ombudsman in reviewable child deaths where the death of a child is within those criteria, internal review of those things; the work of the child death review team looking at all child deaths in New South Wales over a year. There is an extensive system, both in the investigation of the specific death and also of deaths in general, which provide ample opportunity for any particular errors, omissions, offences or, in fact, bits of good work to be identified and acknowledged.

**Mr MALCOLM KERR:** Have any of those investigations resulted in finding against members of DOCS or disciplinary action being taken?

**Ms RYGATE:** I think you are talking about Ombudsman's investigations. My recollection is that there have not been specific findings recommending disciplinary action against any individual staff member. One of the things that we do, though, in relation to child deaths is, with the benefit of the Ombudsman's investigations and our own work, have a very good hard look at what has happened and whether there is the need to address issues with particular staff or groups of staff, and we have a fairly extensive program under way around child deaths to make sure that the lessons that should be learned from those things are learned and that we do whatever we can, without in any way suggesting that you can design a system that can prevent child death because much as we would love to, it is not reality, but to learn whatever lessons we can so that we can at least reduce the chances of those sorts of things happening again.

**CHAIR:** There are some further questions we have regarding your submission. Would you object to these questions being taken on notice?

**Ms RYGATE:** No, I would not but we did not make a submission.

**CHAIR:** The Committee secretariat will be in touch with you regarding these. Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Community Services (Complaints, Review and Monitoring) Act.

**(The witness withdrew)**

**(Short adjournment)**

**KERRY ANN BOLAND**, Children's Guardian, New South Wales Office for Children, Level 2, 407 Elizabeth Street, Surry Hills, sworn and examined:

**CHAIR:** Ms Boland, thank you for appearing before the Committee on the Office of the Ombudsman and Police Integrity Commission this morning. Your appearance before the Committee is to provide information regarding the Committee's statutory review of the Community Services Complaints Review and Monitoring Act 1993. The Committee has received a submission from your organisation. Is it your desire that that submission form part of your formal evidence?

**Ms BOLAND:** Yes.

**CHAIR:** Would you like to make an opening statement?

**Ms BOLAND:** Yes. Firstly, I appreciate being given the opportunity to appear before the Committee. I would like to provide a short opening statement that covers the main aspects of our submission. I will not repeat what is in the submission; however, I will draw your attention to some important matters. In addition, since giving our written submission to the Committee we have had further discussions with the Ombudsman's Office and, if I may, I would like to clarify a couple of issues for the public record.

It may be useful to the Committee if I briefly outline the role and function of the Children's Guardian and the relationship it has with functions under the Community Services Complaints Review and Monitoring Act. My principal role relates to children and young people in out-of-home care and the designated agencies that make arrangements for the provision of their care. I am also responsible for the accreditation of non-government agencies who provide adoption services.

The Children's Guardian is a statutory office established under section 178 of the Children and Young Persons (Care and Protection) Act 1998. Section 181 of that Act states that the Children's Guardian has a number of functions. They are to promote the best interests of children and young people in out-of-home care; ensure their rights are safeguarded and protected; and, importantly, to accredit government and non-government agencies that arrange the provision of out-of-home care and monitor their responsibilities under the Act and Regulation.

The Children's Guardian executes these statutory responsibilities in a number of ways. The primary means are by accrediting agencies against a set of standards known as the New South Wales out-of-home care standards. Accreditation is a structured means of providing recognition of an organisation's performance against standards and other criteria as required by legislation and regulation. The Children's Guardian runs an accreditation and quality improvement program. In order to provide services an agency must participate in one or other streams of this program. It is, if you like, a licensing regime with a quality improvement focus. New out-of-home care service providers must go directly into the accreditation stream. The Children's Guardian also conducts annual case file audits which monitor the performance of agencies in case planning and management-review.

My written submission to the Committee focused on the relationship between the Children's Guardian and the Ombudsman and official community visitors. Some important principles provided the structure for my submission. They are: that oversight bodies must avoid any overlap in responsibilities and ensure they are complementary in the way they operate; that information sharing by oversight agencies maximises their effectiveness and eliminates duplicative requests on service providers or clients; and that while each jurisdiction has distinct functions, both have a common purpose in supporting the continuous quality improvement in out-of-home care for children and young people.

In our written submission we canvass five key areas: the complaint function, the review function, the child deaths in care function, standards for the delivery of community services, and the functions of official community visitors. In each of these areas I outline the respective jurisdictions of the Ombudsman and the Children's Guardian, and the protocols and working arrangements that are in place to eliminate overlap where it may occur. I then discuss the information-sharing issues.

With regard to protocols and working arrangements, my office and the Community Services Division of the Ombudsman's Office regularly discuss out-of-home care projects of common interest. The Ombudsman consults my office in developing particular projects, a recent example being the pilot out-of-home care data classification and reporting system for official community visitors. Ombudsman reports, in turn, can inform areas on which my office may choose to focus in its audit activities, and also decisions I make concerning the accreditation of out-of-home care agencies—for example, imposing conditions on an agency's accreditation. I regard the consultative process, and the memorandum of understanding between the Ombudsman and the Children's Guardian, as an effective way of avoiding duplication in work programs and allowing appropriate matters to be referred between us.

As I indicated earlier, I would like to clarify a couple of issues in our written submission concerning information exchange issues. On page 6 of my submission, which deals with complaints, I refer to discussions between the Ombudsman and the Children's Guardian concerning the appropriateness of recognising the Children's Guardian as a relevant agency under schedule 1A of the Ombudsman's Act to enter into complaint referral and information exchange arrangements under part 6 of the Act. Since the submission to the Committee, further discussions have occurred. I am now satisfied that our broad function of promoting the best interests of children in out-of-home care allows relevant information to be disclosed to the Ombudsman under section 254 of the Children and Young Persons (Care and Protection) Act 1998. I understand that the Ombudsman is satisfied that relevant information can be disclosed to the Children Guardian under section 34 of the Ombudsman Act and section 24 of the Community Services (Complaints, Review and Monitoring) Act.

At page 10 of our submission we have asked the Committee to consider whether the Community Services (Complaints, Review and Monitoring) Act supports the provision of review information to the Children's Guardian before a review report is finalised. Section 13 (5) (b) of the Community Services (Complaints, Review and Monitoring) Act allows for a report to be provided to the Children's Guardian and we think that section 34 of the Ombudsman Act is not over-ridden by that section. But if there is uncertainty then I would like the Committee to consider that the Community Services (Complaints, Review and Monitoring) Act should allow for pre-report information to be disclosed to us for the reasons outlined in my written submission.

The major issue raised in my submission is the potential for improved co-operation between the Children's Guardian and official community visitors and the legislative barrier to effective information exchange in this area. In New South Wales the Ombudsman supports an official community visitors program, that has a strong residential disability care focus but also extends to out-of-home care in group homes and similar residential care services. The out-of-home care services visited by official community visitors provide services to less than 3 per cent of the out-of-home care services. Whilst the number of children and young people subject to the jurisdictions of both the Children's Guardian and official community visitors is small, 41 of the 57 out-of-home care agencies in New South Wales are accredited, or have interim accreditation, to provide residential care. This means that the information gathered by official community visitors is likely to be of great interest to my office.

The Association of Children's Welfare Agencies and a number of out-of-home care agencies have suggested there would be value in integrating official community visitor feedback into the accreditation process. Whilst I have power to require the out-of-home care agencies provide me with community visitor reports, I am concerned that decentralising responsibility for providing reports may result in some relevant reports not being passed on. If my office were to receive relevant visitor reports through the Ombudsman's office, and be able to discuss issues arising with relevant official community visitors, I could be assured I was receiving relevant information adequately placed in its proper context.

As with all information considered by my office, visitor information will not be taken into account before affording out-of-home care agencies full procedural fairness. My focus is to work with out-of-home care agencies in improving the quality of their services and by giving them a chance to address substantive concerns. If an agency fails to address those concerns then, and only then, would I consider other action such as imposing conditions on their accreditation. In turn, relevant material in accreditation reports, annual progress reports and case file audit reports prepared by my office could assist and inform official community visitors on particular issues to focus on when visiting out-of-home care services. The new memorandum of understanding with the Ombudsman can address how this information could be provided to official community visitors, subject to appropriate confidentiality safeguards being put in place.

At this stage section 8 of the Community Services (Complaints, Review and Monitoring) Act and clause 4 of the regulation provides for official community visitor reports being made available to the Ombudsman and relevant Minister. There is no capacity for such reports to be provided to the Children's Guardian. I would ask the Committee to consider the merits of a legislative amendment to support information in official community visitor reports being able to be made available to my office. I could then develop protocols with official community visitors and the Ombudsman as to the precise circumstances in which this information would be provided, how it would be used, and how its confidentiality would be protected.

**CHAIR:** Can you expand on how the receiving of complaints information that raises serious or systemic concerns about a designated agency or non-government adoption service provider would contribute to your work and enhance the protection of children?

**Ms BOLAND:** Our system operates by us assessing the systems of an out-of-home care agency. We do that by a number of means. The first means is to assess their policies and procedures. The second means is by assessing the casework, where it is available to us, and making a judgement as to whether the systems that are in place meet a certain

standard. It is obvious that outside that process a number of other activities can occur, including making complaints to the Ombudsman and other like bodies. It makes common sense to us that where there is a serious systemic issue in the context of a complaint that that should be taken into account in an accreditation decision. We rely on the information that the agencies give us to a large degree and if they choose not to provide the other information we ask for currently there is little we can do, although we would come across it substantially in some of their material. In other words, I am saying it is another source of information to assess systems within out-of-home care agencies—it gives us a fuller picture.

**Mr PAUL PEARCE:** You were talking about the barriers to effective information exchange. You believe there would be advantages in the information gathered by the community visitors coming through to you. Were you talking about issues pertaining to the agencies or the bodies who are doing it or were you talking about individual cases within that? If it relates to individual cases how would you seek to address any privacy issues that might arise from that?

**Ms BOLAND:** Primarily we would be looking at any substantial material that goes to assessing whether an agency meets a standard or not. So that would be systems issues or it would be individual cases that highlight a systems issue. Our main aim is to look at the systems to make sure that they are in place in order to look after individuals. It may be in the course of that, that individual matters may come to our attention and I think I mentioned in my opening statement that we would need to attend to those by adherence to the provisions in the Ombudsman Act and also some other privacy issues would need to be sorted out. How we exchange the information and the extent to which we do that, we are suggesting would be covered in the memorandum of understanding between the two agencies.

**Mr MALCOLM KERR:** Have any arguments been put forward to you, not so much about the technicalities of what you are seeking but that it would be a wrong course of action to give you access to that?

**Ms BOLAND:** No.

**Mr MALCOLM KERR:** So far as you are aware?

**Ms BOLAND:** No, not at all. I think what has come to our attention is mainly how useful it would be. I have not received anything in the negative.

**Mr MALCOLM KERR:** So as far as you are aware there is no opposition to what you are proposing?

**Ms BOLAND:** Not as far as I am aware.

**Ms SYLVIA HALE:** Page 8 of your submission discusses the non-proclamation of the review functions. My reading of it is that you manage quite well without them being proclaimed but were they proclaimed then you could manage equally well. Do you have a preference for the proclamation or otherwise and do you have any explanation as to why they have not been proclaimed?

**Ms BOLAND:** There are a number of issues in relation to proclamation or non-proclamation. Just for the information of the Committee, we have provided a significant

amount of material to the Wood Commission and our submission is on their website if you want to avail yourself of that. We talk extensively about the unproclaimed provisions. The Government has decided not to proclaim them. From the perspective of the Children's Guardian we consider some of them to be unworkable. Again that is outlined in some degree of detail in our submission to the Wood Commission. In that submission we have a look at a possible model that could be considered and that is out in the public arena at the moment to have a look at. I just draw your attention to that submission. It is extremely comprehensive.

**Ms SYLVIA HALE:** It really is not a good process, is it, for laws to be enacted but not proclaimed? I am not sure that that is appropriate. In terms of official community visitors, do you have any role in their appointment?

**Ms BOLAND:** No.

**Ms SYLVIA HALE:** Do you feel it would be desirable for you to have some input?

**Ms BOLAND:** I will just think about that for a minute. A small number of the community visitors concern our jurisdiction. We obviously would consider the ones that have been appointed to have a background in out-of-home care services and to have an understanding of that system. I think at that most basic level, that would be our requirement in any case. Whether we would need to have input into that? I think the Ombudsman's office does a good job at that. I do not see any real need or that it is imperative at this stage that we would need to have input.

**Ms SYLVIA HALE:** Just going back to page 8, you talk about the case file audit program that you have developed. Do you believe that works very satisfactorily?

**Ms BOLAND:** Yes, we are exceptionally pleased with it actually. The last case file audit that we undertook, which is covered off in our annual report, was an extensive case file audit covering some—I do not remember the exact number—I think around 2,335 cases. We think that we got a very good understanding and feel for how the out-of-home care system is operating across the board, and those findings are now in the report.

**Ms SYLVIA HALE:** Is that a system that is adopted by any other agency that you are aware of? How was it developed?

**Ms BOLAND:** In the original provisions for the Children's Guardian one of the provisions suggested that we look at every case review. When we looked at what that would entail, given the size of the out-of-home care system if you look at one of those for each child—and we need to do that at a minimum on an annual basis—we would be looking at 10,000 matters per year. The capacity for an agency to give real attention to that many matters was not practicable so we introduced instead what we think to be a comprehensive case file audit process, which picks up the issues intended by that particular section and, given the sample size and the extensiveness of that review, we think that that gives us statistically reliable information and enables us to pinpoint particular areas of concern for which we will go forward and do more work.



**Ms SYLVIA HALE:** So does it work by identifying a problem and then searching through cases where that problem has been evidenced or does it work by a random sample of, say, 10 percent of your cases every year?

**Ms BOLAND:** It is a random sample. As I said, we only look at court-ordered care, so we looked at just less than half of the matters in court-ordered care. We had PricewaterhouseCoopers consulting firm design our audit tool and do the data analysis for us. This tool was trialled in the early stages and then there was a second trial. This last case file audit was the largest sample and I think the most reliable sample and it looks at case management issues, review issues; it looks at health records; it looks at educational records and various other aspects; kids' participation in the process; foster care and participation; parent participation; and it basically canvasses all of those issues which, as you know, are legislative requirements under the Act. So, we look at how the system is performing in relation to those areas.

**CHAIR:** What were the outcomes of the review of the memorandum of understanding with the New South Wales Ombudsman?

**Ms BOLAND:** Between us?

**CHAIR:** Yes.

**Ms BOLAND:** The memorandum of understanding that we currently have in place is the 2004 memorandum. We have now drafted an updated and new memorandum, which we are currently talking to the Ombudsman about. Obviously, some issues that come out of this will influence what else needs to go into that memorandum. That is the status of it now.

**CHAIR:** Would amendments to the CRAMA improve the sharing of information between the two agencies, in your opinion?

**Ms BOLAND:** I have itemised two areas where I think it would—that is in relation to official community visitor material, and also, if there is any doubt in the Committee's mind, in relation to review material. The issue there is we are pretty sure that we can be provided with a child review report. There is a small question—although we have reasonable consensus that we think is overcome by provisions in the Act—that we would like to get material earlier than the final report. For example, if we are in the process of accrediting an agency and getting towards the end of that accreditation process and that agency tells us they are currently being reviewed by the Ombudsman, we would like the capacity to know what the nature of that review is to see if it was a substantial issue that went to an essential of our accreditation criteria—our system, for example—and I think we would like the opportunity to either defer accreditation to make sure that the issues identified by the Ombudsman are remedied and then we can have some assurance that the accreditation systems that we accredit are in place and working appropriately. It is important to remember that our system in fact accredits systems, and if there is a fundamental to those systems that is not working I think that is what we would like to know.

**Mr PAUL PEARCE:** Just following on from that, the Ombudsman is doing a series of assessment criteria and you would be seeking to get access to that prior to the conclusion of it. How does that provide procedural fairness to the agency that is being assessed if you are

then making judgments based upon something that is not finalised but would not necessarily have been brought to their attention?

**Ms BOLAND:** Sorry, I will be clearer. What I am saying is we would await the outcome. We would want to know that it was a substantial issue that would affect accreditation, but obviously we would let the Ombudsman's processes conclude and their recommendations be accepted, presumably by the agency, and remedied. What we are looking at is deferring the decision to accredit until that process is either concluded or we could be of assistance in that we could perhaps put a condition on the agency that they must follow the recommendations of the Ombudsman. But our more likely approach would be to defer accreditation until that process is complete.

**Mr PAUL PEARCE:** Do you then envisage a feedback between yourself and the Ombudsman in relation to matters that are coming up through the review process so that you are looking at it with the agency when you get this draft or report?

**Ms BOLAND:** I think what we are really looking for is to know, not extensive detail, but to know that there is a substantive issue that might affect a decision we might make in relation to accreditation. We already have extensive referral and do often refer matters to the Ombudsman for him to have a look at under his legislation. I think that works exceptionally well.

**Mr PETER DRAPER:** You said before that something like 41 out of 57 agencies were accredited. Is that normal?

**Ms BOLAND:** Forty-one are accredited to do residential care. The system in New South Wales is most of the care is by foster care and a small percentage of the system is in relation to residential care. When you apply for accreditation—and you need to apply for accreditation in each program, a foster care program or a residential program—most agencies, even if they are not doing residential care at that moment will also apply for accreditation for residential care. To various degrees, as the system develops, they will undertake residential care.

**Mr PETER DRAPER:** You mentioned earlier that they all have to meet an out-of-home care standard. Is that something that is reviewed on a frequent basis?

**Ms BOLAND:** The standards?

**Mr PETER DRAPER:** Yes.

**Ms BOLAND:** We have just concluded a review of our regulation and as part of that review we are currently looking at the out-of-home care standards. So, yes, we are in the process of reviewing those standards to update them to current practice but also because they were developed back in 1998, and a lot has happened since then. Most of them are still relevant. There is a lot of repetition in them so we intend to streamline them and simply update them with current practice.

**Mr PETER DRAPER:** Is there a timeline for having that done?

**Ms BOLAND:** By the end of this year. We intend to have that and our new regulation in place for when agencies come up for re-accreditation, which is at the beginning of 2009.

**Ms SYLVIA HALE:** Have you ever revoked the accreditation of an agency?

**Ms BOLAND:** No.

**Ms SYLVIA HALE:** Have you ever been close?

**Ms BOLAND:** Yes. In terms of people undertaking the requirements of accreditation, most of the agencies would say that it is—I would call it a robust process—some of those would consider that it is quite a hefty task for them. In terms of compliance with those accreditation criteria, it is a pretty rigorous process. What we have tended to do is put agencies on, what we we're calling internally, a work program, which assists them identify those areas where there are shortcomings. Some agencies have the capacity to remedy those very quickly and some other agencies are slower at that. In terms of revocation though, I think the other sections of our legislation come into place, and that is what is in the best interests of children and young people. So, obviously, apart from assessing material that goes to accreditation we are very interested in how are the kids travelling in that particular service.

**Ms SYLVIA HALE:** Of the 41 agencies you say are accredited for residential care how many have gone on to a work program, or what percentage?

**Ms BOLAND:** I would have to look at that. I will take that on notice. It is not very many but I will give you a percentage.

**CHAIR:** Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the CRAM Act. This concludes today's public hearing for the statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. Thank you to everyone.

**(The witness withdrew)**

**(The Committee adjourned at 12.30 p.m.)**

## HEARING 2

**NOTE:** The second hearing of the Statutory Review of the *Community Services (Complaints, Reviews and Monitoring Act) 1993* took place on 13 March 2008 at Parliament House, Macquarie Street, Sydney.

**CHAIR:** I welcome everybody to the second day of public hearings being held as part of the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring Act) Act 1993. This Act incorporated the Community Services Commission into the New South Wales Ombudsman's Office thus creating the Community Services Division. Section 53 of the Act requires the Committee to review the Act to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Committee is required to report on its review by 3 July 2008. Today, being the second day of the Committee's hearings for this review, the Committee will be taking evidence from a number of peak bodies as well as members of the official community visitors.

**ANDREW BUCHANAN**, Chair, Disability Council of New South Wales, 3/450 Edgecliff Road, Edgecliff, sworn and examined:

**DOUGIE HERD**, Executive Officer, Disability Council of New South Wales, level 19, 323 Castlereagh Street, Sydney, affirmed and examined:

**CHAIR:** Good morning, Mr Buchanan and Mr Herd. Thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the Committee is to provide information regarding the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring Act) 1993. The Committee has received a submission from your organisation. Is it your desire for that submission to form part of your formal evidence?

**Mr BUCHANAN:** Thank you, Chair.

**CHAIR:** Do you want to make an opening statement?

**Mr BUCHANAN:** Yes. May I thank you and your Committee for inviting me and my colleague Dougie Herd. It is worthwhile reminding the Committee of the purpose of the Disability Council of New South Wales. It was established by the Community Welfare Act to advise government on issues affecting people with disabilities and their families. Our council members are appointed by the Governor on the recommendation of the Minister for Disability Services. Members are selected on the basis of their experience of disability, their understanding of issues, their knowledge of service delivery and their ability to reflect and advise on government policy. The majority of council members are people with disability from across New South Wales.

We welcome the opportunity to give verbal evidence to your Committee. We hope to elaborate on our written submission of last October. If I may, however, I would like to step back for a moment from the immediate purposes of the review of Community Services (Complaints, Reviews and Monitoring) Act 1993 which are:

To determine if the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives.

The short answer to both questions is, "Yes, they do." We feel it is helpful to remind ourselves briefly of the more fundamental purpose served by Community Services (Complaints, Reviews and Monitoring) Act 1993, the reason the Act must be understood to be a necessary law and seen to be effective. We need the Community Services (Complaints, Reviews and Monitoring) Act 1993. We need the Community Services (Complaints, Reviews and Monitoring) Act 1993 because we have services that people with disability and their families rely on to live with dignity as valued members of our communities, and I cannot estimate or over estimate that enough. That point seems almost too obvious to make but I hope you will understand why we believe it is anything but that. It is, I contend, essential to our purposes here this morning. I am sure you will agree with me that the statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993 must not be a sterile parliamentary exercise of minding our p's and q's. None of us, I am sure, regard the review as a matter of mere legislative housekeeping.

So this is my point, real people with disability and their families really do need and benefit from the rights and protections enshrined in the Community Services (Complaints, Reviews and Monitoring) Act 1993. The review cannot be, therefore, a dry exercise. It must be viewed as an essential component of ensuring that what we think of as the community care or disability services system actually works in the best interests of people with disabilities and their families. In New South Wales there are approximately 1,300,000 people with disability, of whom 200,000 have what some reports classify as a profound disability and 200,000 more have a severe disability. Tens of thousands of people with disability, older people and their families are supported by taxpayer-funded services delivered by government and non-government agencies, employing many thousands of front-line staff and managers.

