

Level 19, 323 Castlereagh Street  
Sydney NSW 2000

# Disability Council of New South Wales

Official adviser to the NSW Government

Tel: 02 9211 2866

Fax: 02 9211 2271

<http://disabilitycouncil.nsw.gov.au>

Ms Angela D'Amore MP

Chair

Committee on the Office of the Ombudsman and Police Integrity Commission

Parliament of NSW

Macquarie Street

SYDNEY NSW 2000

Thursday, 25<sup>th</sup> October 2007

Dear Ms D'Amore,

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

Thank you for the invitation to contribute to the Statutory Review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. I hope that the comments we make below will assist you and members of your committee as you consider the purposes and efficacy of the Act.

### The Disability Council of NSW

The Disability Council of NSW was established under the terms of Section 16 of the Community Welfare Act 1987 to advise Government in NSW on issues affecting people with disability and their families. We also give advice to the Australian Government on the effect of policy on people with disability living in NSW.

Council members are appointed by the NSW Governor on the recommendation of the Minister for Disability Services. Members are selected on the basis of their experience of disability and 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.

### Section 3: Objectives of the Act

The Disability Council believes that the objectives of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (the Act) as set out in section 3 remain valid, worthwhile and necessary. The objectives of the Act do not require amendment.

The Disability Council is confident that most, if not all, stakeholders in the disability community in NSW would share our view that CRAMA continues to fulfil a purposeful and necessary role. The Act provides a clear legislative framework within which complaints may be addressed and resolved. We are sure that people with disability, their families and organisations which represent people with disability value CRAMA.

The Act should be considered and reviewed in its contemporary context, which differs to some degree from the circumstances in which Parliament first approved CRAMA. We note some of the demographic and policy changes of recent times:

- The proportion of the NSW population who are people with disability is about one in five, approximately 1,300,000 people (with varying degrees of disability).
- Approximately 400,000 people with disability in NSW are categorised as have a severe or profound disabling condition.
- Approximately one in four people with disability come from non-English speaking backgrounds, requiring agencies to make a greater effort to meet needs within a framework of commitment to cultural and linguistic diversity.
- Despite the recent commendable policy initiatives and drive by government departments (including DADHC) people with disability from non-English speaking backgrounds and Aboriginal people with disability are disproportionately under-represented in and served by disability and generic human services.
- The Australian population is ageing and living longer. This is true for people with disability as much as for the population as a whole.
- Ageing and disability are related. The older one becomes, the greater the likelihood one will acquire a significantly disabling condition.
- At the opposite end of the age range there has been a dramatic surge in the diagnosis or recognition of increased numbers of children with disabling conditions, particularly those with an autism spectrum disorder.
- The NSW *State Plan*, combined with policy documents *Better Together* and *Stronger Together*, outline the commitment of the State Government (supported by historically unprecedented growth in resources) to people with disability that they should, to the full extent of their capabilities, live in and contribute to the community.
- A significantly greater proportion of public funding of disability services is now directed to non-government organisations operating within policy and monitoring frameworks set by Government.
- An increasingly large section of the population of people with disability has complex services needs, perhaps as a result of dual diagnosis, which may result in intervention and support from several organisations and/or disciplines.

These are just some of the components of the 'community care' matrix today. Each will remain a component of developing trends in the years ahead.

We believe that for most people with disability and their families, most of the time, the support they receive from Government and non-government services is satisfactory (and is often good to excellent). We recognise, however, that for some people with

disability and their families the quality of the services they receive can fall below acceptable standards.

Most often, the problems which arise for people with disability or their families create one-off, site or service specific difficulties for particular individuals. Usually, such problems can and should be resolved locally.

Sometimes, however, problems escalate or may be a consequence of systemic breakdown. In such circumstances it is vitally important that people with disability have access to and feel free to use internal and external complaints mechanisms. CRAMA is, therefore, an essential part of the legislative and policy framework that supports people's right to live with dignity, personal autonomy and respect.

We turn now to consider the objectives of the Act

(a) to foster, in community services and programs, and in related services and programs, an atmosphere in which complaints and individual monitoring are viewed positively as ways of enhancing the delivery of those services and programs

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.

We fear that too many service providers retreat to defensive positions when asked to deal with complaints. Similarly, we believe that service users who consider or make complaints run the risk of being stigmatised as 'difficult clients'. (We concede that we can offer little but anecdotal evidence in this regard.) These tendencies, which are resistant to developing a culture of continuous quality improvement, can deter people with disability and / or their families from making legitimate complaints. There is a danger that service users can be led to believe there is 'no point in complaining because no one listens and they make you feel guilty for speaking up'.

The Community Services Division of the Ombudsman's Office and the Ombudsman have important roles to play in promoting organisational cultures that fully embrace quality assurance built around feedback from and evaluation by clients.

Within such organisational cultures, complaints would be understood to be part of a broad range of valued indicators of room for improvement. In this regard, we would refer committee members to the commendable commitment of the Community Services Division / Ombudsman to ongoing initiatives such as their work through the Senior Officers Group, The Human Services Chief Executive Officers Forum and periodic NGO roundtable meetings.

