

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 Tuesday 18 March 2008

The Committee met at 11.45 a.m.

PRESENT

Ms A. D'Amore (Chair)

Legislative Council
The Hon. C. J. S. Lynn
The Hon. L. J. Voltz

Legislative Assembly
Mr P. R. Draper
Mr M. J. Kerr
Mr P. R. Pearce

BRUCE ALEXANDER BARBOUR, New South Wales Ombudsman, Level 24, 580 George Street, Sydney, and

STEPHEN KINMOND, Deputy Ombudsman (Community Services Division) & Community & Disability Services Commission, 580 George Street, Sydney, on former oath:

CHAIR: The proceedings today are being heard as part of the Committee's statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. The Act incorporated the Community Services Commission into the New South Wales Ombudsman's Office, thus creating the Community Services Division. Section 53 of the Act requires the Committee to review the Act to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Committee is required to report on its review by 3 July 2008. The Committee has held two days of public hearings, on 11 March and 13 March 2008. Over the two day's of public hearings the Committee took evidence from a range of government agencies, peak bodies and a representative of the official community visitors scheme. Today's evidence from the New South Wales Ombudsman forms the final segment of public hearings for this inquiry.

Mr Barbour, the Committee has received a submission from you in relation to the statutory review dated 13 February 2008. Do you want that submission to form part of your formal evidence?

Mr BARBOUR: Yes, thank you.

CHAIR: Would you like to make an opening statement?

Mr BARBOUR: Yes, thank you. It is now just over five years since the Community Services Commission merged with my office to form the Community Services Division. The foundation for the merger was the amended Community Services (Complaints, Review and Monitoring) Act 1993. This Act conferred responsibility for all the statutory functions of the commission to my office, retaining all existing protections for vulnerable people receiving, or eligible to receive, community services. The amended Act also conferred the new responsibilities aimed at enhancing these protections and created links in the Ombudsman Act to ensure application of the extensive powers available in that Act.

The ensuing five years have embedded the Community Services Division and its community service functions within my office. The new functions are well established, systems have been streamlined, and we have produced significant outcome for vulnerable people who rely on community services in this State. This said I consider there remain challenges and opportunities that we need to explore in order to maximise the benefits of my office's work in community services. For that reason I believe it is fortuitous that the legislation provides for a review of the Act. I welcome the Committee process

in this inquiry, in particular as an opportunity to reflect on the achievements that we have made under the Act and how these achievements can be built on in the future.

Before looking forward, it may be useful for the Committee to reflect back on the reasons for the merger of the commission into my office. In late 2000, the Crown Solicitor advised the then Minister for Community Services that the commission did not have power to investigate the Department of Community Services in relation to that department's statutory child protection work. My office subsequently assumed the role of receiving and dealing with complaints in relation to child protection prior to the merger. At that time there was also emerging concerns about the range of agencies with a role in over citing community services. In addition to my office and the commission, the Office of the Children's Guardian had recently been established in 2000 and the Commission for Children and Young People, incorporating the Child Death Review Team and the Working with Children Check process, also became operational in 2000.

The legislative changes that resulted in the merger were focused on addressing what was subsequently seen as overly complex, and not particularly effective, oversight arrangements. In the second reading speech for the Community Services Legislation Amendment Bill the then Minister, the Hon. Carmel Tebbutt, noted that the bill would address the complexity of community services oversight in New South Wales and had been:

... formulated on the basis of some fundamental principles: that the independence of the review and reporting process and the potential to share information should be strengthened wherever possible, that any gaps or uncertainties in the current system should be remedied; that client access and complaint handling are to be improved; that none of the current protections in the review and monitoring systems of community services should be weakened.

I believe that over the past five years my office has upheld these principles and effectively fulfilled the objectives of the Act. Nonetheless, there have been challenges.

Organisational mergers will always have an element of difficulty. The merger brought together two workforces, each with different structures, IT systems and databases. There were new functions to establish and an imperative to ensure the most effective framework for applying the Community Services (Complaints, Reviews and Monitoring) Act with the available powers under the Ombudsman Act. In meeting these challenges, we have worked hard to create the best processes and approaches possible. Early on I initiated a review and restructure of the division to achieve improved functionality and to integrate the new reviewable deaths function. Staff and systems are integrated, and our merging of IT and database systems—a complex undertaking—is rolling out as planned. The Community Services (Complaints, reviews and Monitoring) Act has been significantly strengthened by the Ombudsman's extensive investigative and related powers. We have demonstrated a greater capacity to deal with issues for

community service consumers more holistically and across agencies, as a result of my office's broad jurisdiction. And we have achieved results.