We have laws, agreements, policies and procedures to govern and guide it all. Here are just a few: the Disability Services Act, the Home and Community Care Agreement, the Commonwealth State and Territories Disability Agreement, Better Together, the State's whole-of-government plan for people with disability, Stronger Together with its universally welcomed injection of \$1.3 billion of growth funds over five years and, of course, the Community Services (Complaints, Reviews and Monitoring) Act 1993. It is clear, I hope you will agree, that we have a large, complex, diverse, widespread service system that strides to meet the needs of many people with disability. There remain, however, areas of unmet need. So not only is the system large and complex, it can also be from time to time subject to pressures, none of us would wish upon it.

At the core of this huge industry of improving, but sometimes stretched services, sits its raison d'être the individuals towards whom all this energy is devoted to organising what has been called the mixed economy of community care. At the heart of our system sit many people with disability with individual needs for support and a set of rights enshrined in law about what to expect of services. For our part we recognise that most of the time for most people within the system most of the services operate well—that it is as it should be. Skilled,

dedicated and professional staff members do their level best to respond appropriately to the expressed needs of people with disability. All of us must do what we can to support and encourage good staff members to do their jobs, as well as any human being can. But that is where part of the difficulty can arise.

Human beings working in human service organisations can and do, from time to time, fall short of our and their expectations and standards, as well as those of the clients that they are employed to support directly or indirectly. That is where the Community Services (Complaints, Reviews and Monitoring) Act 1993 comes in. That is why the Community Services (Complaints, Reviews and Monitoring) Act 1993 is important. Human beings in human services sometimes make human errors, sometimes it is a problem tied to an individual, to a location or to a unique set of circumstances. Sometimes, however, it is a failure in or of the system itself. That is why we need an effective complaints, review and monitoring framework, one that is set out in law and fixed within a rights-based approach to respecting the dignity of people with disability. So before concluding these opening remarks may I remind you of the key points from our written submission, and there are eight.

First, the objectives of the Act as set out in section 3 remain valid, worthwhile and necessary. Second, we believe the service system as a whole has not yet fully realised the goal of the Community Services (Complaints, Reviews and Monitoring) Act 1993 that complaints and complainants should be seen as legitimate and welcome, as well as positive indicators of quality assurance within service delivery systems. Third, complaining can be problematic and perceived to be risky for clients, many of whom are already vulnerable. People with disability may not feel safe enough to risk making a complaint. The pressures at play here can be subtle but strong. Fourth, we believe that complaints are handled best and dealt with most effectively as near to the client as can be. Escalating them up the ladder ought to be avoided but where it becomes necessary the systems in place should facilitate and not inhibit complaint resolution.

Fifth, complaining should not be reduced to a battle between right or wrong, winner and loser. Like all speakers before you, I imagine, we favour alternative dispute resolution tools, such as mediation and conciliation designed to change behaviour, leading to better outcomes. Sixth, independent complaints systems and agencies are critically important to good quality assurance and complaints resolution. Seven, the Ombudsman's Office is the key agency. Its Community Services Division, led by Steve Kinmond, does excellent work on behalf of vulnerable clients. It responds to individuals, addresses systemic problems and takes seriously the essential voices of advocates and advocacy organisations. Its role should be enhanced.

The final point is that we have stated our belief that the right under the Community Services (Complaints, Reviews and Monitoring) Act to appeal a Minister's decision under the Disability Services Act ought to be realisable. Some of our stakeholders have told us that currently that is not the case. If that is indeed correct, Parliament needs to fix the problem in favour of the right to make an appeal to the Administrative Decisions Tribunal. Thank you once again, Chair. I hope that we have been able to offer a helpful perspective this morning and we are here to answer any questions, particularly my colleague Dougie Herd, to the best of our and his ability.

**CHAIR:** Thank you for your opening statement. It was very comprehensive. I would now like to open the questioning of the witnesses. Your submission recommends that the Ombudsman develop its role in systemic issues. Can you outline how this would contribute

to the achievement of the objectives of the Community Services (Complaints, Reviews and Monitoring) Act?

**Mr BUCHANAN:** I think, in brief, it would just offer clarity; it would offer a sense of purpose. If I could reiterate and say that I think one of the difficulties of a person with a disability in some cases is that they are vulnerable in the first place, so it needs to be very clear. I think we have to have clarity, we have to have communication and I think the role of the Ombudsman's Office as outlined should be enhanced as part of that.

**CHAIR:** Would you like to add anything, Mr Herd?

**Mr HERD:** Yes. One of the things we want to see the Ombudsman's Office do more of is to be a tool available to the sector to develop its own systems. I think 40 per cent of the funds that have been generated through Stronger Together—the new money—will go to non-government organisations and it is a good and proper thing that we develop a lot more diversity in the service systems. That, of course means that we get a larger number of non-government organisations spread across the State providing services, with sometimes rural locations being the only provider. They may be small organisations, they may not have a great track record or years of experience, particularly if our policy in government is to expand and develop new forms of services and we can imagine there are a larger number of new players in the field providing very direct personal services to vulnerable people.

Because those non-government organisations come with a will to do good; they want to do the best thing they can, they probably do not spend an awful lot of time sitting down. The first thing on their mind is not, "How will we organise our complaints procedures?" But that is probably what they need to do. Rather than rush in to deliver services to people in vulnerable services, they need to think through the processes that will allow them to deal with problems when they arise; it is too late to do that when the problem has arisen.

Therefore, the role of the Ombudsman in investigating, finding out what is going on and seeing what good practices and bad practices are in existing organisations and being able to effect some change in other organisations practices is an essential role that helps build the capacity of the system. The Ombudsman should be able to do more of that, to not sit and wait for a complaint to arise but to learn from the experience of this diverse sector that we have got and use the best practice that we can find to bring everybody up to a level of competency in those key back-office areas that are not immediately what most well-intentioned non-government organisations think is not their responsibility but it absolutely is. It is not just the Department of Ageing, Disability and Home Care that needs to have a complaints procedure or a review and monitoring process; it needs to be all of those agencies funded by our money through decisions made in Parliament to make sure that people get the same quality of service with the same rights, whoever their provider is. I think that would be one instance of ways in which the Ombudsman could adopt a systemic role.

The other thing to say is fairly obvious. If it is correct, and I believe it is, that somewhere in the region of 550 complaints were received by the Ombudsman's Office last year in this area, they have a better picture of what is going on than many of us and I do not think they should hold that information to themselves or not recognise big pictures when they see them, and if they see the pictures, they should use that information to perhaps paint a new one for us or to encourage those who have the responsibility to paint new pictures, to do it on the basis of knowing what the world actually looks like for people with disability who often had no idea how to articulate the concerns that they have.

**Mr BUCHANAN:** If I can just add—and I am not a public servant so I am trying to see it objectively—in many ways it is a twofold issue. One is there has to be leadership from the disability sector and it is important for those individuals with a disability to clearly articulate what the problem is, to demystify. Likewise I think we have seen in government in the last couple of years a refreshing change of appointments—and perhaps Steve Kinmond is a good example of that in terms of the Ombudsman's Office—who tend to be humane and actually "get" disability. Without being political, in this State we have actually seen with the last three Ministers of Disability Services individuals who actually understand and are quite empathetic.

But it is really a twofold exercise in leadership, leadership from government in terms of people leading in an appropriate way and seeing things objectively, demystifying the whole issue of disability and for the disability sector likewise to show leadership as well as to assist to demystify rather than being precious. I think with great respect, the disability sector up until the last five years tended to be rather precious and tended to say, "We're special. We need help. We need special attention." My view as Chair of the Disability Council and as a person with a disability is that we are not special, that we have to participate and operate in a contemporary society, aided by some assistance but not to cry poor all the time. It is a twofold marriage.

**The Hon. CHARLIE LYNN:** You mentioned that 40 per cent of funding goes to non-government organisations. Is it your view that that percentage is about right or could it be a bit less or a bit more?

**Mr HERD:** The smart answer is that we can always have more, and anyone who wants to give it to us, we will take it. I think the Stronger Together money is 40 per cent. I am not sure whether the balance sits properly. But I think what is clear is that we need a strong, vibrant and developing non-government sector of large and small organisations who know the localities and communities and to develop expertise because the numbers are large. We have two options. We die young or we end up a user of community care services at some stage, whether as a person with a disability in my case as a 27 year old having my accident or Andrew's position earlier in life or my mum, who is 77, with hip replacements, knee replacements, losing sight and who needs somebody to come in and help her and tell her to not climb ladders to dust the top of the wardrobe. I have no idea why she does that but the Home Care Service of Scotland comes in and stops her doing that because it is stupid.

In our ageing population here in New South Wales we will need services. I am different from Andrew, and Andrew and I are different from my mum and 25 per cent or thereabout of the population of people with a disability in this State come from a non-English-speaking background. If you can forgive me for saying this in Parliament so early in the morning, let a thousand flowers bloom is what I think we need—government-funded and accountable services that are responsive to users needs, run by non-government organisations that understand the communities they serve, in which people with a disability and their families have a say in how those services are developed and managed, professional staff who do their best to make sure that the services are organised competently and well and that the procedures that we are considering today are in place to allow those people to get redress when things do not quite go as any of us would wish.



We are long past the time when all public-funded services will be organised through a government department, and I think that is a good and proper thing. We need to encourage the non-government sector but there is a risk that we get fragmentation of a service system. When there were almost no non-government organisations providing services, by and large we knew what we would get: It was a Henry Ford model of community care: You can have any colour you want so long as it is black. That does not work any more in the modern world. We have a series of public policies that encourage. Large residential centres will close over time, says Stronger Together. We have got parents, younger and older, who are saying, "Our previous generations may have looked after their sons and daughters for 20, 30 or 40 years but we are not in a position to do that." The baby boomers are spending the inheritance. They are not looking after their kids in the same way as perhaps my mother's generation might have done. If that is correct and if it is proper, we need government and non-government services to reflect that new paradigm, which will only deepen over the next 20 years.

As the population ages, if our community care policies are successful, if the new Commonwealth Government's national disability strategy is effective and if we can get an agreement on the Commonwealth, State and Territory disability agreement, that would be nice, but all of it tends towards more non-government organisations providing more services in more locations and, therefore, a tendency towards diversity and complexity, which makes the Community Services (Complaints, Reviews and Monitoring) Act even more essential now than when it was first drafted and makes an effective Ombudsman's Office and its Community Services Division even more critically important than the Community Services Commission was before its merger and I hope that this review will contribute to strengthening both the trend towards community care, the rights enshrined within it and the mechanisms that support people to live independently in the community.

**The Hon. CHARLIE LYNN:** I think you have both articulated it really well; you are good advocates.

**Mr BUCHANAN:** In terms of your question about funding, you may be surprised to know that Dougie has Scottish blood.

**Mr PETER DRAPER:** Dougie, following on from what you said about the merger, is the Disability Council of New South Wales satisfied with the outcomes of the merger with the Ombudsman?

**Mr HERD:** Yes.

**Mr PETER DRAPER:** Is there anything we could do better?

**Mr HERD:** I was working in the non-government sector before the merger took place and the Disability Council was I think sceptical at best about the ideas that were behind the merger. We may or may not have been correct five years ago, but I know of nobody who would suggest that we undo that which has been done. I think anyone who would suggest such would be looking at the world through rose-tinted spectacles. We have moved on. What was done was done. That has shown itself I think to have good and bad—not "bad", that is the wrong word, we don't use "good" and "bad", do we? Strengths and weaknesses. The strength is that I think people, punters—locally—understand very clearly that there is an Ombudsman and what an Ombudsman's office is there to do in as much as anyone

understands such things in the atmosphere of government departments, and I think people will feel a confidence that if they can take their case to the Ombudsman they understand that they have a powerful ally on their side and it does not need to be explained to them what the difference is between the Community Services Division and the Ombudsman. They know the Ombudsman reports to Parliament and they make complaints.

There is a criticism I think, which may or may not be fair, but put it this way: I am not a lawyer—my apologies to any lawyers in the room. There is a way in which lawyers go about their business which does not have the kind of community development perspective that was inherent in the Community Services Commission before the merger, and that has again both its strengths and its weaknesses. I think if we can continue to further develop the community development perspective within the Community Services Division it will not only strengthen that division but it will also filter into other aspects of the Ombudsman's work because in our experience what people tell us when we ask them is that these matters are not about merely legal technicalities: did a particular thing happen in a particular way at a particular time within the confines of the text of a law? They are about people's lives. We need to understand that. That is what is important.

If I could try to put it this way, a tin of beans on a shelf in Coles does not care how it gets out of the box on to the shelf to be sold. It has no opinion about it whatsoever. So one does that, if one is employed to do it, within the terms of one's employment and the Occupational Health and Safety Acts that govern how you will lift tins of beans out of boxes and put them on shelves. A C5-6 quadriplegic like myself cares deeply how you get me off my bed into my wheelchair, and also my need to be lifted out of bed, because I cannot do it myself, can from time to time be seen to come into conflict with the occupational health and safety rights of employees who work for non-government organisations. We need to negotiate that process in a way in which a tin of beans never needs to negotiate anything.

I think I have an absolute right to be treated with the complete dignity that any human being should be treated with when you have to be moved from a bed into a wheelchair, and because I am an old-fashioned trade unionist I also understand that the people who do the work have an absolute right to make sure that their back does not get damaged because they are helping me to get from my bed into the wheelchair, and into that mix, if I may have a complaint about the way in which it is done by a non-government organisation funded by the State, I need an Ombudsman that is going to come in and understand the complexities of that relationship because it is not just a technical matter.

It is not: Did this thing comply at that time? Although that is a crucial question, it is: How was the relationship conducted? Developing that culture within the Ombudsman is critical to its future success, I would argue, because if it merely sits in a legalistic framework it will miss the key philosophical purpose of all of this independent living, community care business that we are supposed to be about, which is to let people live with dignity to the best of their abilities in a community that cares. As usual, that is a slightly longer answer than you probably wanted or expected, but I hope it gives the flavour or the nuance that I think needs to be there. The short answer is that the merger has worked I think in the interests of people with disability and their families and the processes begun need to be deepened and made lasting, not just in the Community Services Division but across the whole of the Ombudsman's office because people with disability are not just the users of community care services. We go about our business as mothers, fathers, family members and consumers. We use all government services and the Ombudsman has a right to look at all of those

government departments and it needs to understand that sometimes we engage with government departments in a slightly different way from members of the public generally.

**Mr PAUL PEARCE:** I suppose I had better make a concession: I am a lawyer, but I did like the quote from the red book, I thought that was a nice start to the morning. You referred in your letter to Part 5, the review of tribunal decision hearings under the Act. It has been raised by several groups that there is potential conflict or incapacity for the Act to operate. What is your assessment? You do not have a particular view on that, you simply say in your letter that it has been raised that there is a potential issue. How do you interpret it? What do you see as the problem? I intend to ask several people who have raised it because I think it is something that may have to be addressed, if there is in fact an issue here.

**Mr BUCHANAN:** From a non-lawyer perspective?

**Mr PAUL PEARCE:** Yes.

**Mr HERD:** Our understanding of the problem is that—and I hope this is correct—people have a right to appeal a decision by the Minister, take it to the Administrative Decisions Tribunal, but that right cannot be realised, we understand, because the Minister's signature does not appear on the funding decision that set up the service that somebody may be complaining about. Because there is a devolution of responsibility for signing these decisions, the legal technicality we understand is that there is not a way of progressing that because in this case it is not Kristina Keneally's name that appears on the documentation, as it were, it would presumably be the director-general or the director-general's nominee, whoever approves the funding grant that goes to the service that somebody then complains about. If that is correct—and I do not know if it is or not—then our view, and I think we have discussed it pretty clearly, is that that administrative technicality that gets in the way of somebody exercising their rights needs to be removed in some way. The right to appeal a Minister's decision absolutely needs to be supported. I hope we are not getting this wrong, but I think that is the problem.

**Mr PAUL PEARCE:** I have read both sections, which is why I asked the question. Has it been tested?

**Mr HERD:** I believe it has. We got our information from the New South Wales Council of Social Service and from People with Disability Australia and I understood that People with Disability Australia had had a problem in the past in testing this in the court system.

**Mr PAUL PEARCE:** I would have thought that a finding that there was not a right of appeal was a very narrow interpretation of the sections because anyone acting would have been acting effectively as an agent of the Minister in that circumstance under delegation. I am just wondering whether there has been a misinterpretation at some point through the relevant tribunal?

**Mr HERD:** I do not know.

**Mr BUCHANAN:** Could I come back to your earlier question about the merger and clarify it?

**CHAIR:** Yes.

**Mr BUCHANAN:** As Dougie was talking it struck me that if indeed there was any scepticism from the Disability Council, or any doubt, I think at that stage it probably was, if I may suggest, a lack of information or communication in how the merger may react. My sense now is that there is a much greater deal of confidence in the broader disability sector towards government and I think that has come about probably because the disability sector has got its act together and, as I said before, because we now have Ministers for disability services, particularly at the moment with Kristina Keneally and the shadow Minister Andrew Constance, both of whom I think get it and actually relate very well.

Having said that—and I sit on other government committees, New South Wales Health, Office of the Privacy Commissioner, et cetera—my sense is that Government as a whole, with great respect and although you are dearly loved, does not really communicate terribly well, does not get the message out. I think in an area like disability and vulnerability, and as former Prime Ministers and current Prime Ministers talk about the most vulnerable in our community, we have to really clearly articulate what the issues are and where the support is. I think for a person with disability or for a person who has mental health issues, it is one of the issues that the infrastructure is there, it is a matter of being the architect and knowing how you tap in to some of those services. So if I as a fact faced chair of the Disability Council can plead that clarity and communication really have to be at the top of the agenda to avoid any misunderstandings, why there may be scepticism about mergers, and if this is to occur in five or ten years time, we do not repeat the same issues.

**Ms SYLVIA HALE:** In your submission, Mr Buchanan, you talk about the elderly and younger and you say that there has been a dramatic surge in the diagnosis and recognition of increased numbers of children with disabling conditions. You nominate autism spectrum disorder. It is my understanding that the Department of Education does not recognise autism as a disabling condition. Is that correct to your knowledge and, if so, have there been representations made to the department so that special provision could be made for those children?

**Mr BUCHANAN:** I am actually unaware of that background. Certainly in discussion with the Education Department through their director of disability services, Brian Smyth King, my impression, having worked very closely with the Department of Education and Training, is that they are supportive and empathetic of all disability, including autism. I think in our report we state that a lot of the so-called hidden disabilities have become more apparent. Fragile X autism, as you have quite rightly outlined, and a range of other mental health disabilities are now heightened and have been in the last couple of years. I think that, hand in hand with the issue of disability and ageing, is now talked about much more openly.

**Ms SYLVIA HALE:** Yes, but there may often be a requirement for the provision of specific services rather than a general recognition that people are impaired in some way?

**Mr BUCHANAN:** Absolutely, and I think we should all be striving for those things.

**Ms SYLVIA HALE:** On the last page of your submission you say that vulnerable people with disability in some circumstances are not protected by the Act, and I think you nominate people living in unlicensed boarding houses. Do you have any suggestions as to how the reach of the Act should be broadened to include such people?

**Mr BUCHANAN:** I think the whole issue of accommodation and housing is a vexed issue. Do you know what I mean? I think in terms of when we have looked in the past at institutions and institutionalisation, it is such an emotive term that we have to work not only as government but as a community to try to overcome some of those issues. Whether individuals with disability are living in boarding houses, group homes, whatever is an institution I think needs some form of protection.

**Ms SYLVIA HALE:** But presumably it is the fact of these boarding houses being unlicensed that therefore they are beyond the reach of government control, as it were, that is expanding the Act to bring them within reach of the provisions of the Act.

**Mr HERD:** I think we could only but agree with you, and we face that problem I think not just with regard to unlicensed boarding houses in the future. I think my observation is that if our policies, not just here in New South Wales but in the country and overseas, are successful, more and more people will live in their own homes being supported by taxpayer-funded services to live independently and it becomes very difficult to see people with psychiatric disability, with physical and intellectual disability, living in any street anywhere in the community in an ordinary house, an unlicensed boarding house—how do we ensure that the protections that would be present in a group home or a large residential centre are present and real? That is one of the downsides of the growth and fragmentation that I think I mentioned earlier.

I do not know what the legal answer is. I struggle with it, whether or not I am a lawyer. Does everybody's house become an area in which the Community Services (Complaints, Reviews and Monitoring) Act 1993 applies? I am not sure how one gets round that legalistic problem, but I think we need to find a solution to that. I confess that I am being deficient in my public servant role here because the Disability Council is supposed to advise government and all I am doing is pointing out a problem and agreeing with you that we need to get a solution. I think maybe what we ought to do, and I am mindful of the report that you have got to produce, is to consider your thoughts on the subject and give the best advice we can to the Government on how it might act on what is clearly a gap and will become a bigger gap in the years ahead.

**Ms SYLVIA HALE:** Presumably something like a charter of human rights could be the legal framework within which at least the people living in non-government licensed accommodation might have some avenue of appeal.

**Mr HERD:** Am I allowed a Sir Humphrey answer to that question? It reminds me of one thing that perhaps I should say. As you probably know, the Australian Government is considering conducting a national interest assessment of whether or not the United Nations Convention on the Rights of Persons with Disabilities should be ratified, having been signed by the previous Government last May, I think it was. If that convention is ratified by the Australian Government, my understanding is that the State Government, and I believe the Opposition also, is supportive of ratification of the treaty. That would open up the possibility certainly of that instrument having some use. But that is not the same as a State-based law that would address the problem that you identify. I think we all agree that there is a problem, particularly acute for people in company and unlicensed boarding houses who have nothing like the protection they need or deserve in unlicensed boarding houses at the worst end of

the spectrum. I recognise that there are unlicensed boarding houses at the other end of the spectrum that do good jobs.

**Mr BUCHANAN:** Your point about education is a very valid one in terms of autism. I suppose the only clarification to make is that irrespective of whether the State and Federal Governments and/or previous governments have made headway, one of the frustrations is that there is always an unmet need in that area. Perhaps it is unrealistic to expect that there will be ever any government who will be able to provide the appropriate dollars to cater for those hidden disabilities.

**The Hon. LYNDA VOLTZ:** While we are talking about people making complaints, these Acts obviously have an impact on to the service providers, the non-government organisations that administer the services. I am conscious that there is a decrease in the stock of boarding houses. While we are talking about more regulation for them, we are talking about a decrease in stock. Are there other impacts on the service providers and non-government organisations from these systems? Obviously there is the impact that people are able to make complaints. Are there other impacts?