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.

(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

The Disability Council shares the perspective of the NSW Council of Social Service (NCOSS) that,

*“There is compelling evidence in various studies that a number of barriers prevent people with disability and others, from initiating complaints and participating effectively in the proceedings. The barriers include:*

- *lack of clarity about the level of support that can be expected*
- *stress associated with launching the complaint*
- *perceived lack of credibility of people with disability*
- *cognitive impairment and communication problems*
- *practical constraints such as transport*
- *features of both the formal courtroom-type proceedings as well as the ADR process which, while less formal, still can be stressful.”*

Making a complaint within the human services sector is fraught with potential difficulties for clients, service users and family members who may be dependent on the very services about which they wish to complain. The processes involved and the systemic / cultural barriers to exercising a theoretical right to complain are much more complex and challenging than in other circumstances.

There are vulnerabilities involved for people making complaints about human services that do not exist in other client / provider relationships. If one is dependent, let us say, on disability services personnel to shower, toilet or dress every morning of one's life there may be a reluctance to complain because of the dependency relationship that can ensue. The forces constraining the service user's right to complain about poor quality services are wholly different from those operating, for example, when a customer of Harvey Norman decides to return a faulty toaster.

Unlike many aspects of life, people who depend on human services may have few (sometimes no) alternative service providers to choose from. This can be particularly true in regional, rural and remote areas of NSW where there may be only one service provider for the 'community care' population. In such circumstances it can become very difficult for a client to complain about systemic or individual problems arising from poor quality service provision.

Circumstances such as we describe above make the objectives of CRAMA (and the Act as a whole) vital for people with disability and their families. Potentially vulnerable people need the reassurance and support of a legal framework and approachable agencies that can (and will) assist individuals to articulate and resolve complaints.

Complaining isn't easy and it is sometimes risky. The Act makes it possible for clients to believe that it is legitimate and permissible to complain. The Act gives to vulnerable people a clear sign that there are mechanisms for dealing with difficult situations and it points people, who may have little knowledge of how services systems operate, to means by which their voice (often isolated and frequently unsure of what to say) may be heard.

(c) to encourage, whenever reasonable and practicable, the resolution of complaints at a local level

We believe it is in the interests of everyone involved that complaints be resolved locally (and as quickly as possible). No one wants to turn the circumstances of their life, and a complaint about poor quality services, into a production that's 'bigger than Ben Hur'. Indeed, the risk (real or perceived) that a complaint may become too big a deal, will be escalated up the line, will result in many people being involved or may take lengthy periods to resolve will inhibit people from making legitimate complaints.

The Disability Council believes that service providers must accept (as many do) responsibility to ensure their clients genuinely believe that making a complaint is legitimate and welcome as part of a quality assurance process. Clients need to be made aware from the earliest contact with an agency that complaints will be well-received, dealt with fairly, quickly and locally without any fear that complainants will be identified as 'difficult' or 'problem' clients.

(d) to encourage, whenever reasonable and practicable, the resolution of complaints through alternative dispute resolution

The Disability Council is strongly of the view that alternative dispute resolution (ADR) should be the first option and default value of complaints mechanisms that may be utilised by people with disability and/or their families. The last thing anyone involved in attempting to resolve a complaint wants is that either party (or both) 'lawyer-up'.

It is important, however, that ADR mechanisms, when used, are understood by participants to be components of larger processes within which participants have rights (and obligations). The less formal discourse within ADR settings is welcome and, we believe, is more likely to produce satisfactory results, more quickly, more locally, most of the time. But there can be a risk of confusion about and misunderstanding of the purpose and consequences of ADR if its role is not understood and agreed upon from the outset of any complaints process.

People with disability and their families may have little or no experience of complaints mechanisms. They may feel vulnerable at the point of making a complaint or during any processes used to resolve the complaint, regardless of any attempts to use ADR. An ADR mechanism (such as mediation or family conferencing) may seem informal and open to an experienced service provider yet remain intimidating to a client or family for whom their involvement may be the first time they have complained about anything.

Our belief in the efficacy and appropriateness of ADR is, I hope, clear. We recognise, however, that there may be circumstances in which a complaint is not resolvable using ADR. People with disability and their families must be supported to understand that their rights to representation and access to advocacy services remain intact and valid. We prefer ADR but we understand more traditional and formal means of resolving complaints may be the only (we hope last) resort. People with disability making complaints should understand that formal complaint procedures are valid.

(e) to provide independent and accessible mechanisms for the resolution of complaints, for the review of administrative decisions and for monitoring of services, programs and complaint procedures

Independent mechanisms for the resolution of complaints are essential.

The Office of the Ombudsman and its Community Services Division (CSD) are necessary to ensure that people with disability can achieve satisfactory resolution of complaints. We are pleased to note that the Office and the CSD offer a range of mechanisms that contribute to fostering a culture of continuous improvement within human services providers.