The merger also presented challenges for stakeholders in community services. The environment at the time of the merger included a history of strong community sector support for the retention of the commission as a separate, independent body. At the outset some parts of the sector were resistant to any form of amalgamation—indeed, I might add that many members of the commission staff who came across to the Ombudsman's Office had a similar view—despite the Government's commitments to maintain and enhance protections for consumers. The Committee's stakeholder review of the merger identified some ongoing concerns in parts of the sector. The main issues identified included sector engagement, the capacity of my office to be an agent for change, and the profile of my office in community services. I note that these were against the background of general support for the work and achievements of the division, but it is important that those concerns are acknowledged.

The Committee's report in October 2006 concluded that some areas would warrant further assessment, and we responded directly to those in our detailed submission. I note at this point that my office has continued to consult and listen to stakeholder views, and to respond to any issues identified wherever it is appropriate or possible. In particular, we have invested significant resources into community education, information and awareness activities to further promote our role in relation to community services. This of course is an ongoing process. I would strongly support the Committee exploring whether my office should be given greater discretion to release information about our work where that work relates to systemic issues. This is one issue that has persisted for stakeholders and it is one that I am keen to address.

Finally, when considering whether the objectives of the Act remain valid and whether the terms are appropriate, it is essential to have regard to how effective the work of my office has been under the present arrangements. The division's achievements over the past five years are significant. Many are detailed in our submission. I will briefly outline but a few of these achievements to indicate the scope of our work. To date, since December 2002 we have reviewed the deaths of more than 1,000 individuals: 600 children and young people and 460 people with disabilities. We have produced four annual reports to Parliament about the outcomes of this work. We have made recommendations to a range of agencies, including the Department of Community Services [DOCS], the Department of Ageing, Disability and Home Care [DADHC], New South Wales Health and the New South Wales Police Force. The large majority of our recommendations have been accepted and acted upon by these agencies.

For example, the State Government initiated legislative changes in late 2006 in response to issues identified in our child death reviews. The amendments included the introduction of parent responsibility contracts to formalise agreements made between DOCS and parents to address risk of

harm concerns and to clarify actions where agreements are breached. Other legislative amendments resulted in children being better identified under the Act as at risk of harm if they had been the subject of a prenatal report to DOCS. New South Wales Health is undertaking a statewide review of drugs in pregnancy services, with a view to developing minimum standards for these services. The department has also put in place a number of measures to monitor and respond to incidents where children present to emergency departments as a result of methadone ingestion or suspected methadone ingestion.

DADHC has implemented a range of initiatives, including first aid training, a standardised record keeping system for client information in DADHC services, and reviews of departmental policies providing guidance to staff working with people with disabilities in care. Since December 2002 the division has initiated 90 investigations relating to 59 individual cases. The majority—77 investigations into 47 matters—have concerned child protection issues. In the past year we finalised 22 investigations and have commenced a number of new investigations. Investigations arising from our complaints and review work mainly focus on individual cases but often have a much broader impact on agency operations. Agencies have accepted and acted upon the majority of recommendations we have made in those investigations.

We have conducted four group reviews and seven service-based reviews of individuals living in either disability care or statutory out-of-home care. In all, we have considered the circumstances of 150 individuals in care. Where warranted, our reviews resulted in recommendations to improve the situation of individuals. Once again, the large majority of these recommendations have been acted upon by the agencies. In addition, we have made a range of recommendations to address systemic issues identified in the course of our work. For example, in 2007 we completed a group review of children in statutory care who were under five years of age. This work was a follow-up of an earlier 2003 in-care review of the same age group. While we have identified some concerns and referred these to DOCS, we also observed clear improvements since the initial review in case planning and management for short-term placements and for carer support.

We have achieved a consistent increase in the number of complaints handled by the division that result in resolution of the complaint and/or services being improved. In 2006-07, 54 per cent of formal complaints were resolved. Our survey of stakeholder satisfaction with our complaint handling, which we have already touched on, indicated overall that complainants appear to be satisfied with how we handle their complaints. We have completed a number of major inquiries and systems investigations into a range of issues affecting consumers and service providers. These have included special reports to Parliament on monitoring standards in licensed boarding houses, access to and exiting from services for homeless people provided under the Supported Accommodation Assistance Program, and services for children with a disability and their families.

Other significant projects have included an investigation into DADHC's role as lead agency for a cross-government senior officers group responsible for improving the interagency coordination of support for people with disabilities who are in contact with the criminal justice system, an inquiry into DADHC's monitoring of disability services, an audit of individual planning in funded disability services, and an inquiry into individual funding arrangements in out-of-home care. We monitor all recommendations we make, and I can confidently say that this work has resulted in positive change in a vast number of areas. For example, following our investigation into children with disabilities, DADHC developed an action plan to improve services to these children. The plan included strategies to improve service arrangements for children placed in, and at risk of being placed in, voluntary care and to enhance organisational capacity and systems.