**Mr HERD:** Yes. To be straightforward, there is too much paperwork. There is no doubt about that at all. There is also tension there. I do not want to personalise these things, but I think it is general. I want my rights protected by as much belt and braces legislation and paperwork that will protect my rights. I think it is important for me to state this because I am not a shy, retiring wallflower. I am a reasonably confident and articulate person. But even I find myself in situations in which I feel a real vulnerability as a person with a disability. I am a C5/6 quadriplegic, I am paralysed from the chest down. I am dependent on people to do highly personal things just to get me up out of bed and on with business. So I want to have somewhere at the back of my brain the reassurance that there is some system operating in my favour. Also at the same time I do not want the organisations that I depend upon spending a large amount of their time, money and professional expertise filling out forms that are sent into Clarence Street so that somebody can tick a box to say that the procedure has been followed in the correct and proper way. I am not sure how we reconcile those competing legitimate interests.

When Andrew and I accompanied, to our great pleasure, Minister Della Bosca around the State when we did the Stronger Together consultations, I recall there was a woman representing a non-government organisation providing services in the Parkes area. She said that she had a real dilemma because she was not sure what was in the best interests of her clients. Was it to stay in Parkes and do the work or was it to travel up to the meeting with John Della Bosca to tell him that the paperwork on the community participation tender was so onerous she did not know she would have the time to do it. But she knew if she did not do the paperwork she would never get the money to develop the services in Parkes and that that tension caused her real difficulties on a Thursday evening. For her it made a real difference. Twenty minutes on paperwork was 20 minutes she was not spending with her clients. For her clients in Parkes there was nobody else to do the work. The Minister at the time gave an assurance that the paperwork would be simplified, but I think we still have some way to go to simplify those processes. If we are going to spend taxpayers' money, we ought to spend taxpayers' money on service delivery, not paper filling and box ticking.

**The Hon. CHARLIE LYNN:** Is a lot of that stuff covering your own backside?

**Mr BUCHANAN:** Precisely. Taking that issue a step further, if indeed a family with a child with a disability is dealing with the Department of Ageing, Disability and Home Care and/or the Department of Community Services and/or NSW Health the paperwork is tripled. That is the frustration. I think it was actually very healthy for the then Minister for Disability Services putting together Stronger Together to be exposed to the real issues, hearing from the horse's mouth from highly articulate young mothers who were not being drama queens but were simply saying it as it is talking about the frustrations and the difficulties. We all know how difficult having children is, let alone ones with highly complex needs. So that is an issue, and the other is a compounded issue of a disabled child who could be 60 or 70. The parents during their evidence said they were terrified of dying because if they die, what happens to the child. These are real issues that obviously we have to grapple with. Again, that comes back to the whole thing of carers and the current controversy we have had in the Federal Government in the last week or so. That is an issue that is sometimes swept under the carpet. It should be pulled out with the vacuum cleaner and addressed by all governments. That was a slight digression.

**CHAIR:** It was appropriate. The Committee has further questions regarding your submission. Do you object to taking those questions on notice?

**Mr HERD:** Of course not.

**CHAIR:** The Committee secretariat will be in touch with you about that.

**Mr MALCOLM KERR:** Madam Chair, I would like to ask a question about the paperwork issue. You mentioned the burden that is placed on people by the paperwork. Has there been a reduction or simplification in paperwork that you are aware of? Following it being to the Minister's attention, has there been a reduction or simplification?

**Mr HERD:** From what people tell us, the example I was talking about, the community participation tender, the subsequent tender documents have been better than the one that was being complained about. I think there is plenty of room for improvement here. That is what I think. These tensions are real. Forgive me for repeating myself, but I think it is important. We want to try to make sure that we can minimise the amount of unnecessary administration work that is required, paper filling and box ticking, but at the same time there are necessary administrative and reporting processes that are fundamental to the successful application of the obligations under the Community Services (Complaints, Reviews and Monitoring) Act 1993. It is finding a balance between those two that is really tricky.

We have too much evidence here and elsewhere of vulnerable people who find themselves in very difficult, sometimes life-threatening situations, as we know. A special commission is on at the moment looking at the ways in which children in very difficult circumstances can be abandoned by a caring community. How we gather the evidence to monitor performance, to review activity, to make sure that the rights are enshrined is something that we need to look at within the context of not placing so many burdens on agencies that they just give up and go home—which particularly small organisations tell us they struggle with.

I am sure if the Spastic Centre were here they would say they do not like much paperwork either. But, to be frank, the Spastic Centre can deal with it. They have a big

centre, a large administrative base, fundraising managers, and people who fill out forms and that is what they do. But if you are working in Broken Hill, and I was out there two weeks ago speaking to some small organisations, they are doing it on very small budgets with nothing but goodwill on the part of managing committees and staff. They really do not want somebody from Sydney sending them 14-page documents and asking them to get it back next week because if they do not they will get two out of five instead of three out of five. It does not make any difference to the person in Broken Hill who just wants to get a bed.

**Mr BUCHANAN:** I think your question is a very good one. As Dougie said, there can always be improvement. My sense is since Stronger Together there has been an improvement. Before you arrived I was saying that the current Minister for Disability Services, Kristina Keneally, and the shadow Minister, Andrew Constance, are in touch with the disability sector, they get it. I think through those two individuals representing two arms of government things have improved.

**Mr MALCOLM KERR:** But there is still room for improvement?

**Mr BUCHANAN:** There will always be room for improvement.

**Mr MALCOLM KERR:** There always will be and we will always have to strike that balance.

**Mr BUCHANAN:** Correct, it is a juggling issue.

**CHAIR:** Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Community Services (Complaints, Reviews and Monitoring) Act 1993.

**Mr BUCHANAN:** Thank you for having us.

**(The witnesses withdrew)**



**RHONDA JOY SHAW**, Official Community Visitor, Official Community Visitors Scheme, Level 24, 580 George Street, Sydney, sworn and examined:

**CHAIR:** Thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the Committee is to provide information about the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. Would you like to make an opening statement?

**Ms SHAW:** I am pleased to have the opportunity to contribute to the process. I hope I can be of some value. I am really looking forward to answering the questions you might have but there might be something on your agenda that has not been there before which has been on ours, and that is to ask the Committee if it can clarify some of the aspects of the Act that impact on the industrial relations aspects of employment for community visitors.

**CHAIR:** We currently do not have any jurisdiction over industrial relations, but we can take some advice on that and refer it to the appropriate committee or Minister for clarification. I will now open the questioning of the witness. Are you satisfied with the support provided to official community visitors by the Ombudsman?

**Ms SHAW:** Yes, I am more than happy with the support that we are provided.

**CHAIR:** How many issues of serious concern have been raised with the Minister in recent years and are you satisfied with the response?

**Ms SHAW:** I myself have been a visitor for three years and I truly work to the aim of the Act. So I am really interested in local level resolution: I do not want to take all issues either to the Ombudsman or to the Minister. In the three years there has been one issue that I have taken to the Minister, and whilst I will say I was not necessarily happy with the response from the Minister's office, I was happy with the outcome for the particular child about whom I raised the issue.

**Mr MALCOLM KERR:** Just arising from that: You say you were not happy with the response. Could you just detail the basis of the unhappiness?

**Ms SHAW:** The response tends to come from the department. You write to the Minister and you get a response from DOCS. I need to clarify that my area is with out-of-home care. I do visit some people with disabilities but largely I visit children in out-of-home care. So if I raise an issue and it might relate to the practice of the Department of Community Services and the response comes from them, it is generally what I would call quite watered down. But, just having the capacity to take it to the Minister had an impact on the care that was provided for that particular child. At the end of the day that is really what I am more focused on: I am more focused on the outcome of individuals.

**Mr MALCOLM KERR:** I can see the problem in terms of appealing to Caesar. The person giving the advice is the person you are making the complaint against.

**Ms SHAW:** Absolutely, yes.

**Mr MALCOLM KERR:** And that does not seem just.

**Mr PETER DRAPER:** I am interested in the process when you go and visit a client and you identify an issue of concern. What is the process? What steps do you take?

**Ms SHAW:** I will take you through a day of a community visit. We generally turn up unannounced at any time of the day or week. I have been known to visit on Good Friday, seven o'clock on a Friday night and so forth. We visit at those times for good reason, and that it is to see how the place is really working. There are other agencies that might have a role in looking at how a service operates but they rely on a paper story. What we get to see is what is truly happening. We will arrive at a house, introduce ourselves if we are not already known to the staff—often times we will not be because they are different when we go—and ensure that they understand what our role is. We carry an identification card that sets out on the back of it exactly what we are allowed to do in terms of talking to residents and looking through paperwork and so forth.

Then what we would do is see if any of the residents are happy to speak to us. We can do that privately or with other people around—that is completely up to the resident. Generally we tend to visit the same place a number of times. My expectation is that a child would not really want to speak to me until they had gotten to know me. But often times on your second visit they are more than happy to talk to you. If they raise an issue of concern, the first thing I do is speak to the staff who are on duty and ask them their understanding—depending on what the issue is. The issue could be about, for example, an allegation of an abuse in care. There was one I had where I visited a child and he told me of an assault by a staff member. What I did in that case was go to have a look at the paperwork to really ensure that the facts were there: was that staff member actually on duty at the time that this alleged assault occurred and was there any record of that? I looked through the records for the next couple of days to see what the result of that was.

In that instance I left and I phoned the chief executive officer of the organisation to ask them their understanding, and then the process went from there. What they did was hold an independent, which means they paid someone to do a report about whether or not that actually occurred, and that report went to the Ombudsman's office. That is one of the issues I have: agencies are asked to conduct reports that go to the Ombudsman's office, but they pay the person who writes that report and in this particular instance I was very surprised to find that they could not substantiate or confirm that abuse had occurred.

**Mr PETER DRAPER:** Can you suggest another way of doing it rather than them being responsible for producing these reports?

**Ms SHAW:** Somebody more independent, like possibly the Ombudsman's office.

**Ms SYLVIA HALE:** In the submission of the Council of Social Service of NSW [NCOSS] they talk about a number of issues being raised about the Official Community Visitors Scheme and they suggest, in particular, that the number of visits is low, particularly in the disabilities area, and the visits are not frequent enough. It appears that around three hours per service would be the norm and at times more than a year passes between visits. Does that correspond with your experience?

**Ms SHAW:** Yes, absolutely. I would say that one of the reasons for that is that there are not enough community visitors. The scheme itself, I think, is much smaller than it needs to be.

**Ms SYLVIA HALE:** And there are not enough because there are not sufficient resources to employ them or is it because there are not sufficient numbers of people who are interested in fieldwork?

**Ms SHAW:** Resources to employ them I think is the reason. I do not want to harp on the industrial relations part of it, but this is one of the reasons why I brought it up. For example, myself, I have another job, which I need to because the visiting role is so poorly paid. I have come here today for an hour out of my other job which I will then rush back to. If I was able to I would do more visits but I do not have the time because I have another job. A lot of visitors are in that position: a lot of visitors have other jobs. Some do not; some are able to really make it a full-time position. But that is the lay of the land.

**Ms SYLVIA HALE:** From your personal experience I gather there is some concern that it is not a sufficiently diverse representation among the visitors. For example, people from culturally and linguistically diverse groups are not represented sufficiently among the visitors, nor are people of an Aboriginal background. Is that true?

**Ms SHAW:** I do not know. There are no Aboriginal visitors at the moment that I am aware of. The first part of your question: I would say there is a reasonable reflection of the larger community in terms of the spread of people from different backgrounds—there are people with disabilities; there are people from non-English-speaking backgrounds; there are people like myself.

**Ms SYLVIA HALE:** The Council of Social Service of NSW also talks about the official community visitors' feedback being insufficient and that the official community visitors provide data at the broadest level only. Earlier evidence centred around the overwhelming impact that paperwork requirements have on non-government organisations. Do you believe that you have sufficient time to give the feedback that could be useful?

**Ms SHAW:** More time would give better feedback always.

**The Hon. LYNDA VOLTZ:** Just going back to your earlier statement about the ministerial response, I assume the letter was actually signed off by the Minister, not the department?

**Ms SHAW:** No, the response came from the director general.

**The Hon. LYNDA VOLTZ:** So you took it to the Minister and the director general responded to your correspondence?

**Ms SHAW:** Yes. And that was with the previous Minister. It was about a year ago.

**Mr PAUL PEARCE:** I had a similar question to Lynda's, which has been answered. You talk about the establishment of the relationship with the person who has raised the complaint. You have identified your time constraints and obviously other community visitors' time constraints. Leading on from what Sylvia identified in NCOSS's document as well, do

you feel you are getting into the full range of the complaints which exist or do you feel there is an enormous reticence on the part of the clients to speak to someone knowing that they are within those circumstances and will remain in those circumstances after the complaint has been dealt with? How do you go about addressing that? Not all complaints are going to be particularly serious complaints; obviously, with more serious ones there will be repercussions for the staff member involved; others will be subject to some form of conciliation or whatever.

**Ms SHAW:** Bearing in mind that different visitors do different things, and I visit children in out-of-home care, often times the kids are more than happy to talk and more than happy to tell me what they are annoyed about. There are some who do not want to speak to me at all because they speak to so many people who want to know everything about them, and that is fine. The way I get my information around those children or those circumstances is that I rely on the paperwork that is available or I will speak to staff. In some cases I will speak to family members. But that is the way that I get the information that I might use to raise concerns. I am not sure that answers the first part of your question.

**Mr PAUL PEARCE:** From my own personal experience in the past, and not obviously in the community services area, paperwork will tell a particular story—it will tell the story that the person who compiled that paperwork wants to tell—so it quite often disguises more than it exposes. Do you feel there is a need for a mechanism to go beyond that in some way? You have got the paperwork; you have got a reticence on the part of the client or the child; how do you go from that point? Is there a vehicle that you can see that would allow a matter to be further investigated?

**Ms SHAW:** If somebody does not tell you what is not happening for them and you cannot get that information—a common one with the kids that I visit is that you will find children who have been out of education for six months or more at the age of about 12, at a really important developmental part of their lives. Often times the kids are not terribly bothered about that, but I am concerned about that because I understand what impact that is going to have on them later down the track. So I can get that information quite easily by—

**Mr PAUL PEARCE:** School records?

**Ms SHAW:** By looking at records and speaking to caseworkers and speaking to staff and so forth. It has to be what does this child do from Monday to Friday during the day? I think you can get most information. Obviously, if there is a child there is something happening with—and a common one is there is a large degree of resident-to-resident abuse in out-of-home care. These are kids who have been taken, often times, out of very violent families and the way they have learned to respond to anxiety or pressure is through violence, yet they are placed in groups with four or five other kids who respond exactly the same way. There is a lot of violence but often times kids will not tell you about that as being a problem because they are used to it.

An example is a child who I visited where there was an allegation about a staff member. The child did not actually tell anybody what happened but another child who witnessed it told somebody. I asked him, "Why didn't you tell somebody about that?" And he said, "Well, I'm used to it." That was his answer. I guess as a community visitor I acknowledge that I am not going to be able to uncover absolutely everything that is going on for every kid. It is true, if I am visiting twice in six months—and we all know that children

move around a lot in their placements—you might not see that same child. What you need to be able to do is focus on the broader issues and focus on the way the agency, for example, is providing care for all children. Sometimes it is going to be an individual matter but often it will be broader.

**Mr PAUL PEARCE:** If a child has been moved around is there a method of liaison between yourself and your records with a subsequent community visitor?

**Ms SHAW:** Not if they are moved from service to service, because of the confidentiality aspect I guess. But I do find that I visit children—that is one fabulous things about the scheme—and because I visit a range of services I get to see children in different models of care, which gives me the capacity to provide feedback to the service such as: Do you realise in another service this is the way they handle things and it seems to work better? So we can make comment on what is working and what is not. But we do see the kids move from place to place as well.

**CHAIR:** There have been suggestions made in submissions to the Committee for your reports to be feed back to funding bodies. Would you be in favour of that?

**Ms SHAW:** That is a difficult one. I think it would really confuse our role if our reports were to go back to funding bodies. I say specifically "our reports" because the focus of our work is a local-level resolution. We might raise an issue and our aim is to get it sorted out, it is not to get that agency into trouble, for example. However, there are issues from time to time that I desperately would like to share with funding bodies and other accrediting agencies, for example. That would be in a situation where I have been raising issues with an agency for a considerable period and I can see that either they have not got the capacity or willingness to address it. In those situations I would like to be able to share information but it would not be through sharing my reports.

**CHAIR:** Do you think there would be negative consequences for the resolution of issues of concern if those reports were made available?

**Ms SHAW:** It is difficult to say. I am sure there are people who would be concerned that that may happen. The way that it works at the moment—and it was interesting to note the last speaker, talking about how the merge has gone between the Community Services Commission and the Ombudsman's Office—I did work at the Community Services Commission in 1995, when it was first set up, for six months as a complaints officer. I do not want to offend anybody who was part of that but I know when I left after that six months "toothless tiger" was a term that was being used a lot. Now, I know as a visitor going out to visit that just the knowledge that I have the ability to take information to either the Ombudsman or the Minister gets people doing their work. About sharing information, you need to be very careful and it needs to be looked at very closely.

**CHAIR:** There are some further questions we have. Would you object to taking these questions on notice?

**Ms SHAW:** No.

**CHAIR:** The Committee secretariat will be in touch with you regarding those questions.

**Ms SYLVIA HALE:** Could I just ask one more question?

**CHAIR:** Yes.

**Ms SYLVIA HALE:** It is my understanding that the most vulnerable of children are not only those with disabilities but also those who have no families to support them at all. Is there any special provision made to cater for the particular needs of those children in terms of increased number of visits to them?

**Ms SHAW:** Yes, there are increased visits to the more vulnerable people with disabilities. I do visit a few children with disabilities who live in group homes and I have got to say that the range of care is very wide. Some of them have a fabulous service. I guess I would comment too—I know it came up last time as to the capacity for non-government services and government services to support those children—in my experience, and from what I see, the Department of Ageing, Disability and Home Care is doing a very good job with children with disabilities. They seem to be much better resourced in their homes than the children who are in the care of non-government organisations. I am assuming that comes down to funding and infrastructure and so forth.

**Ms SYLVIA HALE:** You say you encounter a wide range of quality of service?

**Ms SHAW:** Yes.

**Ms SYLVIA HALE:** Do you have any ways of addressing that by acting on behalf of the child to get that child transferred to a better service? How can it be resolved?

**Ms SHAW:** Not directly, but for example there is a child that I am dealing with at the moment where I have said to the service: Look, I really do not think this child's needs are being met in this placement? What do you think? They agree. So I am asking them what steps they are taking to ensure that this child can be moved to a service that can meet his needs better. There are things they can and cannot do and they are about waiting lists and so forth. Indirectly I can have an impact on those things but not directly. I cannot say: This child should move to there. If it is about the quality of service provision I cannot say: That child should move because that is a better service—because they all need to get up to scratch. What I would rather say to the service that is providing the poor care is: Have you thought about doing these sorts of things?

**(The witness withdrew)**

**(Short adjournment)**

**ALISON PETERS**, Director, Council of Social Service of New South Wales, 66 Albion Street, Surry Hills, affirmed and examined:

**CHAIR:** Ms Peters, your appearance before the Committee this morning is to provide information regarding the Committee's statutory review of the Community Services (Complaints, Review and Monitoring) Act 1993. The Committee has received a submission from your organisation. Is it your desire to have that submission form part of your formal evidence?

**Ms PETERS:** Yes, it is.

**CHAIR:** Would you like to make an opening statement?

**Ms PETERS:** I do not believe there is any need for me to do that.

**CHAIR:** How could the official community visitors program improve in your opinion?

**Ms PETERS:** As our submission states, we believe it quite often comes down to resources. Our submission indicates that there has been some concern that in the official visitors program there are not enough visits, not enough visitors performing those visits, and they are somewhat constrained. Certainly we believe that additional resources may assist because it means that organisations that are receiving funding, and that are being visited, are constantly being kept aware of where they could make improvement. The visitors play an important part in that role.

**CHAIR:** Do you have any comments you would like to make on the jurisdiction of the Ombudsman, particularly in relation to the policy and monitoring role of the Ombudsman?

**Ms PETERS:** I think our submission speaks for itself. Suffice to say that we believe the Ombudsman is doing a good job in this regard but we do actually think there could be more work done on systemic issues. In particular, our submission talks about the possibility of the broadening of the educational role. We think that would assist with complaints handling, in that people would have a clearer expectation of how they might be able to resolve any concerns they have with service delivery through that education function.

**Mr PAUL PEARCE:** We have heard previously from community visitors about issues of privacy in the reporting back and circulation of information. I notice on page five of your submission you identify that there would be a likely benefit from identifying patterns, emerging trends etc cetera which could give value. How do you address the concerns that have been expressed in relation to the privacy issue?

**Ms PETERS:** That is something that is quite common in the community services sector, the balance between privacy but also having sufficient real information that can allow systemic changes to be made through trends. We believe that there is an opportunity, through more regular visits, for community visitors to provide feedback to individual services. We also believe that more visits provide greater numbers from which trends can be discerned so there is less identifying information. We do accept, however, that it is a fine balance, particularly when there are small numbers of visits being made at this time, which means that there is a greater chance of being able to identify individuals, and that naturally has privacy implications.

**Mr PAUL PEARCE:** The community visitors also identified, particularly with regard to children, that there is a movement of children between agencies and between areas. So in a sense a visitor who has established some rapport may not see that child again and because of privacy concerns the issues do not follow the child so it is somebody starting from scratch. How would you see that overcome?

**Ms PETERS:** That is a difficult one. It is one we find in other areas as well where particular people who may be working with particular users of services, when most people move services the relationship and the rapport, which is often critical to not only providing the service but also ensuring that the service is adequate in meeting the needs of that individual, is lost. In some cases, particularly with children, it takes a while to build that rapport. I would have to take it on notice as to what might specifically be done but we recognise that if that is what has been said then that would be a real problem because the building of relationships and rapport is quite often key to making these processes work.

**Mr PAUL PEARCE:** It has come up in a number of submissions we have received about the apparent inconsistency between two pieces of legislation in relation to appeals to the Administrative Decisions Tribunal. Do you have a view on that? I notice that it has been raised with you by various applicants. Do you have a view on this and how it could be addressed or whether in fact there is a genuine problem and have there been any decisions that have created a problem?

**Ms PETERS:** I am not personally aware of any particular decisions. As some of you are aware, I am relatively new at NCOSS. However, I am happy to find out from our policy officers whether there are particular decisions that the Committee could look at. Certainly, as our submission indicates, it has been raised by a number of other organisations. I am aware that you are hearing from people from those organisations with particular interest in people with disabilities so you may get better information from that, but I am happy to take that on notice.

**Mr PETER DRAPER:** Prior to the merger of the Community Services Commission and the Ombudsman there was a lot of anxiety expressed by peak bodies and individuals. What is your assessment of the success of that move?

**Ms PETERS:** It is fair to say there is a great level of anxiety.

**Mr PETER DRAPER:** I have got a lot of letters.

**Ms PETERS:** Anxiety is probably too polite a word. I think there is a great deal of angst and disappointment that the move had been made. However, I think it is fair to say that was not directed towards the Ombudsman's Office. Certainly, from NCOSS's perspective—and I think it is fairly clear in our submission—we believe they have done an excellent job in terms of winning the trust of the sector and they have done a lot of work to overcome some of the anxiety that was felt at the time. We believe they are doing a good and important role that is benefiting everyone.

