



people with disability

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NGO in Special Consultative Status with
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Committee on the Office of the Ombudsman and Police Integrity Commission
Parliament House
Macquarie St
Sydney NSW 2000

Dear Committee Members:

Statutory Review of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*

Thank you for the opportunity to provide a submission to the Committee on the Office of the Ombudsman and Police Integrity Commission (the Committee) on the Statutory Review of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CRAMA).

People with Disability Australia (PWD) is a national disability rights and advocacy organisation. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWD has a cross-disability focus – we represent the interests of people with all kinds of disability.

PWD's vision is of a socially just, accessible and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are respected and celebrated. This vision underpins everything we do.

PWD was one of the main agencies that lobbied for the establishment of the CRAMA package of reforms in the early 1990s. We saw these reforms as an essential safeguard for the rights and interests of people with disability in a troubled and degraded community services sector where there was little real redress for people with disability with legitimate grievances; where individuals would drift in care, and where the quality of administrative decision-making was generally abysmal and dominated by narrow political considerations.

PWD utilises each of the jurisdictions of CRAMA on a regular basis. We refer many complaints to the Community Services Division of the Office of the Ombudsman for investigation, reviews and broader investigation and monitoring.

Overall, PWD strongly supports CRAMA and believes that its policy objectives remain valid. The objectives uphold the consumers' right 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 changes were made to CRAMA that would lessen the value of these policy objectives.

However, while we argue that the policy objectives remain valid, we are extremely concerned that some functions of CRAMA are not working at an optimal level, which significantly hinders people with disability from gaining the full benefit of these objectives.

Abolition of the Community Services Commission

PWD remains extremely disappointed by the abolition of the Community Services Commission (CSC) and the subsequent amalgamation of the functions of CRAMA into the Office of the Ombudsman. Despite assurances that the Office of the Ombudsman would provide greater security for consumers of community services and that CRAMA would not be weakened, we argue that CRAMA has become less effective and under-utilised since amalgamation. We find that inquiries and reporting under CRAMA are now more private and less rigorous, which has led to an overall weakening of the disability reform agenda, as well as a reduction in the effectiveness of CRAMA protections for people with disability.

Part IV, Complaints

There is no avenue for appeal in CRAMA based on the 'merits' of the complaint; the Office of the Ombudsman only reviews the *form* of a complaint. In other words, a review may look at whether policies and proceedings were in line with the *Disability Services Act 1993 (NSW) (DSA)* rather than look at the 'merits' or substance of the complaint matter.

PWD argues that there needs to be an amendment to Part IV, Section 22 of CRAMA that requires the Office of the Ombudsman to investigate the substance of the matter including, *but not limited to*, any relevant policy and procedure.

Part V, Review by Tribunal

Although the intention of Part V of CRAMA is to give consumers of community services an avenue of appeal through the Administrative Decisions Tribunal (ADT), in practice, such appeals are not able to be made. According to section 20(a) of the DSA, the Minister for Disability Services must give specific approval, or make decisions about the funding of disability services. An appeal that funding of a disability service is contrary to the DSA can only be reviewed by the ADT if the Minister has made a decision that can be reviewed.

Historically, the Minister has acted contrary to the DSA by failing to give specific approval for funding of disability services. This means that the avenue of appeal that is provided for in CRAMA is inoperative, as there has been no decision to be reviewed. PWD argues that this continuing impingement on consumer protection ought to be a matter of great concern for the Ombudsman, who should take immediate action to investigate and address this issue.

In addition, PWD is concerned that the ADT does nothing to advertise or promote its disability jurisdiction, leaving people with disability unaware of their appeal rights. PWD argues that the Ombudsman should work collaboratively with the ADT to ensure that information, such as website information, brochures or systematic outreach is developed to inform people with disability about their appeal rights.

Protections for Vulnerable People with Disability

People with disability are some of the most vulnerable in our community. Many people with disability are exposed to harm and neglect beyond the service settings covered by CRAMA, such as those who reside in unlicensed boarding houses.

In addition, many vulnerable people with disability, such as those in Licensed Residential Centres (boarding houses) and other large residential centres are not protected from retribution if they do make a complaint. These centres operate as 'closed environments' and it is almost impossible to fully protect the complainant from threats of retribution, as it is very difficult to keep the identity of the complainant private from service staff.

PWD argues that measures need to be identified that would expand protections and safeguards for these people with disability. Such measures would offer comprehensive protection and could include the establishment of a vulnerable persons' jurisdiction. Such measures could include, but be not limited to an independent accreditation system, the expansion of CRAMA to cover additional vulnerable persons and address retribution issues, and a 'working with vulnerable persons' check'. PWD argues that the Ombudsman has a strong role in promoting the need for a vulnerable persons' jurisdiction and in identifying possible measures that would expand protections and safeguards.

If you would like to discuss these comments further please contact Therese Sands, Director, Systemic Advocacy and Capacity Building on 9370 3100.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Bowden', with a long horizontal flourish extending to the right.

MATTHEW BOWDEN
Acting Chief Executive Officer