- People with disability and their families need and value “an independent and impartial watchdog” (as the Ombudsman’s Office describes itself). The whole community benefits from its existence.
- It is essential that a formal complaints service such as that provided by the Ombudsman is available to individuals.
- Responding to and dealing with individual complaints is a necessary role but CRAMA requires and deserves more. 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 eradicate systemic problems and barriers to high quality service delivery the Ombudsman / CSD must continue to develop its systemic role.
- We believe that the programme of Official Community Visitors is vital to furthering the objectives of CRAMA. We believe also that the Community Visitor programme needs to be further developed, extended and enhanced. We recognise this may require that additional resources be made available to the Ombudsman.

In short we believe the case can be made for more frequent and detailed visiting arrangements so that Official Community Visitors can become better acquainted with the detail of how community based services truly operate. There should be a continuous drive to ensure that a larger number of trained and competent Visitors reflect the cultural and linguistic diversity of the potential client base in human services. We need more Visitors and more who come from non-English speaking backgrounds as well as Aboriginal and Torres Strait Islander people.

- We highly value the proactive role taken by the Head of the Community Services Division to engage in community development and consultation. The Disability Council participates in and values the regular, periodic consultative ‘round tables’ with disability services and advocacy peak bodies.
- We commend the Ombudsman / CSD for its commitment to providing information and training that encourages community service providers to both improve their quality and understand the rights of service users.

Part V of the Act

We recommend that the Statutory Review of CRAMA pays particular attention to Part V of the Act.

There has been some (legitimate) debate as to whether or not the right to have a Minister's decision with regard to funding community based services considered by the Administrative Decisions Tribunal can, in fact, be exercised. There are, we believe, differing opinions / interpretations of the powers and duties of Ministers with specific regard to Section 20(a) of The Disability Services Act on the one hand and the rights set out in Part V of CRAMA on the other.

The Disability Council has not sought legal opinion on the potential conflict of powers / duties / practice referred to above. We cannot, therefore, offer definitive advice to the Committee. We believe, however, the questions raised by the relationship between Section 20(a) of the Disability Services Act and Part V of CRAMA should be scrutinised, clarified and, if found unsatisfactory in some way, resolved in the interests of people with disability and their right under the Act to have access to independent mechanisms of complaint, including review and appeals of decisions.

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

The Disability Council is strongly of the view that this Objective remains valid and purposeful.

(g) to provide for independent monitoring of community services and programs, both generally and in particular cases

We believe this Objective to be valid and purposeful and refer members of the Committee to our more detailed response with regard to Objective (e).

#### Other comments from the Disability Council

##### i. The merger

We recall that the amalgamation of the Community Services Commission the Ombudsman's Office was the subject of intense, sometimes heated, debate. The Disability Council believes that the matter has been settled for some time now and we doubt that any stakeholder would call for a separation of the two former independent bodies.

We believe that the senior management and staff of the Ombudsman / CSD have shown themselves committed to commendable action to protect and uphold the rights of people with disability who may feel vulnerable in their engagement with / treatment by community service providers. We congratulate the Ombudsman / CSD for the manner in which they have managed the challenges of amalgamation and developed services and mechanisms that support and encourage people to exercise their rights under CRAMA (and other Acts of Parliament).

There remain, we feel, some comparatively minor questions about the integration and fit of organisational cultures within the amalgamated agency. We urge the Ombudsman / CSD to continue to monitor and evaluate its own culture with a view to promoting internal commitment to transparency, openness and accessibility.

ii. Scope of the Act

Some vulnerable people with disability in certain circumstances find themselves without the protective rights enshrined in CRAMA. We think, in particular, of people with disability living in unlicensed boarding houses. The Disability Council urges members of the Committee 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.

iii. Attention to cultural and linguistic diversity

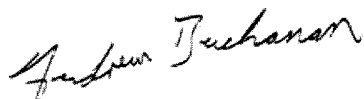
We believe it is important to emphasise the need for greater commitment by all stakeholders to addressing the cultural and linguistic needs of people with disability and their families.

We note the comments made generally by agencies such as the Multicultural Disability Advocacy Association about the significant disadvantages faced by people with disability and their families from non-English speaking backgrounds. If the protections of CRAMA are to be made more meaningful to the whole community, in all its diversity, we must all commit ourselves to and demonstrate inclusive practices that are designed to reduce and eradicate barriers to information about, access to and satisfaction from independent complaints mechanisms.

Service providers and complaints bodies must become more culturally competent. Aboriginal and Torres Strait Islander people with disability and those from non-English speaking backgrounds have culturally specific needs that must be recognised and incorporated within complaints resolution processes.

Finally, on behalf of the Disability Council of NSW, I thank members of the Committee for the opportunity to comment as part of the statutory review of CRAMA. I hope you and your fellow Committee members find this feedback helpful. If you have any questions or seek further information about the Council's views please contact Mr Dougie Herd, Executive Officer at the Office of the Disability Council, who will oblige.

Yours sincerely,



Andrew Buchanan  
Chairperson  
Disability Council of NSW