**Mr PETER DRAPER:** Are there further improvements that could be made, in your opinion? Are there any areas we should be focusing on?



**Ms PETERS:** I think our submission in particular goes to the need for ongoing outreach and education. One of the significant problems that is always the case in these sorts of formal complaint mechanisms is that people who are already disadvantaged just do not. So it is about how you address that deficit. It is easy for probably most of the people in the room to understand what their rights are and how they might take up and pursue issues. It is somewhat ironic that in those situations they usually do not need to raise the issues because they are able to choose the informal mechanisms to resolve disputes. So it is about how you deal with that deficit when you are already dealing with people who have particular disadvantages, how you can get them to make use of these systems. We think the Ombudsman's Office is doing a good job in providing education and support to those people but you can always do more.

**The Hon. CHARLIE LYNN:** One of our previous submissions spoke about the level of compliance paperwork as being an issue in getting the balance right. Do you have any views on that?

**Ms PETERS:** I am not particularly sure how it might play out in this particular context but certainly in the few months I have been in the job the compliance paperwork has been raised as an issue generally. We have to be careful about, while there needs to be necessary paperwork to ensure systems are in place, if we put too much focus on the paperwork we sometimes miss the main game, which is service delivery and improving service delivery. As I said, I am not quite sure about the level of paperwork in this particular area but it would not surprise me that for many agencies—and certainly in the community sector we are dealing with agencies that do not necessarily have great resources or significant administrative capability to deal with paperwork, and it is just one more thing that workers have to do on top of everything else and I could understand that we need to monitor to ensure that that is acceptable from both a monitoring perspective and to ensure good systems are in place but not so onerous that their main job is not being done.

**Ms SYLVIA HALE:** Ms Shaw, when giving evidence in her capacity as an official community visitor, said that her experience was that if she raised the matter with the Ombudsman, where she believed there was cause for complaint, the report that was prepared for the Ombudsman was paid for by the agency about which the complaint presumably had been lodged or was affected by it. Are you aware of this lack of independence in the compilation of the report being a problem?

**Ms PETERS:** I am not aware of it, and it is certainly not something that is raised within our submission.

**Ms SYLVIA HALE:** Would you agree possibly one way to overcome it might be where if the agency paid for the preparation of the report but the Ombudsman was responsible for the employing of the person who prepared that report that might introduce some level of independence?

**Ms PETERS:** Yes, in theory that would be right.

**Ms SYLVIA HALE:** Your submission talks about the need to extend the monitoring role of the Ombudsman, for example, you talk about the Ombudsman cannot review the mediation processes that are used yet in some ways those mediation processes may not always work to the advantage of clients?

**Ms PETERS:** That is correct. We are not opposed to mediation or any other form of alternative dispute resolution. However, it is fair to say that like more formal systems of complaint handling and resolution that people who are disadvantaged have particular needs. We do see that it is a case of, if they are to be used, and used effectively, there needs to be some oversight of those sorts of processes as well, and that is certainly one of our recommendations.

**Ms SYLVIA HALE:** On page 7 of your report you say that the Council of Social Service of New South Wales believes that there is greater scope for the monitoring role of the Ombudsman particularly in areas of government policy implementation that are contentious or have a potentially disproportionate impact. Would you expand on that?

**Ms PETERS:** I think this goes to a more systemic issue. Certainly the view of the sector has been that the Ombudsman has been quite useful in pointing to trends or where possible improvements could be made on a systemic issue. I guess our concern is that this arises from particular complaints. We do believe that given the independence of the Ombudsman and that the work that they have done in the sector there may be a broader role that is less complaints based initiated but more an oversighting on broad policy issues rather than particular individual complainants, so that is what the submission was going to there. I also note in the submission we talk about the need for more work to be done with particular groups of people so, Indigenous organisations. I am also aware that someone from the Aboriginal Child, Family and Community Care State Secretariat is coming this afternoon to talk to you about that, but also people from culturally and linguistically diverse backgrounds who have particular needs when it comes to the needs of these sorts of resolutions.

**Ms SYLVIA HALE:** On page 6 of your submission you say it would be useful to consider the use of current and emerging technology to communicate with consumers, and to use those technologies to reduce barriers of access due to immobility or remoteness of location. What is in your mind specifically?

**Ms PETERS:** Certainly the idea of video conferencing is particularly useful. I think earlier in our submission we talk about the barriers of people in remote and regional locations if they raise concerns, local resolution of those concerns could be problematic because of the ability to be identified and local sensitivities around those sorts of issues. So the use of currently available video technology for holding meetings or conferences, or to assist with dispute resolution is obviously one. Certainly the idea of using different forms of media to educate people is another, and those are the sorts of things we were talking about. For people with disabilities—and again I am aware you are seeing a number of disability organisations later today—those sorts of technologies are used widely to ensure access that might be a physical barrier for them for process.

**Mr PETER DRAPER:** My mobile phone does not work at my house so I think we have got some way to go before—

**Ms PETERS:** I do accept that but it is certainly used by other agencies to facilitate contact and education. While it is available it is a possibility that should be used.

**Mr PETER DRAPER:** In your summary you support the establishment by the Ombudsman of a cross-disciplinary team to go across the departments and programs. Would you explain what that will accomplish?

**Ms PETERS:** Increasingly we are finding that, for example, in the human service non-government agencies that we represent they are working across a range of policy areas. So increasingly they are whole-of-government approaches and it does not always necessarily make sense for us to have, within the Ombudsman, distinct teams looking at distinct agencies. So Community Services while the focus there may well be on the Department of Community Services, they may be working in partnership with Health and police, for example, in family violent situations, the Department Ageing, Disability and Home Care. So it is the ability to move beyond those silos to reflect what is actually—

**Mr PETER DRAPER:** Taking away some barriers?

**Ms PETERS:** Yes.

**CHAIR:** The Committee has further questions regarding your submission. Would you object to taking those questions on notice?

**Ms PETERS:** No.

**CHAIR:** The Committee secretariat will be in touch with you regarding them. Your evidence has been most helpful in terms of assessing the policy objectives of the Act.

**Mr PETER DRAPER:** It is much appreciated.

**Ms PETERS:** Thank you.

**(The witness withdrew)**

**JANENE MARY COOTES**, Executive Officer, Intellectual Disability Rights Service, Suite 2C, 199 Regent Street, Redfern, sworn and examined:

**CHAIR:** The Committee has received a submission from your organisation. Is it your desire for it to form part of your evidence?

**Ms COOTES:** Yes.

**CHAIR:** Would you like to make an opening statement?

**Ms COOTES:** Just a brief statement. Really I think our submission fairly much speaks for itself. I guess what we would like to emphasise is the vital importance of this legislation, particularly for people with intellectual disability which is the group with which we are most familiar. We receive regular requests for legal advice at our service about complaints in services, and usually focussing on real concerns about the welfare of people with intellectual disability within those services. That probably forms about 12 per cent of the requests for legal advice that we receive. Many of those we do refer to the Ombudsman's Office and others we assist people to get legal advice in relation to sometimes even actions of negligence where appropriate.

I think we feel very positively about the legislation. When it was first passed it was received with great joy in the disability sector. I think the legislation provides quite a strong framework for protecting the rights of people with intellectual disability in services. We are not looking for big changes in the legislation. I guess the enforceability of recommendations that the Ombudsman might make is a slight issue, and I think we have noted here that one of the remedies for lack of action is applications to the Administrative Appeals Tribunal which it appears from information we can get is very rarely used. I guess we do not really know the success rate of how complaints against services proceed.

A lot of our comments are more about the implementation of the Act rather than the Act itself. We get feedback that it takes a very long time for action to be taken often, and that it is only a small percentage of complaints that are able to be followed right through so from our point of view that is an area of concern. The other area that we feel is very important is the Community Visitors Scheme, and with the increase in the number of services, we are concerned that perhaps that scheme is not resourced to be able to continue the same sort of work that it could in the early days when it was established. I noticed from the annual report from 2006-07 that it appears that most services would only be visited about twice a year, and that is not a high level of visiting to be able to successfully monitor what is happening in services.

The majority of inquiries that we have about services are from family members of people with intellectual disability, both children and adults, but mainly adults. I guess we have a great concern for those people who have no family or advocates involved with them who could raise the same sort of issues that families might raise. So the Community Visitors Scheme is a really important part of being able to keep some sort of view of what is happening to people who do not have advocates within services. Those are the main points that I wanted to make, but again I stress the importance of maintaining the strength of this legislation and perhaps looking at the enforceability of recommendations.

**CHAIR:** Thank you for your opening statement. What is the view of your organisation in relation to the merger of the Community Services Commission and the Ombudsman?

**Ms COOTES:** We had great concerns when that was about to happen. Some of those concerns have been allayed. One of the things we see as a difference that we thought was valuable with the Community Services Commission was there was able to be a more proactive response to issues that were shared by a number of complainants, which does not seem to occur quite as much with the Ombudsman's Office. I do not know if that is a question of resourcing or a question of even culture because the Ombudsman's Office has a strong history behind it. We find, by comparison, with the sorts of actions that the Community Services Commission would take, that they were more outcome focused, looking at what was the problem and what had happened for the person with a disability and actively looking for the reasons why, whereas perhaps with the Ombudsman's Office there is more of a focus on administrative and process.

In general, it has been more successful than we would have expected, but that is a concern; we would like to see more proactive things happening, like getting services together to raise issues that seem to be common across a number of services. One issue like that with the Community Services Commission was nutrition and health, which was followed up in a very proactive way and has improved greatly in services. That has been a bit of a loss in the transfer from one to the other for clients.

**CHAIR:** How did you arrive at the position stated in your submission to the Committee, which was that "this number of formal complaints made cannot truly reflect the number of issues needing to be resolved via an external complaints body"?

**Ms COOTES:** That is in relation to the number of complaints that we hear, and that is both through requests for legal advice but also when we are doing community education and working with advocacy groups that you hear a lot of concerns about what is happening in services. Even recently we have had some calls from staff in services, particular residential services, and there is a perception that things are getting worse. These are a few cases but we are certainly getting this message consistently about the casual nature of staffing in a lot of residential services and consistency is one of the most important factors for people with intellectual disability, so that is a concern to us. The reason we say think there has been an under-representation is because of what we hear, both through legal advice and in our community contacts. As you would imagine, it is very difficult for parents to complain about services that they are very dependent on, so despite the protections that are there in the legislation, there is a lot more anecdotally than comes to the Ombudsman's Office.

**Mr PAUL PEARCE:** I have a couple of questions on the issue as well and you have partly answered the first one. In terms of the number of formal complaints that are made relative to what you are hearing anecdotally and through general inquiries, you have identified a possible reticence on the part of parents because of the relationship with the service. Is there anything in the complexity of the complaints mechanism that is discouraging to people as well?

**Ms COOTES:** I cannot give you examples but I suspect that is the case, yes, that there is a reluctance to enter into such a formal process. Generally people know that these things take a long time. That would be my suspicion, that if people have heard about the complexity of it, it might stop people from making formal complaints.

**Mr PAUL PEARCE:** With the numbers who did go through the formal complaints process, whilst you view it as a relatively small percentage of the nature of the complaints, do you think that would give you a broad brush of the type of complaints or do you feel it is only a limited focus on the limited number of more serious complaints, without giving the broader picture?

**Ms COOTES:** It probably does not take in the more minor complaints, and hopefully a lot can be dealt with locally. We assist people to raise an issue with their local service and it is good if it can be resolved in that way, so it is probably the biggest complaints, but I suspect it would be a cross-section. The things we hear a lot about are medical and safety issues not being well provided for and I noticed in the annual report that is one of the issues that the community visitors were raising as well. The other big one is the level of aggressive behaviour within some services amongst clients that is not well managed. We are regularly called to provide court support, which is one of the things we do for people where there are apprehended violence orders [AVOs] taken out between residents in group homes and occasionally AVOs taken out by staff against residents in group homes. Now AVOs do not fix the problem, so the number of people who suffer assaults within their services is a big area.

Some level of uncontrolled behaviour is inevitable with people with intellectual disability but the skill in managing that behaviour and the safety of the other people is a bit of a concern. We feel that reflects, to some extent, the experience of the staff in general and what seems to be reported to us to be a tendency towards a lot of part-time and casual staff, and people with disability who have behavioural problems, react badly to change and lack of consistency. I think the complaints probably reflect a range of problems.

**Mr PAUL PEARCE:** Several organisations have mentioned the apparent inconsistency between two pieces of legislation, clause 5A of the Community Services Act and Section 20A of another piece of legislation. You have cited one case. Do you believe there is a genuine issue here and, if so, what would be your suggestion as to how this could be resolved. I refer you to the bottom of page 3 of your submission, "lack of enforceability of the Ombudsman's recommendations and lack of use of the ADT".

**Ms COOTES:** Sorry, I am not familiar with the specific clauses in the Act.

**Mr PAUL PEARCE:** Apparently it goes to the technicality of the Minister not signing something and therefore it eliminates the capacity to appeal against the Minister's decision. I have read the two sections and I cannot see that there is an issue but it has been flagged by Disabilities and NCOSS and referred to in your submission as well.

**Ms COOTES:** What we are concerned about is the lack of use of that. I am not sure whether that is a reason for the lack of use of it. I cannot add much to that, I am sorry.

**Ms SYLVIA HALE:** In your submission you referred to a number of recent examples of people with disabilities being treated in an appalling manner. Have any of these instances been resolved or what sort of systemic problems do you see to an appropriate outcome as a result of these incidents?

**Ms COOTES:** The two that refer to health and safety issues, the families involved were not really satisfied with the way that they were resolved. At least one of those families has taken some advice about negligence. What I am saying is that I would like to see, if the Ombudsman's Office is getting a number of these complaints, that it be taken up as a more general issue so that there can be some examination of the general issues that might be affecting them, particularly medical issues.

If you go back 10 or 15 years, with a lot of disability services—and unfortunately they were institutionally based—there was a nursing component and there was nursing training available. There is not such a depth of understanding of medical issues now within staff and from our perception the management does not seem to be transferring that. It does not need to be medical expertise necessarily, or nursing, but a good knowledge of medical issues and the importance of them. A lot of people with intellectual disability also have medical problems. I would like to see that systemic issue being taken up more because it does occur quite a lot that these sorts of mistakes are made, not intentionally. It is just a lack of knowledge, expertise and realising the possible consequences of some of these things.

**Ms SYLVIA HALE:** So presumably when you talk about the proliferation of part-time and casual workers within agencies, many of these people would have no specific training in dealing with the people they are caring for?

**Ms COOTES:** Yes, that is right.

**Ms SYLVIA HALE:** There is no requirement for particular training that you are aware of?

**Ms COOTES:** No, not for a lot of the positions, there is not, so you have university students doing this as their part-time job as they go through university, or backpackers who come and get this sort of work as well. It must reflect difficulty in attracting staff because I am sure services would not choose to have inexperienced staff and I assume that is the problem, that it is difficult to attract experienced staff into the sector. It is not right throughout. In some houses you find the staff have been there for eight or 10 years and those houses run really well and you do not find the levels of aggression and these accidental problems happening but I suspect that the casual and a lot of change among staff is often behind these sorts of problems coming up, so the ability to staff services well is probably an issue.

**CHAIR:** Can you comment on the enforceability of recommendations made by the Ombudsman?

**Ms COOTES:** Yes. Our understanding is the Ombudsman has the ability to recommend but that enforceability can be a problem if the service chooses not to or superficially makes some changes, but I am not sure how close the monitoring is to really see whether the recommendations are properly followed through and for how long that goes, so that is one area that we wonder if the Act could be strengthened.

**Mr PETER DRAPER:** Some of those true-life stories you gave were quite horrific. I assume they were all subject to an official complaint?

**Ms COOTES:** We certainly referred all of them to the Ombudsman's office.

**Mr PETER DRAPER:** Are you aware whether they were resolved satisfactorily?

**Ms COOTES:** I do not know the outcome. I think they were in waiting, so I do not know what has finally happened with those, but we have certainly had contact back from the first case to say nothing has happened yet, after a couple of months.

**Mr PETER DRAPER:** Could you take that on notice and advise the Committee as to what actually happened with those individual cases?

**Ms COOTES:** Certainly.

**CHAIR:** We have some further questions regarding your submission. Would you object to taking those questions on notice?

**Ms COOTES:** No.

**CHAIR:** The Committee secretariat will be in touch with you regarding those. Thank you for appearing before the Committee today. Your evidence has been most helpful in terms of assessing the policy objectives of the Act.

**Ms COOTES:** Thank you.

**Ms SYLVIA HALE:** I am sorry to come in at the end, but could I ask: How do you find your clients cope with alternative dispute resolution procedures? Are they particularly disadvantaged by the procedure or in fact does it work to their benefit?

**Ms COOTES:** It depends on the level of the person's disability. I would think that there would be some people who could participate in that with support. Again, as part of our court support, we support some people through things like juvenile justice conferences and adult conferences connected with criminal acts and also apprehended violence order conferences about neighbourhood disputes sometimes. There definitely are limitations because many of the clients of the sort of services that we are talking about would not be able to participate, so they would be dependent on an advocate or somebody else participating on their behalf, but some people would be able to have some limited participation I think.

**Ms SYLVIA HALE:** There is provision, is there, during alternative dispute resolution for an advocate to represent the person? An advocate is able to participate in the proceedings on behalf of a person with an intellectual disability?

**Ms COOTES:** Well, I think that would be reasonable. You would have to be confident that they were speaking in the interests of the person and they had consulted the person.

**Ms SYLVIA HALE:** But they are not excluded from participating?

**Ms COOTES:** Not as far as I know. I think that is very important because we are talking about a group largely who cannot advocate for themselves, so it is important that advocates are included and I would think they would be. Often they are the complainants



because the person with a disability cannot make the complaint on their own behalf, so I would think they would be included. Do you mean locally in services if there is a problem?

**Ms SYLVIA HALE:** I just wondered how people dealt with it, particularly people with intellectual disabilities, because it does seem to me that taking out an apprehended violence order is a totally inappropriate process in relation to such people.

**Ms COOTES:** Yes, it leads to very big problems. What you need is a practical solution to the problem, not a legal solution, so you have really unworkable situations arising through apprehended violence orders. It seems to me that they are inappropriately used and that other solutions should be sought.

**Ms SYLVIA HALE:** If a client breaches an apprehended violence order, presumably there are repercussions as a result of that breach?

**Ms COOTES:** Yes, a breach of an apprehended violence order is a really serious offence and a group home is seen as a domestic situation, so they are domestic violence orders, not neighbourhood. It is very serious. I think, from the cases I have seen, it is very frustrating to magistrates to have these sorts of things coming before them and they would much rather that the problem was resolved outside of the courts, and also the police are frustrated at having to be involved in these actions as well. I do know of one situation where the service said that they could not move a person, but if there was an apprehended violence order they would separate the two people. That is pretty sad I think, that a service would not just deal with the issue and for some reason felt they needed an external impetus to do that.

**(The witness withdrew)**

**(Luncheon adjournment)**

**BILL PRITCHARD**, Executive Officer, Aboriginal Child, Family and Community Care State Secretariat [AbSec], Level 7, 104 Bathurst Street, Sydney, sworn and examined:

**CHAIR:** Thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the Committee is to provide information about the Community Services (Complaints, Reviews and Monitoring) Act 1993. The Committee has received a submission from your organisation. Is it your desire for the public section of your submission to form part of your formal evidence?

**Mr PRITCHARD:** Yes.

**CHAIR:** Would you like to make an opening statement?

**Mr PRITCHARD:** Yes, I would like to acknowledge the traditional owners of the land where we are gathered today.

**CHAIR:** Can you assess for the Committee the extent to which different types of providers of community services comply with the Community Services (Complaints, Reviews and Monitoring) Act 1993?

**Mr PRITCHARD:** As I said in our submission, we mainly represent foster carers, kinship carers and clients to deal with the Department of Community Services [DOCS]. So, I suppose, I am really only able to comment on how we deal with them and how we follow through to the Ombudsman afterwards. What was your question?

**CHAIR:** The question was: Can you assess for the Committee the extent to which different types of providers of community services comply with the Community Services (Complaints, Reviews and Monitoring) Act 1993—for example, non-government organisations and government departments?

**Mr PRITCHARD:** In relation to government departments, DOCS, it depends at what level we are talking because DOCS is structured at so many different levels—the local level, the regional level and the head office level. At local and regional levels it varies from poor to very good. So it is very difficult to generalise. I think the ones that are not complying as well as they possibly could should be developed to further comply. With regards to the Ombudsman, we have a close working relationship with the Ombudsman and we are able to refer and advocate in the spirit of the Act on behalf of Aboriginal people, who sometimes feel uncomfortable dealing with bureaucracies. With the other non-government organisations, we have some formal arrangements with the Foster Care Association and other non-government organisations where we try to work together on occasions to resolve issues. That is basically it.

**CHAIR:** At Tuesday's public hearing the Department of Community Services acknowledged that there was room for improvement in the delivery of culturally appropriate complaints handling. It discussed the possibility of employing indigenous complaints officers to deal specifically with complaints by indigenous people. What are your views on this issue?

**Mr PRITCHARD:** I think it is absolutely necessary. I think we demonstrated in our submission that there can be real problems for Aboriginal people when they attempt to contact an organisation to make a complaint and then they may be dealing with somebody who is not very culturally sensitive. Especially with DOCS, because of the past history in welfare, if they do not get a feeling of immediate comfort they will most probably drop the complaint.

**CHAIR:** Also the department discussed issues relating to the appropriateness of staff in rural and remote areas living and working in the same community. What are your views on this issue?

**Mr PRITCHARD:** It is a difficulty we have come across. It is very, very hard, even if it is an Aboriginal caseworker, for a person to go in and complain. It is like airing your dirty washing, I suppose. There is sometimes a feeling there may be retribution. I am not saying that happens but there could be a perception of it, especially in smaller communities where it is more everybody knows everybody and they do not want to air their dirty washing, as I said. I think that is why we have had a role. We get a lot of our work from the smaller communities. They often contact us first before they have even gone in at a local level because of the level of discomfort, I suppose, that they feel. So we are able to help there, but it does need to be addressed.

**Mr PETER DRAPER:** Bill, we heard earlier today from an Official Community Visitor who was going out and about. She was asked a question about whether the makeup of Official Community Visitors is representative of the community. She said basically it was with the exception of Aboriginal people. In your submission you suggest that designated Aboriginal people be appointed to that process. What advantages would that provide?

**Mr PRITCHARD:** It is the cultural advantage with Aboriginal people being able to walk into an agency. I am talking about going into a group home—I cannot remember the exact term now. If Aboriginal people are involved I think they will be more open again to able to speak to the visitor and express the concerns or complaints that they have. Whereas with a person that is not an Aboriginal person and maybe is not sensitive enough to Aboriginal issues, they might have the propensity to clam up, I suppose.

