REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

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

At Sydney on Thursday 13 March 2008

The Committee met at 10.00 a.m.

PRESENT

Ms A. D'Amore (Chair)

Legislative Council	**Legislative Assembly**
Ms S. P. Hale	Mr P. R. Draper
The Hon. C. J. S. Lynn	Mr M. J. Kerr
The Hon. L. J. Voltz	Mr P. R. Pearce

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 and 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 being 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. LYNDA 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. LYNDA 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 lead 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.)