

Submission

No 38

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

Organisation: Aboriginal Child, Family and Community Care State
Secretariat (AbSec)

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**Response to the calling of submissions into the:
STATUTORY REVIEW OF THE COMMUNITY SERVICES (COMPLAINTS,
REVIEWS AND MONITORING) ACT 1993 (the Act)**

1. The Aboriginal Child Family and Community Care State Secretariat (NSW) Inc (AbSec) is a peak body funded by the NSW Department of Community Services (DoCS) to advocate on behalf of Aboriginal children and young people in the Out Of Home Care (OOHC) system of NSW. AbSec also deals with wider welfare issues for Aboriginal children and young people in NSW and nationally.

AbSec also auspices the Aboriginal Statewide Foster Care Support Service (ASFCSS). This service offers advice, advocacy and referral services to Aboriginal Foster Carers and OOHC agencies. This service is often the initial contact point for Aboriginal foster carers who are experiencing difficulties with DoCS or other Government agencies. Whilst the ASFCSS is primarily funded to offer advice and referrals to Aboriginal foster carers, complaints are often received from Aboriginal people experiencing child protection issues or problems with other government departments. AbSec will always attempt to refer these complainants to the appropriate service. Complaint handling protocols have been developed by AbSec which align with the objectives of the Act. (see attached complaint handling flowchart).

AbSec maintains an "Access" database of all complaints received and all referrals made. Follow up (post referral) is made with the complainants to monitor the progress of individual complaints. This was most recently done via a survey of Aboriginal foster carers in May 2007 and a random phone follow up of complainants in June 2007. It is acknowledged that most respondents (excluding those that did not follow through with their complaints and who were further re-referred to the Ombudsman's office) were in the main happy with DoCS complaint handling procedures. Areas of concern were raised by individual complainants related to the phone service and cultural issues as outlined further later in this document.

It is intended that the focus of this submission should be to comment on perceived specific deficiencies of the Act related to Aboriginal people. As AbSec's and the ASFCSS's main roles are dealing with complaints related to OOHC, child protection and DoCS issues, most comment will involve complaint handling procedures adopted by that department. Comments will relate to the individual sub sections of the *Objectives* of the Act.

2. **Comment on Section 3 (1) (a)**

- (1) *The objects of this Act are as follows:*
 - (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,*

If a complaint is received by AbSec related to service provision by DoCS (and depending on the type of complaint received¹), then the initial advice provided to the complainant would be aligned with AbSec's protocols - ie; initial referral for resolution should be to the local DoCS Community Service Centres (CSCs). If matters then remained unresolved at a local level, further efforts are made for resolution through the "DoCS complaint line" prior to referral to the Ombudsman's office or other agency. AbSec does not advocate directly to the DoCS complaints line as there is a perceived conflict of interest in AbSec advocating with a funding body.

On occasions when Aboriginal people encounter service delivery problems with DoCS, a reluctance to complain to the very agency with which they are having the difficulties is demonstrated. This problem can be exacerbated by Aboriginal peoples past associations with "the Welfare". There are continuing difficulties being encountered by the ASFCSS worker whilst encouraging Aboriginal people to access the DoCS complaint resolution services. These include:

- An electronic voice initially answers the phone at the complaints line and on occasions delays can be encountered before contact is made with an intake officer. Complainants are often requested to leave their details and they will be rung back. Problems can be encountered in 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.
- DoCS has confirmed that whilst there are currently no Aboriginal identified positions directly attached to their complaints line, this is currently being reviewed as part of a broader review of their service delivery to Aboriginal people. AbSec believes, as it often is part of the complaints process, it should be included in the working party undertaking that review.
- Culturally appropriate complaint handling procedures are an imperative for any service dealing with Aboriginal people. It is acknowledged that the DoCS complaints line attempts to address this issue with senior management stating, "if we need specific advice on Aboriginal people or issues we will refer the person or case to the Aboriginal services branch". Whilst acknowledging a significant effort is being made to address Aboriginal cultural sensitivities, the attached case study demonstrates the shortcomings that can occur when this method is adopted by the complaints line. There is sufficient anecdotal evidence to indicate that Aboriginal people are more open and communicative when talking to another Aboriginal person. Indeed this has been acknowledged by the DoCS Helpline, which has made employing Aboriginal intake staff a priority.

¹ Serious matters involving child protection issues are referred immediately to appropriate services, eg DoCS Helpline or Police. Serious matters involving corrupt, unethical or illegal behaviour would be referred directly to the Police, Ombudsman, ICC or other relevant authority.