**Mr PETER DRAPER:** From your experience, do you find difficulty with people from different Aboriginal nations or from different mobs relating to people from other areas?

**Mr PRITCHARD:** Certainly that is something that would need to be addressed. It depends. Some people of cultural standing from other nations may be accepted in the community. You would have to be a little bit careful about how you appointed community visitors and make sure they were acceptable to individual communities. It just would not be that you are Aboriginal so you can cover the whole area. You would have to have some sort of cultural knowledge of the area, I believe.

**The Hon. LYNDA VOLTZ:** In relation to complaints from people within Aboriginal communities, one of the issues I raised with the Department of Community Services was the difficulty of people wanting to engage with agencies that they had a reluctance to engage with, such as the Department of Community Services and the Police, because of the nature of the agencies and past experiences. Do you find even when there is a problem there is a

reluctance to complain through those agencies because people do not want to engage with them?

**Mr PRITCHARD:** Again, it is very difficult to speak in general. In some areas some agencies do it very well. In some regions even the Police do it very well, anecdotally from the information we receive, and certainly the Department of Community Services in some locations does it very well. Once that relationship is established, the rest of the community builds on it. Where we have got Aboriginal out-of-home care services, which act as a liaison between the community and DOCS, there is a greater acceptance of dealing with DOCS because, I think, they feel supported by the agency at the local level. In other areas where there is not an Aboriginal agency to support the people in making a complaint or raising issues, often there is a great reluctance to go and speak to the welfare because not only is there the shame factor but there is a past history.

**The Hon. LYNDIA VOLTZ:** Do you have examples of the regions where it is working well?

**Mr PRITCHARD:** Certainly on our database we know which ones are doing well. We are trying to work with the regional directors in those areas to overcome some of the problems.

**The Hon. LYNDIA VOLTZ:** I want to ask a question about an issue that has come up in the past. I do not know if it is relevant. We have been told that often people do not want to make complaints or that the people running non-government organisations are, in fact, the people they want to complain about. Is that an issue?

**Mr PRITCHARD:** Actually that is probably the biggest issue. When you complain to DOCS it is like the hen complaining to the fox. You are never going to feel very comfortable complaining about an agency. The perception is that these people have worked together and they know each other. It is very difficult for somebody to get over that perception and go and voice their complaints. We try to reassure people that there are mechanisms so that they can complain at the local level. We see ourselves as a bit of a backstop. We say to them that they should really try to resolve it at the local level. We also now have foster care support representatives in a lot of the areas who will assist the people at the local level to approach DOCS if they have concerns. Some of the issues still needs to be addressed.

**Mr PAUL PEARCE:** Madam Chair, I need some guidance. I want to ask a question relating to confidential information in the report, but not specifically about the facts.

**CHAIR:** The Committee has the option of taking in camera evidence at the end.

**Mr PAUL PEARCE:** I do not believe it goes to the heart of the matter.

**CHAIR:** If it is not in relation to specifics, then you may be able to deal with the matter now.

**Mr PAUL PEARCE:** It is in relation to a postscript comment on page 27 about convoluted processes. Clearly, in this particular case you identify a problem. Is the convoluted nature of the problem systemic across the area?

**Mr PRITCHARD:** The convoluted nature, definitely. I suppose at the time if somebody has a complaint and we perceive it to be a genuine complaint, we stick to the structure where we refer it to a local level and then it often takes time to get the information from the caseworkers because of case loads and various reasons, and then it will come back to us and we will attempt to act on behalf of the foster carer, which obviously again takes time: we have got to get in contact with them and then if it comes back not satisfactory we try and contact at a regional level, which can take some time, the regional managers being very busy people. It is often quite difficult to get hold of them.

Then it comes back and if we do not get a resolution we have got to ask them to contact the complaints line, because we see it as a conflict of interest that we contact the complaints line because we are funded by DOCS. So we say, "You really need to take it to the complaints line", which in itself can take quite a considerable time, and then if it has to go on to the Ombudsman. So often these complaints take three, four, five months to actually get some sort of outcome or some sort of decision even.

**Mr PAUL PEARCE:** From what you have said there, your organisation has identified the sort of system blocks that are causing this delay in getting a resolution?

**Mr PRITCHARD:** Certainly. It is good that things are resolved at a local level but we think we should be able to advocate strongly in the first instance when we are contacted, especially for Aboriginal people because they are often feeling uncomfortable, and then we are not going through that process where they are trying to make contact with a caseworker or they are trying to make contact with a casework manager or the manager of the community service centre. We would see it as a lot easier for us and for the foster carers if we were contacted and we could go directly then to the managers. And often, depending on the relationships with these various community justice centres, we actually do that on occasions anyway.

**Mr PAUL PEARCE:** But that would vary from area to area, obviously, as to whether or not there is a formal or informal relationship?

**Mr PRITCHARD:** Yes, definitely.

**Ms SYLVIA HALE:** In your submission you talk about how through the community justice centres there is a pool of Aboriginal mediators and your suggestion is that they appear to be independent whereas the mediators employed by DOCS lack that appearance of independence, even if they are. Are you suggesting that DOCS discontinue its mediation service, at least insofar as Aboriginal issues are concerned, and that that function be transferred totally to community justice centres? If one is providing what you think is a good service and one—and it is a question of perceptions—is not, how do you see that being dealt with?

**Mr PRITCHARD:** I suppose I should declare that I worked for Attorney General's and I worked in establishing the Community Justice Centres Aboriginal Mediation Program, or expanding it, and I saw how well it works for Aboriginal people, and I also saw, from the amount of referrals coming through, we got very few referrals from DOCS. I also had been working for DOCS as a caseworker and casework manager previously and I had actually used community justice centres before I went to Attorney General's so I saw the benefits of the service to Aboriginal people: they felt very comfortable in the process. It is a process that

mirrors traditional forms of mediation in Aboriginal communities, so Aboriginal people feel comfortable with it.

But when you have got, again, the person that you are making the complaint about actually mediating the complaint, it is very difficult for Aboriginal people to see that as being fair. They are the ones they are actually in dispute with and they are going to mediate the dispute. I am not suggesting that they would do it unfairly or anything, it is just a perception in Aboriginal people's conscience that it is not fair; it is not seen as fair.

**Ms SYLVIA HALE:** So presumably, if the community justice centres were to be used, there would have to be an enlargement of the pool of mediators there, but that could be funded by the decline in the mediators provided by DOCS?

**Mr PRITCHARD:** Or the number of mediations. I think most probably the community Justice Centres Aboriginal Mediation Program is still underutilised across-the-board. I think, because the mediators are not employees, they are on a session basis, there is quite a lot of scope for it to be able to be expanded anyway without having to employ extra staff. I do not think there would be a lot of direct costs; I think there would most probably be cost benefits to DOCS.

**Ms SYLVIA HALE:** One of your recommendations is that amendments should be considered to be included in the Act to ensure that culturally appropriate alternative dispute resolution [ADR] processes are used as a complaint handling mechanism. How would you see them being culturally appropriate? How would they differ from the more conventional mediation?

**Mr PRITCHARD:** Again, with community justice centres I think they have got a pool of about 400 mediators altogether and they are all from culturally diverse backgrounds. One of the tenets is that you try to match up the participants in the mediation with the mediator. So if there is somebody from a Middle Eastern background and somebody from an Anglo background they would try to have an Anglo and a Middle Eastern mediator and they would also try to match ages, if it is a young person or an old person. So there is a real matching process about the mediation, whereas I think for less professional services the community justice centre might have two qualified mediators and they will do the mediations—it does not matter whether you are black, white, brindle or 97 years old. I think there is a lot more speciality available through community justice centres.

**CHAIR:** In your capacity as an advocate for complainants have you experienced barriers to participating in the resolution of complaints?

**Mr PRITCHARD:** Certainly, on occasions. Advocacy is a dirty word, I should say. We are an advice and referral service and I believe that we most probably overstep our bounds by advocating on behalf of complainants, and on occasions some people have said, "You haven't got a designated role in this". We obviously try to point out that that is being very unhelpful and we most probably can help more than we can hinder, and we are not there to obstruct processes, we are there to seek resolutions and assist Aboriginal people to seek fair resolutions. I think it is sometimes personality based. Some people just basically see us as being a little bit interfering whereas we see it as, like I said, trying to get a resolution. There is no benefit to anybody in letting things drag on and people suffering as a result.

**CHAIR:** Also, the submission from your organisation expresses a view in favour of the Ombudsman being able to direct agencies to comply with the objectives and principles of the CRAMA. Can you elaborate on this?

**Mr PRITCHARD:** It was at an earlier phase I was looking. I maybe should have elaborated better in the submission. If there is reticence on the part of the agencies to actually participate in some sort of advocacy or dispute resolution process then there should be some sort of role where you or whoever else could go to the Ombudsman and say, "They will not even participate at this level. Could you somehow direct them that they are obligated to participate at this level?" so it does not escalate to go to the Ombudsman. I think it can be a waste of resources if just through obstinacy people do not want to seek resolutions and should not have to go through this whole process.

**CHAIR:** Thank you for appearing before the Committee today. Your evidence has been most helpful in terms of assessing the policy objectives of the Act.

**(The witness withdrew)**

**ELENA KATRAKIS**, Chief Executive Officer, Carers New South Wales, Level 18, 24 Campbell Street, Sydney sworn and examined:

**CHAIR:** Ms Katrakis, thank you for appearing before the Committee this afternoon. Your appearance before the Committee is to provide information regarding the Committee's statutory review of the Community Services (Complaints, Review and Monitoring) Act 1993. The Committee has received a submission from your organisation. Is it your desire for that submission to form part of your formal evidence?

**Ms KATRAKIS:** Yes, thank you.

**CHAIR:** Would you like to make an opening statement?

**Ms KATRAKIS:** I would like to read a couple of paragraphs. Firstly, I would like to thank the Committee on behalf of Carers New South Wales for the opportunity to address the inquiry. Carers New South Wales, as you probably know, is here today to speak on behalf of the 750,000 carers that it represents within New South Wales. Because of the intrinsic nature between the carer and the care recipient, the Act affects many carers who act on behalf of and advocate for their relatives and friends with disabilities who access services.

Overall Carers New South Wales supports the terms and objectives of the Act. Our previous written submission, which we referred to this review, raised some particular issues that carers reported to us that may lead to more effective outcomes to emerge from this legislation and its functions. The purpose of my address today is to provide you with information about carers in New South Wales, the nature of the caring role, and the difficulties carers have experienced with accessing service support that falls under the Community Services (Complaints, Review and Monitoring) Act 1993. To set the context, carers are usually family members or friends who provide support to children or adults who have a disability, mental illness, a disorder, chronic condition or who are frail, aged. They can be parents, partners, brothers, sisters, daughters, friends or children of any age. Carers may care for a few hours a week or every day. Carers are unpaid but they may receive income from a range of sources, including government pensions and benefits and, hopefully, bonuses.

The statistics on carers provided by the Australian Bureau of Statistics indicate that approximately one third of all carers in Australia live in New South Wales. Of primary carers 45 per cent care for a partner, 29 per cent for a child and 32 per cent for a significant other—whether that is a sibling or a parent. Women aged 45 to 54 years of age are the largest single group of carers. Of primary carers—those providing the majority of support to a person— 45 per cent provide care for 40 hours or more on average each week. Of primary carers 78 per cent live with the person they support but a number of carers do not live with the person they support. The median gross-personal income for a primary carer is \$224.00 and other carers \$365.00. Of primary carers 55 per cent rely on a government allowance or pension as their primary source of income.

Carers New South Wales receives a large number of calls from carers who have complaints about services that fall under the jurisdiction of the Act. These complaints generally fall into three categories: gaps in services or inappropriate services being delivered; unreliable or inconsistent service provided; negligence or abuse of a person with



a disability by the service provider. Generally many carers are fearful to make complaints about the services. This can occur for a number of reasons, including fear of retribution by the service provider; fear of withdrawal of service; and for carers in rural and remote areas concern that there is no alternative service. Long waiting lists for services, and hence difficulty in assessing services, is another reason why carers may hesitate to complain. The lack of culturally appropriate services is also an issue and the need for more education and awareness around complaints procedures would assist carers. Those are the general comments I would like to make.

**CHAIR:** The submission to the Committee from your organisation refers to gaps in service systems generating complaints. Can you elaborate on that, please?

**Ms KATRAKIS:** Gaps in service provision, where there are just not services available. It is difficult to complain about services if they are not there. People end up getting a service from an organisation that they may not be happy with but because there is no alternative they do not complain and continue on because they do not have any options. That is what we mean by the gaps in service provision, or where they are having one need met but not having all of the needs of the person with a disability met through the service system.

**Mr PETER DRAPER:** As part of your submission there is a statement that caught my eye: "... complex funding arrangements for the provision of services which may place many community services outside the jurisdiction of the Act." Can you elaborate as to what services are outside the jurisdiction of the Act and whether in your opinion that should be addressed through this review?

**Ms KATRAKIS:** It would be where services might be subcontracted down the line. If the Department of Ageing, Disability and Home Care is funding a service and that service is then subcontracted and provided by somebody else. It is not always clear to carers whether those things come within the purview of the Act. The premise behind the comment in the submission is that sometimes carers are not aware whether the services they are being provided with do fall under the Act. With such a complex service system out there it is difficult to navigate. Complaints procedures are not always openly available. Obviously in some services they are, and well displayed, but in others they are not.

So if a carer rings us for advice and assistance they may not be aware of what the funding of their service is, they just know that they get respite from this service. Is it a Department of Ageing, Disability and Home Care funded service? Is it a Commonwealth funded service? Is it not? Does it fall within the jurisdiction of the Act? Carers would not necessarily know—and it would not only be carers but we are talking within the perspective of carers. It is whether the services being provided do fall under the jurisdiction of the legislation.

**Mr PAUL PEARCE:** Just to follow up on that, from the dot point, "many carers and people with disabilities are unaware of the complaints procedures". Is the problem as you see it the fact that there is an unawareness of the complaint procedures or is it because there are certain services falling outside the purview of the Act? Can you suggest a way that we can cut through this so that there is a greater level of awareness of the actual procedures, bearing in mind that other groups have already identified the complexity involved in the complaints procedures?

**Ms KATRAKIS:** I think it is both. I think it is, first, services that fall outside the Act and, secondly, awareness of complaint procedures. Having a look at the website and the complaints procedure process, yes, it is very clear on the website, absolutely. It is there but it is around people knowing that they can do that and they can go there, if you take away the fear factor for carers and the care recipient. I think an education and training kind of program, making sure that carers are aware through our newsletter—we can do things to promote complaints procedures and things like that, and we do so with a range of agencies; the Health Care Complaints Commission is one recent example.

It is getting the message out there and making sure that those processes become part of—when people sign up and are part of it, get a service from a respite centre or get supported accommodation, that when they go to a service they also know what the complaints process is so that it is there, it is up front, it is part of a kit of information that people get that they can access later. Yes, those things do fall down and people can lose things or not think about it and think, "I won't need that. This will all be fine and lovely." But it is there and it can trigger something for people so it needs to be a multifaceted approach to education around the complaints process.

**The Hon. LYNDA VOLTZ:** You say that the Committee needs to assess the relevance of the Act in particular to the changing environment of increased pressure on community care systems for people with disabilities. You go on further, "Currently there is no legislation or policy in New South Wales which stipulates the rights of carers or responsibility of governments". But for carers in particular, their rights perhaps under the complaints system, when you are talking about the changing environment I assume you mean the more pressure on them and what their rights are under that.

**Ms KATRAKIS:** The more pressure within the system in terms of, I suppose—I do not like to use the word "burden" but I suppose what I am trying to say is the impact on carers, given that a number of the programs we hear about that are coming out, whether it is through the health system or the disabilities system, rely on care in the community. That is absolutely a good thing, but care in the community means that the provision of that care often rests on unpaid, informal family carers, the people we represent, and there is a growing need for carers within the community to provide that gap in service provision that is not provided by institutions or what might have been provided a number of years ago. So there is that increase in need for carers. There are statistics around the ageing of the population, the increased need for carers and the numbers of carers that will be able to provide that increasing level of need over the next 20 to 30 years.

**Ms SYLVIA HALE:** In your submission you say that there is no legislation or policy in New South Wales which stipulates the rights of carers or responsibilities of government in relation to carers and community services. How do you see this absence impacting on or impeding the making of complaints?

**Ms KATRAKIS:** What we would like is a carers recognition Act which there is in South Australia and Western Australia at the moment. How it impacts is that people just do not recognise the role of carers within any of these services as a general rule. There are certainly services that are on there and certainly the Department of Ageing, Disability and Home Care is doing a number of things in that area in certain pockets of services. So things

are changing but there is not that legislative right of carers to be recognised as part of the care relationship within the service provision.

**Ms SYLVIA HALE:** So you are saying that if there were that legislative provision the carers would have their own right to lodge complaints rather than on behalf of someone else.

**Ms KATRAKIS:** That is right. If you look at the recent changes to the New South Wales mental health Act, there are now provisions for the role of carer within the provision of support, and there are provisions within the new mental health legislation around primary carer. It gives carers status and a role within service provision for someone who they are caring for with mental illness. They do not have that kind of status or recognition within the disability services area or broadly elsewhere. So legislation gives some of that recognition. Yes, they can make complaints now but there is fear of retribution and all those other things, not to say that that fear will not be there but it also gives them that legislative base and recognition.

**Ms SYLVIA HALE:** Earlier the Committee heard evidence from AbSec about the inappropriateness of some of the mediation that occurs with Aboriginal people and the techniques. You also refer to that in relation to ATSIC but also for culturally and linguistically diverse people you say, "the approach taken to resolving complaints made by these diverse users may be different from that of mainstream service users". Can you enlarge on that in relation to people of Koori background?

**Ms KATRAKIS:** I think it is around the processes that are put in place, that maybe things are not dealt with in detail as much or maybe the approach is not culturally appropriate, and that people from culturally and linguistically diverse backgrounds are double disadvantaged in terms of not being aware of complaints procedures and processes and need to have the different cultures that they come from and what complaining means within those different cultures as well. So it is around having culturally specific responses that are relevant to all the community.

**CHAIR:** Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Act.

**(The witness withdrew)**

**(Short adjournment)**

**MATTHEW ROBERT GEORGE BOWDEN**, Co-Chief Executive Officer, People with Disability Australia, P.O. Box 666, Strawberry Hills, 2021, and

**THERESE PAULA SANDS**, Co-Chief Executive Officer, People with Disability Australia, P.O. Box 666, Strawberry Hills, 2021, affirmed and examined:

**CHAIR:** The Committee has received a submission from your organisation. Is it your desire for that submission to form part of the formal evidence?

**Mr BOWDEN:** Yes.

**CHAIR:** Do you want to make an opening statement?

**Ms SANDS:** Yes. People with Disability has made a submission to the Committee based on the key issues that it wants to raise. We want to make it clear from the outset that we strongly support the Community Services (Complaints, Reviews and Monitoring) Act 1993 and believe that its policy objectives remain valid. We believe the objectives uphold the consumers' rights to community services that are competent, effective and transparent, the right to make complaints and to be involved in securing a quality service. We would be very concerned if there were changes to those objectives that would lessen the value of the Act. However, we are extremely concerned that some of the functions of the Community Services (Complaints, Reviews and Monitoring) Act 1993 are not working at an optimal level and, therefore, the objectives of the Act cannot be met, which significantly hinders people with disability from gaining the full benefit of those objectives.

We want to reiterate that we are extremely disappointed by the abolition of the Community Services Commission, and we believe that has a large impact on why the Community Services (Complaints, Reviews and Monitoring) Act 1993 is not as effective as it could be. Despite assurances that the Office of the Ombudsman would provide greater security for consumers of community services, and that the Community Services (Complaints, Reviews and Monitoring) Act 1993 would not be weakened, we argue that the Community Services (Complaints, Reviews and Monitoring) Act 1993 has become less effective and under utilised since amalgamation. We find that inquiries and reporting under the Community Services (Complaints, Reviews and Monitoring) Act 1993 are now more private and less rigorous which has led to an overall weakening of the disability reform agenda which was well under way with many of the inquiries and outcomes of complaints through the Community Services Commission. So the total effect is a reduction in the effectiveness of the Community Services (Complaints, Reviews and Monitoring) Act 1993 protections for people with disability.

**CHAIR:** Would you expand on the suggestion in your submission for the establishment of a vulnerable persons' jurisdiction?

**Mr BOWDEN:** We are advocating for the creation of a protective mechanism for people with disability to operate similarly to the way that we have protections in place for children in our community. We see vulnerable adults and people with disabilities as potentially vulnerable adults who experience abuse and neglect at a very high level. We are concerned about that and yet we do not think that there are sufficient mechanisms to actually investigate complaints, particularly complaints that might fall outside of the funded

disability service sector. There are limitations on what powers currently exist to either investigate or look into things. We see that with criminal matters that we are concerned with being investigated by the police, however, we think there would be benefit if there were a creation of watch dog power for looking at the vulnerability of adults with disability.

**Ms SANDS:** Further to that I refer you to the Disabled Justice report on the Queensland Advocacy Incorporated website. That report was released last year and looks at an adult protection system, if you like, which would be a holistic system looking at, say, an accreditation system as well as perhaps things like a vulnerable person's check, similar to a working-with-children check, and also looks at reforms across police and the justice system more generally, so a whole range of across government reforms for that adult protection system.

**Mr BOWDEN:** There are other jurisdictions that have a model in place that we would be interested in seeing implemented in New South Wales. The Canadian Government would be a place to look at a system that we think has merits to actually inform us on how that would be set up here.

**Mr PETER DRAPER:** This is the Committee's second day of hearings and People with Disability Australia is the first group that has actually criticised the merger of the commission and the Ombudsman. Will you provide the Committee with some ideas as to what you would like to see change that would, in your opinion, improve the situation?

**Mr BOWDEN:** We call on the Government to re-establish the Community Services Commission and remove from what was merged into the Ombudsman Office the Community Services Division and actually have it as a separate entity. Our concerns largely rest around a less rigorous advocacy for the rights of people with disability. A concern of ours is seeing many complaints taking very much a sort of desk review of policy of government department or organisations, rather than actually the merit of the complaint and actually listening to, or looking at the story that the person with disability brings to their office, and actually looking at it on merit, it is very much looking at the form of the complaint. In the current system we think that a lot is missed and a lot of abuse and neglect and concerns around the system are from the Ombudsman only looking at the policy level rather than at the level for the individual, and looking at the group, and grouping those things together for inquiry.

**Mr PETER DRAPER:** It struck me as unusual that your organisation has expressed the first critical word the Committee has received about the merger. Most advocacy groups were very outstanding in their praises about the current system. The Committee has heard a number of witnesses state that many people and indeed carers are quite reluctant to make complaints because they worry about repercussions. In your experience, how common is it for complainants to have negative action against them after they have made a complaint? Are there any mechanisms you would like to put in place to address that?