We then made a special report to Parliament about DADHC's response and reported that there had been significant progress in such areas as delivering support to families, improving options for children entering care, supporting children to return to their families and monitoring children in care. None of this work would have been possible without a strong and committed team of staff in our community services division. I am proud to say that they not only work very hard but they do so with great passion and enormous sensitivity in a very challenging circumstances. The Deputy Ombudsman and I are most happy to answer any questions that you have of us.

CHAIR: The Committee has received some additional information from People With Disabilities [PWD]. They have requested that this information remain confidential and as such I propose that we deal with any questions arising from this information in an in-camera session at the end of the hearing. The People With Disabilities submission to the Committee stated that, "we find that inquiries and reporting under CRAMA are now more private and less rigorous". Can you comment on that?

Mr BARBOUR: I have not had an opportunity to read the transcript of PWD's evidence. Obviously I have a copy of the submission they sent to the Committee, and I have received some briefing notes about their observations and concerns. I must say that I am very disappointed and somewhat surprised at some of the concerns they have raised.

We have indicated in our submission to the Committee that we believe it would be appropriate for the Ombudsman to be given more discretion to provide more publicly available material in terms of some of our functions. We are happy for the Committee to consider this. Having said that, I believe our relationship, which encompasses frequent meetings and briefings with all stakeholders and advocacy bodies including People with Disabilities, provides an opportunity to amply brief those agencies on our work and what we are doing. To the extent that we are able to within existing legislative requirements, we provide as much information as we can to all interested parties.

CHAIR: Can you tell the Committee about the role of the Administrative Decisions Tribunal as an appeals mechanism, in particular, any limitations on its jurisdiction?

Mr BARBOUR: I appreciate that this has been raised by, particularly, I think, People with Disabilities and the Disability Council and I have to say I have some difficulty following what the issue is. There is very little use of the Administrative Decisions Tribunal that involves or intersects with the Ombudsman. Indeed, only one matter involving us has ever gone to the Administrative Decisions Tribunal and we were not a party to those proceedings. The Administrative Decisions Tribunal's outcome of that was to enforce recommendations that we had made and to require the Department of Community Services to undertake, consistent with our recommendations, what it was that we had recommended. It eludes me what the issue is. However, I am very happy to receive from People with Disabilities or any other agency any briefings or legal advice that they have about why this is an issue, so that if there is anything we can do to assist them we are in a position to do so.

The Hon. LYNDIA VOLTZ: Do you recall the year that issue went to the Administrative Decisions Tribunal?

Mr BARBOUR: The matter that we were involved with was in 2006, I believe. I think the result came out in early 2007.

CHAIR: Would you be in favour of expanding the jurisdiction of your office in relation to the following groups: people with disability living in boarding houses, people in full-time or part-time care, older people being provided with informal care, and children living in informal foster care arrangements?

Mr BARBOUR: I think all of these areas were the subject of suggestions in submissions that might prompt a review of or a look at broadening our jurisdiction. In terms of people with disabilities in boarding houses, licensed boarding houses or licensed residential centres, as they are referred to as well, are service providers and the providers of community services. As such, they fall within our complaints jurisdiction already. Boarding houses also provide residential care and, as such, they fall under part 6 of our reviewable death jurisdiction. They also are able to be visited by Official Community Visitors. So I do not see that there is any need to broaden our jurisdiction in relation to licensed boarding houses. The issues in relation to people in full-time or part-time care, older people with informal care and children in foster care arrangements I think are related to the potential for there to be an expansion in the definition of "visitable service" and to look at that in the context of Official Community Visitors visiting. We have obtained legal opinion about the definition of "visitable service" and how that fits with the different forms of accommodation models and care that are now provided. In our submission to the Committee we have detailed that in some considerable manner. I am quite comfortable with the Committee considering

and/or the Parliament addressing the issue about whether to expand the definition of "visitable service".

In some cases, as we have indicated in our submission, we would argue that that would be a benefit, particularly given some of the new accommodation models and particularly in situations where the lessee of leased accommodations is actually the person receiving care, so technically it is a private home situation but they are actually under full-time care. That sort of situation would seem to fit very comfortably within the notion of what ought to be a visitable service. There are problems around it, as we have identified with the legal advice we have received. So we would welcome the Committee looking at this issue. As I indicated in our earlier meeting, with an expansion of visitable services obviously comes considerable additional cost and administrative arrangements. That is something that is going to need to be looked at as part of this process as well. In terms of the provision of foster care, that raises a very significant issue and one that from a positive perspective needs to be addressed by Parliament. The notion of Official Community Visitors entering private homes is clearly a significant expansion of the concept of visitable services as we currently know it. It is happening in Queensland, as I referred to earlier. But that program, given the sheer number of foster carers, requires a very, very significant increase in the number of Official Community Visitors and funding to support them.