Difficulties are also encountered by the ASFCSS worker when encouraging Aboriginal people to access DoCS' local complaint resolution services, including:

- At the local level many Aboriginal clients of DoCS do not have an allocated DoCS Aboriginal caseworker and most CSCs do not have Aboriginal staff in senior management roles to deal with individual complaints from Aboriginal people.
- Follow up with those carers² who originally sought assistance from AbSec and who were advised by AbSec to initially complain to their local DoCS CSCs, indicates that in many cases they were reluctant to complain (and in many cases did not complain) as they believed that instigating a complaint to DoCS might result in them being subject to some form of sanctions at a local level. Even when reassured by AbSec that there were systems in place to ensure that their complaints could be initially addressed fairly at a local level, the complainants still did not follow through with their complaints.
- Follow up related to those complaints that remained unresolved at the local level and which were subsequently re-referred by AbSec to the DoCS complaints line indicates that on many occasions those Aboriginal people who were referred were reluctant to "complain twice" and did not follow through with their complaint.

The final 3 dot points above, would appear to be at odds with **3(1)(c)** of the act - *to encourage, wherever reasonable and practicable, the resolution of complaints at a local level.*

On occasions when the ASFCSS worker has attempted to intercede on behalf of an Aboriginal person - usually because that person felt uncomfortable in directly dealing with the "Welfare" and because there were no Aboriginal staff available for them to interact with - 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. AbSec has no mandate for dealing with and does not deal directly with the DoCS complaints line but refers the complainant with the advice "to re-contact AbSec if they are unhappy with the outcome of their complaint". 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.

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:

² AbSec conducted a survey of Aboriginal foster carers in April/May 2007 and follow up phone calls were made to those Aboriginal people who had sort assistance to the ASFCSS advice line in 2007.

Who may make a complaint?

- (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.*

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 is 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.

Further there appears to be an unresolved conflicts in the Act between 3 (1) (b) as related to advocacy and 3 (2) (c) as related to privacy legislation.

Recommendation:

The Act should be more specific in allowing for advocacy and allowing for support agencies to act on behalf of disadvantaged groups in the early stages of the complaint resolution process. This is especially an imperative to Aboriginal people when Aboriginal staff are not employed or available at government agencies, to assist with the Aboriginal complainant's concerns.

3. Comment on Section 3 (1) (d)

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

Whilst DoCS has established numerous in-house alternative dispute resolution (ADR) processes related to this and other Acts under which it is governed, there appears to be an inherent reluctance by DoCS to use external ADR service providers to deal with complaints resolution.

One of the main tenets of mediation and alternative dispute resolutions processes is that of impartiality/neutralty. This is especially important to enable engagement of Aboriginal people in the mediation process having regard to past injustices inflicted through previous government policies. Professor Chris Cuneen in his evaluation of the ATSIFAM mediation project noted *"The neutrality of the mediator is an immediate point of contention with the regards to the*

appropriateness of mediation for Indigenous communities. Classic mediation hallmarks of confidentiality..... [is a] key issue[s] that needs to be addressed if mediation is to be relevant to Indigenous communities (see[.], O'Donnell 1995:97. It is claimed that these cornerstones must be adapted if mediation is to appropriate and acceptable to indigenous communities)³

The training and employment by DoCS of its own in-house ADR practitioners would seem to be contrary to this overarching tenet. Other more culturally appropriate and user friendly services are available, including a free Aboriginal mediation service conducted by Community Justice Centres (CJCs) through the NSW Attorney General's Department. This service has a pool of 45 Aboriginal mediators available throughout NSW and uses a co-mediation model (2 mediators) whereby if non-Aboriginal DoCS staff were to be involved in the process, then non-Aboriginal mediators could be accessed as well to ameliorate any perceptions of cultural bias that non-Aboriginal participants may harbour.

Recommendation:

Amendments should be considered to be included in the Act to ensure that culturally appropriate ADR processes are used as a complaint handling mechanism – and that these processes are and are seen to be truly impartial, confidential and independent, with neutral mediators being engaged. This should not infer in any way that the in-house mediators currently used by DoCS, would display bias in anyway - but a perception of bias can be assumed to be demonstrated when employing in house mediators.

4. Comment on Section 3 (1) (e) (f) & (g)

(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.

Having regard to the previous concerns related to early stage complaint handling procedures, accessibility issues and early stage ADR practices - AbSec believes the current role of the Ombudsman's Office should be expanded to allow for the Ombudsman to be able to direct compliance by agencies to the Objectives and Principles outlined in the Act – this is especially necessary if it can be demonstrated that those agencies are relying on decision making procedures and practices that are contrary to the spirit of the Act.

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.

³ Evaluation of ATSI-FAM – Report to the Legal Aid Commission of New South Wales – Chris Cuneen, et al – May 2004

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.

5. Comment on Sections (7) (8) (9)

Appointment of Official Community Visitors
Functions of Official Community Visitors
Co-ordination of Official Community Visitors

It is expected that the recently closed Expression of Interest (EOI) round for provision of OOHC services will result in the establishment of Aboriginal family group homes in NSW. These proposed homes would appear to come under the scope of visitable services. The currently established Aboriginal OOHC services would also appear to be visitable services. For the reasoning outlined in para 2 of this document (related to Aboriginal people being more likely to be open to another Aboriginal person), consideration should be given to the appointment of designated Aboriginal Community visitors to oversee these services.

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AbSec Complaint handling flowchart – Complaints re DoCS