**Mr BOWDEN:** Certainly the fear is very real, and sometimes service providers can be quite underhand and not very explicit about the retribution they might mete out to the person who has made the complaint. We do see these things happening for people. I think that a mechanism of being closer to the complaint investigation process, and the office being able to follow up and see if there has been any negative consequence and that being part of the system of investigation as a follow up—so that the Ombudsman Office will come back to the

organisation and see how things are going in a certain amount of time—that might prevent the person from having a retribution.

**Mr PAUL PEARCE:** I am interested in the second page of your submission, part 4 relating to complaints. I heard the answer you gave in relation to that. I understand we are talking about complaints that have worked their way through to the level of the Ombudsman. You are talking about looking at the actual merits of the individual issue?

**Mr BOWDEN:** Yes.

**Mr PAUL PEARCE:** How would you see that functioning at that level? Normally those sorts of merit-type issues are dealt with further down, closer to the actual incident.

**Ms SANDS:** That is one of the key differences between the Community Services Division and the way it operated and the current Ombudsman. The Ombudsman traditionally looks at the form of the complaint or looks at the policy imperative, if you like, or how the policy operates rather than the substance. The Community Services Commission did look more at the merit and looked at the life experiences and circumstances for the particular individual involved.

**Mr BOWDEN:** Or group of individuals so when there was a cluster of experiences around a particular service type or a particular organisation, an inquiry might be launched on those grounds.

**Mr PAUL PEARCE:** Along with Peter, I was surprised when I read this because it was the first critical submission we have received on the amalgamation.

**Ms SYLVIA HALE:** The tenor of some of the earlier evidence was that by melding the two, it would cause the Ombudsman to adopt a broader approach to complaints to be conscious of their merits as well as the strictly legal position. That is not your experience?

**Ms SANDS:** That is not our experience, no.

**Mr BOWDEN:** That is not our experience. We see less traction of disability rights issues now that complaints are handled within the Ombudsman than we saw before. You only have to look at the annual reports to actually compare the figures of investigations for children versus people with disability. We are not saying that it is not important to investigate complaints around children because it very much is, but children are not the only vulnerable people within our community and it is also the charge of the Ombudsman's Office to actually look at those complaints.

In the 2006 reviewable deaths annual report, the report talks about the 2006-2007 period as the Ombudsman initiating 17 new investigations, finalising 19 investigations and monitoring and implementing the recommendations of a further six investigations in the previous year. So that was about various aspects of care and protection systems for children compared to finalising three investigations and beginning two additional investigations about people with disability, so it is not equitable in our experience of raising complaints and the inquiries that occur from there.

**The Hon. LYNDA VOLTZ:** My understanding from the community visitors, who gave evidence earlier, is that that was the kind of role they were having. Is that not covering people with disabilities?

**Mr BOWDEN:** It certainly is. I understand there to be an equitable number of visitors for children's services and disability services, however that is not mirrored in the inquiries that actually come from complaints. The disability advocacy sector—and we are not alone—are taking complaints to the Ombudsman's Office but we do not see the inquiries following through.

**The Hon. LYNDA VOLTZ:** But the community service visitors have the ability to take them to the Ombudsman's Office, do they not?

**Mr BOWDEN:** They do.

**The Hon. LYNDA VOLTZ:** So there is equity in the allocation—

**Mr BOWDEN:** Of the actual visitors, yes.

**The Hon. LYNDA VOLTZ:** The person who was here earlier said that where they saw those issues, they tried to resolve them at the time directly with the carers or the non-government organisation. Do you have examples where that has not happened?

**Mr BOWDEN:** In the area of concerns around institutional care and the fact that many people with disability in New South Wales remained in institutional settings and it is well-known that those settings are harmful to people, that complaint has been taken to the Ombudsman but no inquiry has occurred.

**Mr PAUL PEARCE:** The part 5 review by the tribunal has been raised by a number of groups. Are you able to supply specific examples where there has been a lack of capacity to appeal or is that an assumption based upon the relevant clauses in the two Acts that you feel negates the need to appeal?

**Ms SANDS:** You are talking about the part 5 review by the tribunal?

**Mr PAUL PEARCE:** Yes?

**Ms SANDS:** PWD over the last 10 years or so has initiated such appeals of reviews and through those legal processes this is the exact position that we have come across. We have wanted to appeal a decision made by the Minister and we have found that this is where our particular legal action is blocked because the Minister has to make the decision, we have to then look for where the Minister has made the decision and the Administrative Decisions Tribunal will not then review it. It is blocked in terms of the review because of that requirement.

**Mr PAUL PEARCE:** Would it be possible for further information on that to be supplied to the Committee because that has come up on several occasions?

**CHAIR:** Will you take that question on notice to give you an opportunity to provide that further information?

**Ms SANDS:** Yes, we can provide information on those legal cases.

**Mr PAUL PEARCE:** Because it is clearly the intent of the legislation, looking at the relevant clauses of the Act, to provide that right of appeal?

**Ms SANDS:** That is right and we are saying, in effect, that it is not occurring because of that. Under the previous Community Services Commission the commissioner was able to look at the Minister's action, however now the Ombudsman will not look at the Minister's decisions. It is as if the Minister is beyond the scope of the Community Services (Complaints, Reviews and Monitoring) Act at this point, whereas the previous Community Services Commission did often look at the decisions made by the department or the Minister.

**Mr PAUL PEARCE:** That is what I am trying to get my head around. In this instance, as I understand the reading of this, it is a fact that the Minister has not signed the relevant document, therefore the Minister has not made a decision, therefore it cannot be investigated.

**Ms SANDS:** That is right, yes.

**Mr PAUL PEARCE:** Why, then, is the department excluded from being put before the tribunal?

**Ms SANDS:** Because the Minister has to provide the decision under section 10 and section 12 of the Disability Services Act around the funding. A lot of the components of the legal action involves looking through documents to find where the decision has been made and then if it is not found that the Minister has made a decision, it has to go through to the Supreme Court to order the Minister to make a decision before any review can be made, so it is a very protracted, lengthy, costly process.

**Mr PAUL PEARCE:** But there has clearly been a decision made otherwise—

**Mr BOWDEN:** It would not be happening.

**Ms SANDS:** That is right, yes, but it has to be tied back to the Minister, I think is the point in terms of the legislation.

**The Hon. LYNDA VOLTZ:** Can I ask a point of clarification? Are you talking about individual cases or policy decisions?

**Ms SANDS:** We are talking about cases that affect groups of people not individual complaints. We are talking about a policy decision that may have been made.

**The Hon. LYNDA VOLTZ:** So you are talking about, say, a Cabinet policy decision?

**Mr BOWDEN:** Yes.

**Ms SANDS:** Yes, a policy decision that is made that will affect people.



**Mr PAUL PEARCE:** I cannot imagine the Ombudsman would ever have a say about that.

**The Hon. LYNDA VOLTZ:** That is what I do not understand. Cabinet, the legislative powers of the Government, I do not see how an Ombudsman would be able to review—

**Ms SANDS:** It is related to funding approvals. Section 10 of the Disability Services Act talks about funding approvals and the Minister has to sign off on what is funded. Our complaints have been related to services that have been funded in what we would argue is contrary to the Disability Services Act so we are asking for a review or we are appealing the decision about a funding approval that has been made. It is a funding approval that needs to be signed off by the Minister. We are happy to provide you with the legal documentation around that because there are about three cases that we can do that on.

**Mr PAUL PEARCE:** That would be good because a number of submissions have been made on that and, to be honest, I cannot get my head around precisely what it is?

**Ms SANDS:** And I think it might be better if we give you the legal documents because it is a legal issue. That is the advice from solicitors and barristers and that advice would be more appropriate than for us to try and explain those legal issues.

**Mr PAUL PEARCE:** Perhaps that could be supplied on a confidential basis.

**Mr MALCOLM KERR:** You mentioned the Queensland provisions and also the Canadian model. Are there any other models that you wanted to draw the Committee's attention to?

**Mr BOWDEN:** Just the report from Queensland Advocacy Incorporated and Disabled Justice. The provisions are not in place yet but the report makes those recommendations. They are in place in Canada but I do not know of anywhere else you might be able to look at.

**Mr MALCOLM KERR:** How would you describe your relationship with the Ombudsman's office?

**Mr BOWDEN:** We have a fairly good relationship. We meet with the Ombudsman's office on a regular basis. We brief them on work; each of us briefs the other on the work that we are involved or engaged in. We obviously make referrals of individual and group or systemic advocacy matters to the Ombudsman and continue to have dialogue. We also feel that we are open to making complaints to them if we are not satisfied with how a complaint has been handled, so we have that relationship.

**Mr MALCOLM KERR:** Have you expressed your misgivings to anybody in the Ombudsman's office?

**Mr BOWDEN:** Not all in one go perhaps, but certainly those things have been on the record.

**Mr MALCOLM KERR:** They have been aired?

**Mr BOWDEN:** Yes, they have been aired. They were also aired particularly when the concerns around the merger were aired prior to and during the process of the merger.

**Mr MALCOLM KERR:** Did you obtain any response from anyone in the Ombudsman's office to those concerns?

**Mr BOWDEN:** Did we get a response?

**Mr MALCOLM KERR:** Yes. I know it would be informal, but did they express any support for what had happened?

**Mr BOWDEN:** There was a difference of opinion I think.

**Mr MALCOLM KERR:** There was a difference of opinion?

**Mr BOWDEN:** Yes, and we ended up just having to work together and continue to work together with a difference of opinion being agreed upon.

**Mr MALCOLM KERR:** Did they put any arguments up to you?

**Mr BOWDEN:** Yes, but we think that it was a very conservative reading of the Act in some ways, and their powers, and a very cautious approach to their role, whereas we would like to see a more strident protector of rights than we currently have.

**Ms SANDS:** I think the arguments were based around what has been provided to the rest of the sector, particularly around the merger, that they would have more power, they would be able to oversight more areas—the general arguments that have been raised—and certainly that they would not lose their ability to be rigorous in looking at consumer protection issues. But in evidence we do not find that.

**Mr MALCOLM KERR:** Without wishing to verbal you, you have found a more bureaucratic approach to problems. Would that be fair to say?

**Ms SANDS:** I would say that it is just more that the Ombudsman, I would think, traditionally looks at policy compliance in terms of the way it looks at complaints and processes, and our opinion is that the merger has meant that that culture has now impacted on the Community Services Division as opposed to them having an impact on the Ombudsman culture, so it is looking more at policy compliance rather than the actual substance and merit of the complaint and the cause of the issue.

**Mr BOWDEN:** There are several examples of that, whether looking at the children's services framework for the Department of Ageing, Disability and Home Care where a framework was introduced that we support and is strong, and the Ombudsman only going at that level and talking to senior Department of Ageing, Disability and Home Care bureaucrats about that policy, that the policy looks fantastic, however its implementation on the ground and the difference it is or is not making in the lives of children with disability was the concern that we had and the concern of our clients—a fantastic policy, but it is not actually being implemented, and it is the ability of the Ombudsman to get below that policy review and that sort of paper desk review.

**Mr MALCOLM KERR:** Did I understand you to say you have several examples of that translation not taking effect between policy and implementation?

**Mr BOWDEN:** Yes.

**Mr MALCOLM KERR:** Would you be prepared to provide those to the Committee?

**Mr BOWDEN:** Absolutely.

**Mr MALCOLM KERR:** I think it might be helpful if that is done before we hear from the Ombudsman so that we can get his response.

**CHAIR:** If you could provide that information to the Committee by Tuesday, that would be of great benefit to us.

**Mr BOWDEN:** We will see what we can do.

**CHAIR:** Yes, that is why I say if you can, because I understand that it is a very tight timeframe for providing the information to us.

**Mr BOWDEN:** Who would we direct the information towards?

**CHAIR:** To the secretariat, and we will provide those details to you following your evidence. Would you advocate for the expansion of the service settings covered by the Community Services (Complaints, Reviews and Monitoring) Act 1993?

**Mr BOWDEN:** Yes.

**CHAIR:** In what way?

**Mr BOWDEN:** One of the areas is in the area of community visitors where there is a fairly narrow view of what can be deemed as a visitable service. We can give an example where a person with disability might be receiving considerable hours—perhaps 16 hours a day—of in-home support from one agency with multiple carers, and that agency might be involved in personal care, community access, case management, so having a role in the person's life or many roles in the person's life. That person might have a Department of Housing tenancy themselves. Currently that makes the place unvisitable as the Ombudsman perhaps reads the Act, whereas we would certainly see benefit for that person where they have a complaint or there are some concerns about the way that the service is provided, and perhaps complaints that they have made to try to resolve the situation not being followed up. Currently visitors cannot go into that sort of setting, so we think that more services should be visitable than just the 24-hour supported accommodation type that we currently have.

**CHAIR:** Thank you both for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Act.

**(The witness withdrew)**

**GILLIAN ELIZABETH CALVERT**, Commissioner, New South Wales Commission for Children and Young People, Level 2, 407 Elizabeth Street, Surry Hills, affirmed and examined:

**CHAIR:** Thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the Committee is to provide information about the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. The Committee has received a submission from your organisation. Is it your desire for that submission to form part of your formal evidence?

**Ms CALVERT:** It is.

**CHAIR:** Would you like to make an opening statement?

**Ms CALVERT:** Thank you, Madam Chair, and thank you for the opportunity to address the Committee. My opening statement is to reiterate what is in my submission, that is, that since the Act has been amended in 2002 we believe the objects should be updated to reflect the broader purposes of the new legislation. The Act does confer on the Ombudsman important monitoring and complaints resolution powers and functions for community services in New South Wales, particularly for vulnerable children, young people and people with a disability. For example, section 36 of the Act states that in addition to monitoring the performance of service systems, the systemic reviews of deaths aim "to formulate recommendations as to policies and practices to be implemented by government and service providers for the prevention or reduction of deaths". In my submission, and here again, I am suggesting that the objects of the Act be extended beyond complaints and monitoring to include preventing or reducing reviewable deaths and improving service delivery in community services. That is really why I am here, to make that recommendation and put forward that suggestion to the Committee.

**CHAIR:** Thank you for your opening statement. Can you outline for the Committee the role of your organisation in the performance of Working With Children Checks?

**Ms CALVERT:** The primary role of the Commission for Children and Young People is to be an advocate for children and young people in New South Wales. We have a unique role in that we are the only organisation that does that to the exclusion of all other interest groups, in the sense that our remit is to represent children and young people. While we are required to be cognisant of the community, family and parents—for two reasons, the Act requires me to and also because children tell me that parents, community and family are incredibly important to them—the primary remit I have is to promote the interests and wellbeing of children and young people. In addition to that primary function, I am also responsible for conducting a Working With Children Program, which has three elements to it.

The first and possibly the most important is the function of encouraging agencies to reduce risk to children within their organisations and their places of employment. We know from international research that has been undertaken that there are, in a sense, two aspects to harming children. One is the internal impulse, if you like, that comes from a whole range of reasons to harm children. In a sense, they will be the more traditional paedophile who

targets children. The second group of offenders or group of people who harms children are what might be called opportunistic offenders where the circumstance creates the opportunity for them to harm the child and the child is harmed. In fact, the opportunistic people, the people who will harm opportunistically, are far more prevalent than those that do it because of a compulsion, if you like.

The Working With Children Check identifies those with a compulsion. It is aimed at those with a compulsion. The Child Safe Child Friendly program, which aims to help organisations reduce risk, targets those who are opportunistic offenders. That is why I say it is the most important, because they are the biggest group and they are also the group that employers have the most control over. For example, if you are stressed, you have very poor working conditions, you have been required to work double shifts, you have personal issues at home with a relationship breakdown or you are under the influence of alcohol and you are working with highly vulnerable, aggressive children, then that scenario has a number of opportunities where you could lose it and harm a child. If, however, you create workplaces that provide support to those workers, you drug test people who come on shift, you do not allow double shifts, you have high levels of supervision—all things you can do through the ways in which you organise your employment setting—they are ways in which you can reduce risk and mediate risk to the child.

The first thing we do is try to focus on reducing risk to children through changing the way employment and work circumstances occur. The second way in which we try to reduce risk to children in New South Wales under the Working With Children Program is through banning those who have a certain set of convictions from working with children. Although there is a capacity for some people to seek a review of that status, they are banned from working with children. The third area is through background checking of certain groups of employment roles. Essentially that looks at the working history of that person, the criminal history of that person and the apprehended violence history of that person, certain types of apprehended violence orders. If they have a record, that triggers a risk estimate. We then provide that information to the employer so that they can make a more informed decision about whether or not to employ the child. Those last two elements make up the Working With Children Check.

**CHAIR:** Thank you for that comprehensive answer. The Aunties and Uncles Co-operative Family Project Limited, in its submission to the Committee, outlined concerns about the removal of access to Working With Children Checks. Can you respond to that?

**Ms CALVERT:** We have met with Aunties and Uncles. We can only operate within our legislation, and the guidelines do not cover Aunties and Uncles for the background checking. They are required to fulfil the prohibited employment declarations. But they are not covered by the background checking aspect of the Working With Children Check because they are not paid positions. Let me also say that Aunties and Uncles is one of the organisations that has really taken on board the Child Safe Child Friendly message and has structured its organisational practices to reduce risks to children. I think the benefit of that approach is perhaps borne out by the fact that they have had almost none, or they have certainly advised me when I asked them that they have very, very low numbers of their volunteers harming children.

**Mr PETER DRAPER:** The Committee has received conflicting evidence about the impacts of the merger between the Ombudsman and the Community Services Commission.

From your perspective, has it been a positive merger or are there areas and issues you would like to see addressed?

**Ms CALVERT:** I think it is positive in the sense that we now have one agency that responds to complaints and oversees the community services and public sector agencies. I think it is much easier to do that. The detail of that merger I am not really qualified to talk about. Certainly I have had no-one raise with me that there have been problems with the merger.

**Ms SYLVIA HALE:** Earlier in evidence the Intellectual Disability Rights Service spoke of the problems that are created by the casualisation and part-time nature of staff who deal with people with intellectual disabilities and how this had an unfortunate impact on their clients. You have not spoken about reducing the risk to children by trying to reduce double shifts, stress and so on. I presume that part-time work and casualisation would also impact on organisations dealing specifically with children?

**Ms CALVERT:** I do not know that the part-time capacity necessarily is a negative thing. On the one hand, it could be that if you are part-time you do not have the stress build-up of a full-time worker. On the other hand, having part-time workers may mean that the same level of investment in training and supervision does not occur. I think it is more the features of what support you gave your workers, whether they were part-time or full-time, that would be critical. Casualisation is somewhat different. I think casualisation may well contribute to increasing risk. Having said that, I would have to say I do not have any evidence of that. If I were heading an organisation that works with children and we had high levels of casualisation, I would be paying very close attention to selection, because often casual staff are last-minute staff and we know when it is last-minute it is not a good selection process.

We also note that often they do not get the same level of training. Those things would need to be looked at if we were going to rely on a big pool of casual staff. If those issues could be addressed and it was, in a sense, a permanent pool of casual staff who went through a selection process in order to get into the pool and who then were required to complete training and regular updates, were informed about policy changes and were adequately supervised and performance managed, then I think you could address some of the things that potentially would cause problems. But generally those things do not happen with a casual workforce, and that would be a problem.

**Ms SYLVIA HALE:** In your submission you spoke about the disjoint between the objectives of the Act and the functions that have been conferred by the Act. Would bringing the objectives in line with the functions, although perhaps administratively tidy, have any practical ramifications on your work or the work of any other agency?

**Ms CALVERT:** I think it probably does not have a practical ramification. I think it has an understanding ramification in that the performance of the functions is clarified, made clearer. I think that is its benefit. I think that then often flows through to your staff and helps other people's perception of your organisation. It is a touch point for your staff when there are a whole lot of conflicting and competing demands. So if you have clear objectives or clear objects, they provide a touch point for you to go back to—what is our primary purpose, what are we here for? They can help you to clarify, set priorities and manage demands and expectations.

**CHAIR:** The Office of the Ombudsman in their submission made a suggestion that it was their view that it should be placed beyond doubt that members of the Child Death Review Team have a duty to provide the Ombudsman with information and assistance relevant to the part 6 function. Could you comment on that?

**Ms CALVERT:** I would probably take that on notice. I would need to check what part 6 is. Having said that, I am unaware of any time the Ombudsman has had difficulties accessing information that he requires. I would have to balance that up with the needs of the Child Death Review Team where our legislation makes it quite clear that there are extremely strict confidentiality provisions around the Child Death Review Team, and for good reason. Those reasons are that the children or their parents have not consented to us accessing that information—the children because they are dead and the parents because it would be administratively too difficult. The Team does have powers to get information about that child from any source. So it is a very comprehensive power. That is one of the reasons why we have strict confidentiality provisions. I would not want in any way those confidentiality provisions to be tampered with.

The other reason is that we, unlike the Ombudsman, have a Team. It is a Team process whereas in the Ombudsman's case it is an individual, it is the Ombudsman's role. We have a Team. I think there are enormous benefits in having a Team because you get a much richer discussion and a much wider range of views about the data and information you are looking at and considering. In order for that Team to operate we need to be able to have full and frank discussions, which then enable us to move to the point where we can give the best advice to Parliament that we can. Again, I would not want anything to interfere with the capacity of those Team members to have full and frank discussion in order to give the best advice to Parliament on how to prevent deaths. I would have to be convinced that (a) there was a problem and (b) that there was a need for us to make that change and in making that change that it did not in any way interfere with the confidentiality provisions of the Team for the reasons I have just said.

**CHAIR:** How would you suggest the prevention of reviewable deaths and the improvement of service delivery are best carried out?

**Ms CALVERT:** I would like to see a much broader discussion about the best way to review deaths—to review deaths as opposed to conduct research into deaths, which is what the Child Death Review Team does. I think that there is a range of models that you can use. One of the issues around reviewable deaths is that it is not a robust research process, it is, in a sense, a subjective process. That has benefits but it also has limitations as well that we need to recognise. Regardless of what model is adopted, I think it is essential that the review of a child abuse death, which is what the Ombudsman looks at, goes beyond the point that triggered the review, which is that it was notified to the Department of Community Services and does what we would call a root cause analysis so that it goes right back tracking all of the things that contributed to the death. So, certainly I would want to see something move in that direction, but I think there is an interesting discussion to be had about what are the most appropriate methodologies, if you like, for reviewing, say, deaths from child abuse and neglect.

The second part of that discussion, I think, then becomes how do you look at services that then were involved with that child's life and how do we understand the errors that may be made that in some way contributed to or did not prevent the death. I think that “not

preventing the death” is probably a better way of saying it—they do not contribute to the death but they did not prevent the death, or reduce the likelihood of deaths occurring. I am aware of some research being done at the New Zealand Child Death Review Team where they are looking at trying to develop a typology of common errors. That is being done through the Australian and New Zealand Child Death Review Team group. That is very preliminary work. We do not know whether we will be able to come up with a typology of common errors but we are seeing whether it is possible.

The other thing I would say about services and ways of reviewing deaths is that unfortunately we are not going to be able to prevent all deaths. We need to try and focus on learning rather than blaming. The question is how can we put our focus on learning from those errors so that they are not made again in the future. We know that if people feel attacked and blamed they will not fully think about the issues that might have not prevented the death. So, I think there is an issue that we are seeing in a number of areas, which is how do we learn from mistakes in a way that prevents future deaths rather than review deaths that mean people scurry into the corner and everybody just immediately starts to defend themselves. Nobody learns and nobody benefits in that latter circumstance. So, I think there are a number of challenges facing all of us who are involved in looking at deaths and trying to prevent future deaths.

**The Hon. CHARLIE LYNN:** That is a huge task, given the social situation that exists out there and the resources that you do have.

**Ms CALVERT:** I agree.

**The Hon. CHARLIE LYNN:** Are you on an endless quest for further resources to do that?

**Ms CALVERT:** I have learned to cut my coat to fit the cloth.

**CHAIR:** Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Act.

**(The witness withdrew)**

**(The Committee adjourned at 4.05 p.m.)**

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## HEARING 3

**NOTE:** The final hearing of the Statutory Review of the *Community Services (Complaints, Reviews and Monitoring Act) 1993* took place on 18 March 2008 at Parliament House, Macquarie Street, Sydney.

**BRUCE ALEXANDER BARBOUR**, New South Wales Ombudsman, Level 24, 580 George Street, Sydney, and

**STEPHEN KINMOND**, Deputy Ombudsman (Community Services Division) & Community & Disability Services Commission, 580 George Street, Sydney, on former oath:

**CHAIR:** The proceedings today are being heard as part of the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. The Act incorporated the Community Services Commission into the New South Wales Ombudsman's Office, thus creating the Community Services Division. Section 53 of the Act requires the Committee to review the Act to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Committee is required to report on its review by 3 July 2008. The Committee has held two days of public hearings, on 11 March and 13 March 2008. Over the two day's of public hearings the Committee took evidence from a range of government agencies, peak bodies and a representative of the official community visitors scheme. Today's evidence from the New South Wales Ombudsman forms the final segment of public hearings for this inquiry.

Mr Barbour, the Committee has received a submission from you in relation to the statutory review dated 13 February 2008. Do you want that submission to form part of your formal evidence?

**Mr BARBOUR:** Yes, thank you.

**CHAIR:** Would you like to make an opening statement?

**Mr BARBOUR:** Yes, thank you. It is now just over five years since the Community Services Commission merged with my office to form the Community Services Division. The foundation for the merger was the amended Community Services (Complaints, Review and Monitoring) Act 1993. This Act conferred responsibility for all the statutory functions of the commission to my office, retaining all existing protections for vulnerable people receiving, or eligible to receive, community services. The amended Act also conferred the new responsibilities aimed at enhancing these protections and created links in the Ombudsman Act to ensure application of the extensive powers available in that Act.

The ensuring five years have embedded the Community Services Division and its community service functions within my office. The new functions are well established, systems have been streamlined, and we have produced significant outcome for vulnerable people who rely on community services in this State. This said I consider there remain challenges and opportunities that we need to explore in order to maximise the benefits of my office's work in community services. For that reason I believe it is fortuitous that the

legislation provides for a review of the Act. I welcome the Committee process in this inquiry, in particular as an opportunity to reflect on the achievements that we have made under the Act and how these achievements can be built on in the future.

Before looking forward, it may be useful for the Committee to reflect back on the reasons for the merger of the commission into my office. In late 2000, the Crown Solicitor advised the then Minister for Community Services that the commission did not have power to investigate the Department of Community Services in relation to that department's statutory child protection work. My office subsequently assumed the role of receiving and dealing with complaints in relation to child protection prior to the merger. At that time there was also emerging concerns about the range of agencies with a role in over citing community services. In addition to my office and the commission, the Office of the Children's Guardian had recently been established in 2000 and the Commission for Children and Young People, incorporating the Child Death Review Team and the Working with Children Check process, also became operational in 2000.

The legislative changes that resulted in the merger were focused on addressing what was subsequently seen as overly complex, and not particularly effective, oversight arrangements. In the second reading speech for the Community Services Legislation Amendment Bill the then Minister, the Hon. Carmel Tebbutt, noted that the bill would address the complexity of community services oversight in New South Wales and had been:

... formulated on the basis of some fundamental principles: that the independence of the review and reporting process and the potential to share information should be strengthened wherever possible, that any gaps or uncertainties in the current system should be remedied; that client access and complaint handling are to be improved; that none of the current protections in the review and monitoring systems of community services should be weakened.

I believe that over the past five years my office has upheld these principles and effectively fulfilled the objectives of the Act. Nonetheless, there have been challenges.

Organisational mergers will always have an element of difficulty. The merger brought together two workforces, each with different structures, IT systems and databases. There were new functions to establish and an imperative to ensure the most effective framework for applying the Community Services (Complaints, Reviews and Monitoring) Act with the available powers under the Ombudsman Act. In meeting these challenges, we have worked hard to create the best processes and approaches possible. Early on I initiated a review and restructure of the division to achieve improved functionality and to integrate the new reviewable deaths function. Staff and systems are integrated, and our merging of IT and database systems—a complex undertaking—is rolling out as planned. The Community Services (Complaints, reviews and Monitoring) Act has been significantly strengthened by the Ombudsman's extensive investigative and related powers. We have demonstrated a greater capacity to deal with issues for community service consumers more holistically and across agencies, as a result of my office's broad jurisdiction. And we have achieved results.

The merger also presented challenges for stakeholders in community services. The environment at the time of the merger included a history of strong community sector support for the retention of the commission as a separate, independent body. At the outset some parts of the sector were resistant to any form of amalgamation—indeed, I might add that many members of the commission staff who came across to the Ombudsman's Office had a similar view—despite the Government's commitments to maintain and enhance protections

for consumers. The Committee's stakeholder review of the merger identified some ongoing concerns in parts of the sector. The main issues identified included sector engagement, the capacity of my office to be an agent for change, and the profile of my office in community services. I note that these were against the background of general support for the work and achievements of the division, but it is important that those concerns are acknowledged.

The Committee's report in October 2006 concluded that some areas would warrant further assessment, and we responded directly to those in our detailed submission. I note at this point that my office has continued to consult and listen to stakeholder views, and to respond to any issues identified wherever it is appropriate or possible. In particular, we have invested significant resources into community education, information and awareness activities to further promote our role in relation to community services. This of course is an ongoing process. I would strongly support the Committee exploring whether my office should be given greater discretion to release information about our work where that work relates to systemic issues. This is one issue that has persisted for stakeholders and it is one that I am keen to address.

Finally, when considering whether the objectives of the Act remain valid and whether the terms are appropriate, it is essential to have regard to how effective the work of my office has been under the present arrangements. The division's achievements over the past five years are significant. Many are detailed in our submission. I will briefly outline but a few of these achievements to indicate the scope of our work. To date, since December 2002 we have reviewed the deaths of more than 1,000 individuals: 600 children and young people and 460 people with disabilities. We have produced four annual reports to Parliament about the outcomes of this work. We have made recommendations to a range of agencies, including the Department of Community Services [DOCS], the Department of Ageing, Disability and Home Care [DADHC], New South Wales Health and the New South Wales Police Force. The large majority of our recommendations have been accepted and acted upon by these agencies.

For example, the State Government initiated legislative changes in late 2006 in response to issues identified in our child death reviews. The amendments included the introduction of parent responsibility contracts to formalise agreements made between DOCS and parents to address risk of harm concerns and to clarify actions where agreements are breached. Other legislative amendments resulted in children being better identified under the Act as at risk of harm if they had been the subject of a prenatal report to DOCS. New South Wales Health is undertaking a statewide review of drugs in pregnancy services, with a view to developing minimum standards for these services. The department has also put in place a number of measures to monitor and respond to incidents where children present to emergency departments as a result of methadone ingestion or suspected methadone ingestion.

DADHC has implemented a range of initiatives, including first aid training, a standardised record keeping system for client information in DADHC services, and reviews of departmental policies providing guidance to staff working with people with disabilities in care. Since December 2002 the division has initiated 90 investigations relating to 59 individual cases. The majority—77 investigations into 47 matters—have concerned child protection issues. In the past year we finalised 22 investigations and have commenced a number of new investigations. Investigations arising from our complaints and review work mainly focus on individual cases but often have a much broader impact on agency

operations. Agencies have accepted and acted upon the majority of recommendations we have made in those investigations.

We have conducted four group reviews and seven service-based reviews of individuals living in either disability care or statutory out-of-home care. In all, we have considered the circumstances of 150 individuals in care. Where warranted, our reviews resulted in recommendations to improve the situation of individuals. Once again, the large majority of these recommendations have been acted upon by the agencies. In addition, we have made a range of recommendations to address systemic issues identified in the course of our work. For example, in 2007 we completed a group review of children in statutory care who were under five years of age. This work was a follow-up of an earlier 2003 in-care review of the same age group. While we have identified some concerns and referred these to DOCS, we also observed clear improvements since the initial review in case planning and management for short-term placements and for carer support.

We have achieved a consistent increase in the number of complaints handled by the division that result in resolution of the complaint and/or services being improved. In 2006-07, 54 per cent of formal complaints were resolved. Our survey of stakeholder satisfaction with our complaint handling, which we have already touched on, indicated overall that complainants appear to be satisfied with how we handle their complaints. We have completed a number of major inquiries and systems investigations into a range of issues affecting consumers and service providers. These have included special reports to Parliament on monitoring standards in licensed boarding houses, access to and exiting from services for homeless people provided under the Supported Accommodation Assistance Program, and services for children with a disability and their families.

Other significant projects have included an investigation into DADHC's role as lead agency for a cross-government senior officers group responsible for improving the interagency coordination of support for people with disabilities who are in contact with the criminal justice system, an inquiry into DADHC's monitoring of disability services, an audit of individual planning in funded disability services, and an inquiry into individual funding arrangements in out-of-home care. We monitor all recommendations we make, and I can confidently say that this work has resulted in positive change in a vast number of areas. For example, following our investigation into children with disabilities, DADHC developed an action plan to improve services to these children. The plan included strategies to improve service arrangements for children placed in, and at risk of being placed in, voluntary care and to enhance organisational capacity and systems.

We then made a special report to Parliament about DADHC's response and reported that there had been significant progress in such areas as delivering support to families, improving options for children entering care, supporting children to return to their families and monitoring children in care. None of this work would have been possible without a strong and committed team of staff in our community services division. I am proud to say that they not only work very hard but they do so with great passion and enormous sensitivity in a very challenging circumstances. The Deputy Ombudsman and I are most happy to answer any questions that you have of us.

**CHAIR:** The Committee has received some additional information from People With Disabilities [PWD]. They have requested that this information remain confidential and as such I propose that we deal with any questions arising from this information in an in-camera session at the end of the hearing. The People With Disabilities submission to the Committee

stated that, "we find that inquiries and reporting under CRAMA are now more private and less rigorous". Can you comment on that?

**Mr BARBOUR:** I have not had an opportunity to read the transcript of PWD's evidence. Obviously I have a copy of the submission they sent to the Committee, and I have received some briefing notes about their observations and concerns. I must say that I am very disappointed and somewhat surprised at some of the concerns they have raised.

We have indicated in our submission to the Committee that we believe it would be appropriate for the Ombudsman to be given more discretion to provide more publicly available material in terms of some of our functions. We are happy for the Committee to consider this. Having said that, I believe our relationship, which encompasses frequent meetings and briefings with all stakeholders and advocacy bodies including People with Disabilities, provides an opportunity to amply brief those agencies on our work and what we are doing. To the extent that we are able to within existing legislative requirements, we provide as much information as we can to all interested parties.

**CHAIR:** Can you tell the Committee about the role of the Administrative Decisions Tribunal as an appeals mechanism, in particular, any limitations on its jurisdiction?

**Mr BARBOUR:** I appreciate that this has been raised by, particularly, I think, People with Disabilities and the Disability Council and I have to say I have some difficulty following what the issue is. There is very little use of the Administrative Decisions Tribunal that involves or intersects with the Ombudsman. Indeed, only one matter involving us has ever gone to the Administrative Decisions Tribunal and we were not a party to those proceedings. The Administrative Decisions Tribunal's outcome of that was to enforce recommendations that we had made and to require the Department of Community Services to undertake, consistent with our recommendations, what it was that we had recommended. It eludes me what the issue is. However, I am very happy to receive from People with Disabilities or any other agency any briefings or legal advice that they have about why this is an issue, so that if there is anything we can do to assist them we are in a position to do so.

**The Hon. LYNDA VOLTZ:** Do you recall the year that issue went to the Administrative Decisions Tribunal?

**Mr BARBOUR:** The matter that we were involved with was in 2006, I believe. I think the result came out in early 2007.

**CHAIR:** Would you be in favour of expanding the jurisdiction of your office in relation to the following groups: people with disability living in boarding houses, people in full-time or part-time care, older people being provided with informal care, and children living in informal foster care arrangements?

**Mr BARBOUR:** I think all of these areas were the subject of suggestions in submissions that might prompt a review of or a look at broadening our jurisdiction. In terms of people with disabilities in boarding houses, licensed boarding houses or licensed residential centres, as they are referred to as well, are service providers and the providers of community services. As such, they fall within our complaints jurisdiction already. Boarding houses also provide residential care and, as such, they fall under part 6 of our reviewable death jurisdiction. They also are able to be visited by Official Community Visitors. So I do not

see that there is any need to broaden our jurisdiction in relation to licensed boarding houses. The issues in relation to people in full-time or part-time care, older people with informal care and children in foster care arrangements I think are related to the potential for there to be an expansion in the definition of "visitable service" and to look at that in the context of Official Community Visitors visiting. We have obtained legal opinion about the definition of "visitable service" and how that fits with the different forms of accommodation models and care that are now provided. In our submission to the Committee we have detailed that in some considerable manner. I am quite comfortable with the Committee considering and/or the Parliament addressing the issue about whether to expand the definition of "visitable service".

In some cases, as we have indicated in our submission, we would argue that that would be a benefit, particularly given some of the new accommodation models and particularly in situations where the lessee of leased accommodations is actually the person receiving care, so technically it is a private home situation but they are actually under full-time care. That sort of situation would seem to fit very comfortably within the notion of what ought to be a visitable service. There are problems around it, as we have identified with the legal advice we have received. So we would welcome the Committee looking at this issue. As I indicated in our earlier meeting, with an expansion of visitable services obviously comes considerable additional cost and administrative arrangements. That is something that is going to need to be looked at as part of this process as well. In terms of the provision of foster care, that raises a very significant issue and one that from a positive perspective needs to be addressed by Parliament. The notion of Official Community Visitors entering private homes is clearly a significant expansion of the concept of visitable services as we currently know it. It is happening in Queensland, as I referred to earlier. But that program, given the sheer number of foster carers, requires a very, very significant increase in the number of Official Community Visitors and funding to support them.

**CHAIR:** Are you satisfied with the current internal complaints handling policies and procedures of the Department of Ageing, Disability and Home Care and the Department of Community Services?

**Mr BARBOUR:** Certainly the Department of Ageing, Disability And Home Care complaint handling procedures have been updated and we believe that they are working very well. There is a strong local resolution focus and the department introduced a new complaint handling policy in 2005. We believe regional management staff generally responds quite well to those issues. In terms of the Department of Community Services, I can answer part of it in a public session. Are we in private session at the moment?

**CHAIR:** No, but we will be soon.

**Mr BARBOUR:** The part that I can answer on in public session is that as far as we are aware the existing system that the Department of Community Services operates under is one that has been in place since 1998. The system has been updated to recognise a change in procedures and also in the legislation, but it is clearly problematic. We were provided with a draft in July last year for information and comment about a complaint operating framework. We did provide comment in general on that that the framework technically met complaint handling requirements of the Community Services (Complaints, Reviews and Monitoring) Act 1993 and also the Australian standards for complaint handling. We understand that the Complaints Unit has been the subject of a further independent review and that a report has been prepared. However, we have not received a copy of that

and we are not aware of what is involved in it. We understand that that matter has gone to Executive for some form of ratification in terms of the introduction of a new system. If I can just note, I understand that at your hearing last week the Deputy Director-General of the Department of Community Services indicated that the review was complete and that the department had informed us of the review outcomes. That is not accurate.

**Mr PAUL PEARCE:** I want to ask a couple of questions about visitable services. You refer to advice on the number of models of care that are the outside the visitable service jurisdiction which Parliament may have intended to be within the jurisdiction. Was there a specific incident or series of incidents that caused you to obtain an opinion as to what is or is not within the visitable service jurisdiction or was it because a varied range of models were being developed and you felt you had to clarify whether or not you had a role?

**Mr BARBOUR:** It was the latter. We are constantly live to the fact that there is a lot of change in this jurisdiction and it is very important for us as the primary oversight agency to be able to look at whether or not the legislation is going to cover those particular changes effectively. The advice was sought so that we made sure that not only were visitors going to all those services that they ought to be going to but if there were any problems arising that we were able to bring them appropriately to attention.

**Mr KINMOND:** As an example, in the disability area there has been increased flexibility in terms of accommodation options that are available. For example, some services make the accommodation arrangements for people with a disability but the actual lease is signed by the person with a disability. The legal advice we have received is that those circumstances do not fall under the definition of accommodation service provided by that funded agency. You could have a situation where the lease is signed by the agency facilitating it and then the agency provides the full-time day-to-day support needs. Yes, that will be a visitable service. If, on the other hand, the lease is signed by the person with a disability, notwithstanding that the day-to-day support needs are still being provided by the service, those circumstances are outside the visitable service jurisdiction. The question is, given at the end of the day the person is being provided with full-time or essentially close to full time day-to-day care, should there be any difference in terms of whether the lease is signed by the person with a disability in which case it is out or whether the lease arrangement is signed by the service in which case it would be within jurisdiction.

**Mr BARBOUR:** Clearly there is a significant change and an appropriate trend towards diversifying the forms of accommodation and the forms of service provision. That is really what has prompted that particular example that Steve gave. It is a very obvious one where you can have simply as result of whose name is on the lease the difference between something that is visitable and something that is not.

**Mr PAUL PEARCE:** Do you believe the change in the forms of accommodation is simply a development on the most appropriate forms of accommodation or is it an attempt to limit access?

**Mr BARBOUR:** No, it is not an attempt to limit access. We do not believe that it is designed in any way, shape or form to do that. There has been a lot of pressure on Government to support a greater devolution and a greater range of models in terms of accommodation. We support that; I think everybody supports that. But the creativity, which is a necessary component of that, that is brought to how the services are provided is going

to present these sorts of challenges. It is our job to make sure that we try to keep ahead of that to the extent we can.

**Mr PAUL PEARCE:** So it would be necessary to change the definition to broaden it to cover those forms of accommodation that are now being developed?

**Mr BARBOUR:** There are two issues. The first one is where someone who previously would have been in the visitable service jurisdiction is no longer as a result of the definition able to be looked at. That is a very clear example where I suspect the intent of Government would be to change the definition to make sure that was brought in. The second limb is extending the definition of "visitable service" to bring into visitable services ones that have never been visitable, which may or may not deserve or need to be visitable. That is very much a decision for Parliament and obviously would require legislative amendment. It is a very significant policy change.

**Mr PAUL PEARCE:** The object of that section of the Act, as I understand it, related to the individual and the needs of the individual. You are saying here that the way it is worded it tends to relate to the form of accommodation.

**Mr BARBOUR:** Yes and also the nature of the service provision. For example, you could have older people receiving Home Care Services in their home and those services might be almost full-time but technically they still would not be a visitable service. So there are a range of issues around this that require some degree of consideration and, I think, some decision around what is intended to be covered by these processes.

**Mr KINMOND:** Another interesting area concerns children in out-of-home care in foster care arrangements. If, for example, the foster care situation is simply the payment of an allowance, in those circumstances they do not come within the jurisdiction. But if, for example, the foster carer is being paid as a contractor, then, notwithstanding it is their private home, it is the advice of counsel that, in fact, is within jurisdiction. That is an example of the Ombudsman talking about an area that in the past we have thought was outside jurisdiction. On the basis of this advice it would appear that it is within jurisdiction.

**Mr BARBOUR:** Of course, that is a particularly live issue because there has already been put to the Wood commission considerable support for the view that out-of-home care ought to be rolled out more in terms of non-government service providers rather than government service providers. The nature of those circumstances are often much more of a contractual kind than they are by way of allowance.

**Mr MALCOLM KERR:** Who provided that legal advice, Mr Barbour?

**Mr BARBOUR:** Peter Garling, QC.

**Mr MALCOLM KERR:** You referred to evidence given by the Department of Community Services. I am trying to think of the woman's name.

**Mr BARBOUR:** Donna Rygate?

**Mr MALCOLM KERR:** Yes. You said it was inaccurate in relation to the completion of some material that the Ombudsman wanted, is that correct?



**Mr BARBOUR:** No. I indicated that her advice that we had been provided with the outcomes of the review of the complaint handling system was inaccurate. I do not mean to imply in any way that it was intentionally inaccurate but simply that we do not have it yet. I envisage that we would get it.

**Mr MALCOLM KERR:** Intentionally or unintentionally it was inaccurate, and that is a very serious matter because the evidence given to the Committee should be accurate. Have you had an opportunity to read the transcript of her evidence?

**Mr BARBOUR:** No.

**Mr MALCOLM KERR:** I wonder if it might be provided to Mr Barbour when it is available. Chair, I am just wondering how we deal with this matter if there are inaccuracies. No doubt the transcript will be posted but the public is entitled to the truth in this matter.

**CHAIR:** My understanding is that the drafts are currently being corrected by the witnesses and if there are some inaccurate statements I, as Chair, can write to a particular witness in relation to that. That could resolve the matter you have just raised.

**Mr MALCOLM KERR:** It may or may not, but anyway we should see.

**Mr PETER DRAPER:** I was interested that the Police Force has released its "Aboriginal Strategic Direction 2007-2011" and it includes objectives focusing on Aboriginal substance abuse and a stronger response to policing sexual assaults in Aboriginal communities, including the investigation of child sexual assault. Given what is happening in the Moree area at present, I would appreciate your comments on that particular statement.

**Mr BARBOUR:** We have had a very close relationship in auditing the Police Force's Aboriginal Strategic Direction framework for quite some time. You are correct: the focus has now shifted to those two areas as being areas of priority and we have already engaged with police around a program to ensure that we are able to audit those initiatives in the future. Steve Kinmond, Juliana Demetrius and representatives from our Aboriginal Complaints Unit are involved in the Police Aboriginal Strategic Advisory Council [PASAC] committee, which meets regularly to discuss these types of issues. Another thing we are doing is to ensure that we do not simply look at this purely from a policing initiative but that we actually work on this issue together, with our understanding of problems associated with the Department of Community Services' practice on the ground in relation to regional New South Wales and Aboriginal communities, and also other agencies. We have written to the Department of Community Services asking it to provide us with details of its strategies in relation to remote New South Wales, particularly Aboriginal communities that we understand have an inadequate response to these sorts of issues on the part of DOCS.

We could spend many hours listing the very complex issues that arise in indigenous communities, particularly in remote New South Wales. We are very troubled by the adequacy of the response of some agencies. We have met with the Department of Aboriginal Affairs—I met with the director general—and have looked at what their work will be in monitoring and focusing on the initiatives that come out of the State Plan in relation to these areas. We see it as being a priority of our office to identify what programs are under way and whether or not those programs are working effectively and/or are adequate. I do

not know whether there is anything specific you want me to address in relation to those things, but—

**Mr PETER DRAPER:** Not specifically. I was encouraged to see in your report that one of your strategies for 2008 and beyond is to actually take the Ombudsman into country areas. Would this be something of interest?

**Mr BARBOUR:** That is indeed what we have done previously, and our report to Parliament about our work in auditing the Aboriginal Strategic Direction has covered that in previous years. We do a lot of in-the-field work and Steve, the manager of our CAT team, Juliana Demetrius, and our Aboriginal unit are regularly travelling throughout New South Wales dealing with issues on the ground.

**Mr KINMOND:** The Aboriginal unit, for example, was away for two weeks solid in the Western region and came back just last week, as part of this exercise of developing a methodology to be able to examine the issue of how police approach Aboriginal child sexual assault under the interagency plan. That was two weeks of consultation in the Western region. I, for example, as illustrated in the submission, made a number of visits last year. I was hoping it would be March but it probably will be April when I will go back to Bourke to enter into further discussions. We are certainly awaiting the response from DOCS as to its strategies for addressing staffing shortages, in the Western region in particular, to better service some of these areas. This will be an ongoing commitment, and it is a commitment that we have to make by working directly with communities as well. It is not the sort of thing that you can do from 580 George Street, Sydney.

**Mr PETER DRAPER:** Absolutely. Just out of personal interest, have you been to the Tamworth area?

**Mr KINMOND:** Yes, we went to Tamworth several times as part of the police audits. We have not returned there from an auditing point of view recently and if there are particular issues you would like us to look at we would certainly be keen to get your advice.

**Mr PETER DRAPER:** I was just curious because you stated you are trying to raise the profile of the organisation and improve access and awareness and all that sort of thing.

**Mr KINMOND:** Sorry, I was looking at it in a policing context. I was actually in Tamworth only last week under the three-year cycle I am embarking on in getting out to towns as part of my functions as Deputy Ombudsman in the community services area. There were about 50 different agencies represented at the disability forum and about another 20 agencies at the child and family forum. There was great feedback.

**Mr BARBOUR:** While we are talking about indigenous issues, can I also mention— we have referred to it in our submission—what I think is a very significant project that is just coming to conclusion now. We have done a project in relation to the level of support given by the Department of Community Services to Aboriginal foster carers. We have done an enormous piece of work, probably the first work of its kind to actually look at whether or not people who are providing out of home care to Aboriginal children are adequately supported by the Department of Community Services. We did lengthy interviews with over 100 foster carers and are putting together the results of that process. We will be talking with the Department of Community Services about our conclusions in the next week. We have also

indicated to the Wood commission that we are happy to provide it with a copy of the report after we have had some discussions with DOCS. I have made it a commitment, as has Steve, to address as much as the office possibly can within our resource constraints the issue of support for indigenous people. On almost any measure of work in our community services area you will find an overrepresentation of indigenous communities, whether it be the overrepresentation of young children who are dead as a consequence of inappropriate treatment or, alternatively, the number of Aboriginal children that are in out-of-home care. I see that as a priority and one that we demonstrate our commitment to by putting in as many resources as we possibly can.

**The Hon. LYNDA VOLTZ:** What is the breakdown between Aboriginal communities and the population as a whole in the number of complaints received?

**Mr BARBOUR:** Aboriginal communities traditionally are very reluctant to make complaints.

**The Hon. LYNDA VOLTZ:** Which is why I am asking the question.

**Mr BARBOUR:** We find that our work with our Aboriginal unit is the best way for us to garner information and details about problems and also to generate complaints. One of the side benefits of our recent foster carer project, for example, was that we got 44 complaints directly from Aboriginal community members and/or foster carers about the types of issues that were being canvassed in our activities in the community. We saw that as being an enormous positive side benefit of what was a separate piece of work.

**The Hon. LYNDA VOLTZ:** How would that compare with what you would normally receive?

**Mr BARBOUR:** That is far and away in excess of what we would normally receive about those sorts of issues and that is why we saw it as being really important. For the indigenous communities to complain directly to us requires an enormous amount of trust and relationship building and a lot of work on the ground. We are also putting in a lot of work in outreach to those agencies that support indigenous communities. We have a very good working relationship with the Aboriginal Child, Family and Community Care State Secretariat [AbSec], for example, and we encourage those agencies to bring matters to our attention because traditionally individuals will not make complaints. We also have specialist brochures for our Aboriginal work to try to encourage more complaint making by people from indigenous communities.

**The Hon. LYNDA VOLTZ:** That leads to my next question because obviously there would be a reluctance in Aboriginal communities to deal with DOCS and the police in the first instance, so a complaint process that steps outside that is very important to them. AbSec pointed out how successful the use of community justice centres for Aboriginal communities was. Have you read that transcript?

**Mr BARBOUR:** No, we do not have any of the transcripts from the hearings.

**The Hon. LYNDA VOLTZ:** Given the nature of how Aboriginal communities work, it seemed a natural agency to work with them. I understand what you are doing with the foster

carers but I am just wondering about the ability to reassure Aboriginal communities that there is a justice section when they are dealing with these agencies.

**Mr BARBOUR:** Over the past five years we have probably conducted tens and tens of visits directly to areas, both metropolitan and regional, where there are large Aboriginal communities. Much of that work has been identifying the people on the ground that we need to talk to and communicate with to get the best access to the broader community. We have chaired meetings, we have got people together, we have spoken to people in their homes, and we have spoken to police and worked very hard with them to improve the relationship between police and Aboriginal communities. One of the side benefits of our auditing work on the police strategic direction program with Aboriginal communities has been a vast improvement in the relationship between police and indigenous communities in regional New South Wales. We have seen enormous improvements there. We are very much focused on talking with people and working on the ground on those sorts of issues rather than applying what would be a traditional paper-based complaint process, because that does not work.

**The Hon. LYNDA VOLTZ:** No, that is what I thought was the efficacy of the community justice centres where the mediation-style disputes resolution suited Aboriginal communities.

**Mr PETER DRAPER:** Just on that issue, the report stated that you were meeting the Department of Ageing, Disability and Home Care [DADHC] last month to talk about the potential for your office to audit its engagement with Aboriginal communities about disability service issues. Can you update us on that?

**Mr BARBOUR:** This is a project that we are currently scoping out as something we want to see whether we can do. It is at a very early stage.

**Mr KINMOND:** I met with senior DADHC staff including the Deputy Director General, Carol Mills, a couple of weeks ago. Once again, this sort of work needs to be really practical in nature, not theoretical. We are exploring the possibility of our going to particular locations where it is clear from our consultations with a group called the Gathering, which represents Aboriginal disability services, and also the Aboriginal Disability Network, that at least reasonably good things are happening. We thought we would go to some of those locations, seek to identify some of the positive things taking place and then look at some of the gaps that exist from a consultation perspective. After looking at the solid locations we then propose to look at some areas that we think from our feedback are weaker. The aim of the exercise I suppose is to identify good practice and to ensure that it is promoted. Consultation is an easy thing to talk about in relation to the Aboriginal community, but it is much more difficult in practice. When we are dealing with disability services there is the challenge of mainstream services being provided to people with disabilities as well as specialist services. We are particularly interested in how DADHC is wrestling with that in terms of the implementation of its policy, its consultation strategy. At the moment we are doing some work on the methodology. We have agreed to go back to DADHC when we think we have a broad framework of how to look at things. Once again, we do not think there is a lot of value in a report that will be produced in two years' time. We prefer to look at particular locations, sit down with DADHC, give them feedback as to what we have observed, and after we and DADHC have learnt from that exercise go back into the field. Through a process of continually feeding back issues we hope to effect change. That has

been the strategy that we have used in relation to our auditing for a number of years now in the policing field. We are certainly hoping that might work in the disability area as well.

**Mr PETER DRAPER:** Do you see any barriers to that?

**Mr KINMOND:** Let me say, not at the moment. I think it is achievable.

**Mr BARBOUR:** It is interesting you ask that question though because related to this issue is the very reason why I created the cross agency team to do this project work. I am a great believer that the role of the Ombudsman, particularly in this State given the way in which services are provided, is very much going to change over the coming years and we are going to be very much more driven by project work and by systemic work. What I think presents challenges is trying to explain and convince agencies of the worth of that.

The typical response, because these projects are often done by way of investigation, is to be defensive. We have found it quite a challenge to convey to agencies that really we see this as being value adding and that it is a very constructive process for them to embrace, and one which ought not be seen to be threatening. What comes to mind is our joint guarantee of service [JGOS] project where we are looking at housing and health in relation to the way in which they provide support and assistance to people who have social housing tenants with mental health issues. They, particularly housing, were very concerned about the notion that we were coming in and looking at this particular issue. I am pleased to say, after a lot of work, that they are now very much embracing the notion that this project will potentially provide value to them and help them. I really think that is the way the office is potentially going to add more value.

**CHAIR:** To what extent are you assisting Community Services to develop their complaint systems?

**Mr BARBOUR:** Do you mean the Department of Community Services?

**CHAIR:** Yes.

**Mr BARBOUR:** Or do you mean all community services? As I said before, we provided comments to them when they provided us with a complaint handling framework back in 2007. We do not have a copy of the latest review document. We are not sure what they are doing in relation to that. We did offer, at their request, to scope out our own evaluation of their complaint handling processes, but the time line was not suitable to them. We did not have the capacity to do it for some time, so they have done their own independent review and that is the review we are talking about, which we are yet to receive a copy of.

**CHAIR:** Why was your office unable to undertake that work within the timeframe?

**Mr BARBOUR:** We indicated to them—I think they wanted to try to get it done for the Wood inquiry, and it is not something that we were able to give priority to. We indicated to them that we would be able to do it in February of this year, but they wanted to have it completed by the end of the calendar year last year.

**CHAIR:** What criteria were used in recommending external parties to undertake the work?

**Mr BARBOUR:** I do not know. You would need to check with DOCS.

**Mr KINMOND:** We checked in terms of agencies who had proven performance in this area. For example, there was ARDT, whom we had used previously and who had shown themselves to be quite skilled from an auditing perspective. There was one agency, for example, that we mentioned that they might wish to approach. I also think it is important to bear in mind that we were quite keen to do the complaint handling review, but if we are doing these reviews we have to do them on our terms and not to some extent be an agent of an agency that we are oversighting. So the discussions that took place in relation to the complaint handling review possibility took place quite late last year, and we were going to turn around the review in the space of a couple of months, which is a pretty good review. We could not, however, lessen the timeframe without actually compromising the review itself.

**CHAIR:** What plans are in place for having input into the process and for monitoring the outcomes of the process?

**Mr BARBOUR:** As we understand it, the process is complete. There is a report. We have not received it yet.

**CHAIR:** You have not seen it?

**Mr BARBOUR:** Yes. I just confirmed with Steve that we are unaware of who the consultant is that they ultimately got to do it, and we do not know the terms under which that evaluation process has worked.

**CHAIR:** Do you want to make an additional comment?

**Mr KINMOND:** My problem is that as I get older my memory gets worse. I am just a little bit concerned that there might be an email sitting there where they told me at some stage. So to the best of our—I provide advice to the Ombudsman—

**CHAIR:** To the best of your knowledge, yes.

**Mr KINMOND:** I take responsibility for that.

**Mr BARBOUR:** If that is not a completely accurate representation, I am happy to follow up with something. I will check on that. But the advice that we have got is that we do not have those details.

**CHAIR:** Would enhancing the enforceability of recommendations that you make contribute positively to the achievement of policy objectives of the Community Services (Complaints, Reviews and Monitoring) Act [CRAMA]?

**Mr BARBOUR:** I believe one of the inherent advantages of the way in which Ombudsman offices work is that they are recommendatory only, and that ultimately it has to be left up to the agency and/or government to determine whether or not they are going to

implement those recommendations. We are not a determinative body; I do not believe we should be. I think that in terms of our recommendations, the vast majority of our recommendations are accepted. We monitor them. We follow up. Sometimes they are not as well dealt with as we would like. Sometimes there are delays. But we continue to monitor and continue to see how they are progressing. It is very rare that an agency will say to us, "We are not going to comply with that recommendation." Usually that is because we have been able to convince them during the process of the investigation which precedes those recommendations being made of the merit of the recommendations. So I do not think we need to have any further enforceability in relation to those issues.

**CHAIR:** At Thursday's hearing, the People with Disabilities [PWD] compared the number of inquiries being conducted in the children's and disability areas and suggested that the situation was inequitable for people with disabilities. Could you respond to that, or would you like to take that on notice?

**Mr BARBOUR:** No. Look, I think that is an inappropriate comparison to try to draw, quite frankly. It is not simply about numbers. It is about the nature of the work and the focus of the work. Without doubt, complaints in relation to disability issues are often far more amenable to resolution without the need for investigation, and also the vast majority of services and people who are visited by official community visitors are people who are disabled. So the official community visitors are able to deal with a lot of these things on the ground as well. We do a considerable amount of work in relation to disability areas, and People with Disabilities, as far as I am aware, stands quite isolated in its views about that.

**CHAIR:** Are there any other further questions from members? There are some further questions we have regarding the submission. Would you object to taking those questions on notice?

**Mr BARBOUR:** No. That is fine.

**CHAIR:** Thank you. The Committee secretariat will be in touch with you regarding those. Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Community Services (Complaints, Reviews and Monitoring) Act [CRAMA]. This concludes the public segment of the Committee's hearing of the statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. I ask members of the secretariat to please clear the public gallery. I ask members to remain for the in camera session.

**(Evidence continued in camera)**





## Appendix 4 - Committee minutes

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 1)**

10 am Thursday 28 June 2007  
Room 814, Parliament House

#### **Members Present**

Ms D'Amore MP            Mr Draper MP            Ms Hale MLC  
Mr Kerr MP                Mr Pearce MP

#### **Apologies**

Apologies were received from Mr Lynn MLC and Ms Voltz MLC

#### **Also Present**

Les Gönye, Glendora Magno, Samantha Ngui, Hilary Parker, Pru Sheaves

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#### **General Business**

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- A briefing note was circulated on the requirement for the statutory review of the Community Services Act to be completed by 3 July 2008.

Resolved, on the motion of Mr Draper, seconded by Mr Pearce:

That the Committee advertise for submissions and that the Secretariat begin inviting submissions and organising hearings for the statutory review of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

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The committee adjourned at 10.36 am until a date to be determined.

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### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 2)**

10 am Thursday 27 September 2007  
Room 1102, Parliament House

Appendix 4 - Committee minutes

**Members Present**

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP
Ms Voltz MLC		

**Also Present**

Samantha Ngui, Hilary Parker, Pru Sheaves

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**4. Statutory Review of the Community Services (Complaints, Reviews and Monitoring) Act 1993**

The Committee Manager briefed the Committee on the progress of the review.

Resolved on the motion of Mr Pearce that:

- the Committee approve the posting of the submission from the Association of Children's Welfare Agencies on the ACWA web site.
- the Committee forward copies of submissions raising substantive issues to the Ombudsman to assist in the preparation of his submission.

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The committee adjourned at 10.15am until 15 October 2007.

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**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 4)**

10 am Thursday 29 November 2007  
Room 1254, Parliament House

**Members Present**

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP

**Apologies**

Ms Voltz MLC

**Also Present**

Nina Barrett, Jonathan Elliott, Samantha Ngui, Hilary Parker, Pru Sheaves

The meeting commenced at 10:03am

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#### **4. Statutory Review of the Community Services (Complaints, Reviews and Monitoring) Act 1993**

Resolved on the motion of Mr Draper that the Committee request a submission from the Ombudsman in response to the submissions received to the review and that the Committee also request contact details for the Official Community Visitors scheme.

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The committee adjourned at 10.10am.

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#### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 5)**

10.30 am Thursday 28 February 2008  
Room 1254, Parliament House

##### **Members Present**

Ms D'Amore MP	Mr Draper MP	Mr Kerr MP
Mr Pearce MP	Ms Voltz MLC	

##### **Apologies**

Ms Hale MLC, Mr Lynn MLC

##### **Also Present**

Nina Barrett, Samantha Ngui, Hilary Parker, Pru Sheaves

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#### **5. Forthcoming public hearings**

The Chair briefed the Committee on the schedules for public hearings:

- on 11, 13 and 18 March in relation to the Committee's Statutory Review of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

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##### *Late Items*

The following items were circulated to Committee Members:

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- A late submission to the statutory review of CRAMA (Submission 41) from the Paraplegic and Quadriplegic Association of NSW.

The committee adjourned at 10.52am until Tuesday 11 March 2008.

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 6)**

10.00 am Tuesday 11 March 2008  
Jubilee Room, Parliament House

**Members Present**

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP
Ms Voltz MLC		

**Also Present**

Nina Barrett, Jonathan Elliott, Samantha Ngui, Hilary Parker, Pru Sheaves

**Statutory Review of the Community Services (Complaints, Reviews and Monitoring) Act 1993**

The Chair opened the public hearing at 10.00am.

Mr Brendan O'Reilly, Director General, Department of Ageing, Disability and Home Care (DADHC), took the oath.

DADHC's submission to the Statutory Review was tabled as part of the sworn evidence. The Chair questioned the witness followed by other members of the committee. Mr O'Reilly tabled a document detailing DADHC's monitoring framework for the NGO sector.

Evidence concluded, the Chair thanked the witness and the witness withdrew.

Ms Donna Rygate, Deputy Director General, Strategy, Communication and Governance, Department of Community Services, took the oath.

Ms Rygate made an opening statement and was then questioned by the Chair followed by other members of the committee .

Evidence concluded, the Chair thanked the witness and the witness withdrew.

Ms Kerryn Boland, Children's Guardian, NSW Office for Children, took the oath.

The submission of the Children's Guardian was tabled as part of the sworn evidence. Ms Boland made an opening statement and was then questioned by the Chair followed by other members of the committee.

Evidence concluded, the Chair thanked the witness and the witness withdrew.

The public hearing concluded at 12.25pm.

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 7)**

10.00 am Thursday 13 March 2008  
Jubilee Room, Parliament House

**Members Present**

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP
Ms Voltz MLC		

**Also Present**

Nina Barrett, Jonathan Elliott, Samantha Ngui, Hilary Parker, Pru Sheaves

**Statutory Review of the Community Services (Complaints, Reviews and Monitoring) Act 1993**

The Chair opened the public hearing at 10.00am.

Mr Andrew Buchanan, Chair, Disability Council of New South Wales, took the oath. Mr Dougie Herd, Executive Officer, Disability Council of New South Wales, affirmed.

The Disability Council's submission to the Statutory Review was tabled as part of the sworn evidence. Mr Buchanan made an opening statement. The Chair then questioned the witnesses followed by other members of the committee.

Evidence concluded, the Chair thanked the witnesses and the witnesses withdrew.

Ms Rhonda Shaw, Official Community Visitor, Official Community Visitors Scheme, took the oath.

The Chair questioned the witness followed by other members of the committee.

Evidence concluded, the witness withdrew.

Ms Alison Peters, Director, Council of Social Service of New South Wales, affirmed.

The Council's submission to the Statutory Review was tabled as part of the sworn evidence. The Chair questioned the witnesses followed by other members of the committee.

Evidence concluded, the witness withdrew.

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Ms Janene Cootes, Executive Officer, Intellectual Disability Rights Service, took the oath.

Appendix 4 - Committee minutes

The Service's submission to the Statutory Review was tabled as part of the sworn evidence. Ms Cootes made an opening statement and was then questioned by the Chair followed by other members of the committee.

Evidence concluded, the witness withdrew.

The Committee adjourned at 12.45pm until 1.45pm.

Mr Bill Pritchard, Executive Officer, Aboriginal Child, Family and Community Care State Secretariat [AbSec], took the oath.

The public section of AbSec's submission to the Statutory Review was tabled as part of the sworn evidence. Mr Pritchard acknowledged the traditional owners of the land and was then questioned by the Chair followed by other members of the committee.

Evidence concluded, the Chair thanked the witness and the witness withdrew.

Ms Elena Katrakis, Chief Executive Officer, Carers New South Wales, took the oath.

The submission of Carers New South Wales was tabled as part of the sworn evidence. Ms Katrakis made an opening statement and was then questioned by the Chair followed by other members of the committee.

Evidence concluded, the Chair thanked the witness and the witness withdrew.

Mr Matthew Bowden, Advocate, People with Disability Australia, and Ms Therese Sands, Co-Chief Executive Officer, affirmed.

The submission of People with Disability Australia was tabled as part of the sworn evidence. Ms Sands made an opening statement. The witnesses were then questioned by the Chair followed by other members of the committee.

Evidence concluded, the Chair thanked the witnesses and the witnesses withdrew.

Ms Gillian Calvert, Commissioner, New South Wales Commission for Children and Young People, affirmed.

The Commission's submission was tabled as part of the sworn evidence. Ms Calvert made an opening statement and was then questioned by the Chair followed by other members of the committee.

Evidence concluded, the Chair thanked the witness and the witness withdrew.

The committee adjourned at 4.05pm until Tuesday 18 March 2008.

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 8)**

10.00 am Tuesday 18 March 2008  
Jubilee Room, Parliament House

**Members Present**

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP
Ms Voltz MLC		

**Also Present**

Nina Barrett, Jonathan Elliott, Samantha Ngui, Pru Sheaves

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**Statutory Review of the Community Services (Complaints, Reviews and Monitoring) Act 1993**

The Chair opened the hearing at 11.45am.

Mr Bruce Barbour, New South Wales Ombudsman, previously affirmed; and Mr Stephen Kinmond, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner, on former oath.

The Ombudsman tabled his submission to the statutory review, dated 13 February 2008, and made an opening statement. The Chair questioned the witnesses followed by other members of the committee.

**In Camera Evidence**

The Chair commenced the in camera hearing at 12.35pm for the purpose of clarifying matters arising from the appearance of representatives from People with Disability Australia at the committee's hearing on 13 March 2008.

The Chair questioned the witnesses followed by other members of the committee.

The in camera session concluded at 1pm and the witnesses withdrew.

The Committee adjourned until 2pm.