CHAIR: Are you satisfied with the current internal complaints handling policies and procedures of the Department of Ageing, Disability and Home Care and the Department of Community Services?

Mr BARBOUR: Certainly the Department of Ageing, Disability And Home Care complaint handling procedures have been updated and we believe that they are working very well. There is a strong local resolution focus and the department introduced a new complaint handling policy in 2005. We believe regional management staff generally responds quite well to those issues. In terms of the Department of Community Services, I can answer part of it in a public session. Are we in private session at the moment?

CHAIR: No, but we will be soon.

Mr BARBOUR: The part that I can answer on in public session is that as far as we are aware the existing system that the Department of Community Services operates under is one that has been in place since 1998. The system has been updated to recognise a change in procedures and also in the legislation, but it is clearly problematic. We were provided with a draft in July last year for information and comment about a complaint operating framework. We did provide comment in general on that that the framework technically met complaint handling requirements of the Community Services (Complaints, Reviews and Monitoring) Act 1993 and also the Australian standards for complaint handling. We understand that the Complaints Unit has been the subject of a further independent review and that a report has been prepared. However, we have not received a copy of

that and we are not aware of what is involved in it. We understand that that matter has gone to Executive for some form of ratification in terms of the introduction of a new system. If I can just note, I understand that at your hearing last week the Deputy Director-General of the Department of Community Services indicated that the review was complete and that the department had informed us of the review outcomes. That is not accurate.

Mr PAUL PEARCE: I want to ask a couple of questions about visitable services. You refer to advice on the number of models of care that are the outside the visitable service jurisdiction which Parliament may have intended to be within the jurisdiction. Was there a specific incident or series of incidents that caused you to obtain an opinion as to what is or is not within the visitable service jurisdiction or was it because a varied range of models were being developed and you felt you had to clarify whether or not you had a role?

Mr BARBOUR: It was the latter. We are constantly live to the fact that there is a lot of change in this jurisdiction and it is very important for us as the primary oversight agency to be able to look at whether or not the legislation is going to cover those particular changes effectively. The advice was sought so that we made sure that not only were visitors going to all those services that they ought to be going to but if there were any problems arising that we were able to bring them appropriately to attention.

Mr KINMOND: As an example, in the disability area there has been increased flexibility in terms of accommodation options that are available. For example, some services make the accommodation arrangements for people with a disability but the actual lease is signed by the person with a disability. The legal advice we have received is that those circumstances do not fall under the definition of accommodation service provided by that funded agency. You could have a situation where the lease is signed by the agency facilitating it and then the agency provides the full-time day-to-day support needs. Yes, that will be a visitable service. If, on the other hand, the lease is signed by the person with a disability, notwithstanding that the day-to-day support needs are still being provided by the service, those circumstances are outside the visitable service jurisdiction. The question is, given at the end of the day the person is being provided with full-time or essentially close to full time day-to-day care, should there be any difference in terms of whether the lease is signed by the person with a disability in which case it is out or whether the lease arrangement is signed by the service in which case it would be within jurisdiction.

Mr BARBOUR: Clearly there is a significant change and an appropriate trend towards diversifying the forms of accommodation and the forms of service provision. That is really what has prompted that particular example that Steve gave. It is a very obvious one where you can have simply as result of whose name is on the lease the difference between something that is visitable and something that is not.

Mr PAUL PEARCE: Do you believe the change in the forms of accommodation is simply a development on the most appropriate forms of accommodation or is it an attempt to limit access?

Mr BARBOUR: No, it is not an attempt to limit access. We do not believe that it is designed in any way, shape or form to do that. There has been a lot of pressure on Government to support a greater devolution and a greater range of models in terms of accommodation. We support that; I think everybody supports that. But the creativity, which is a necessary component of that, that is brought to how the services are provided is going to present these sorts of challenges. It is our job to make sure that we try to keep ahead of that to the extent we can.

Mr PAUL PEARCE: So it would be necessary to change the definition to broaden it to cover those forms of accommodation that are now being developed?

Mr BARBOUR: There are two issues. The first one is where someone who previously would have been in the visitable service jurisdiction is no longer as a result of the definition able to be looked at. That is a very clear example where I suspect the intent of Government would be to change the definition to make sure that was brought in. The second limb is extending the definition of "visitable service" to bring into visitable services ones that have never been visitable, which may or may not deserve or need to be visitable. That is very much a decision for Parliament and obviously would require legislative amendment. It is a very significant policy change.

Mr PAUL PEARCE: The object of that section of the Act, as I understand it, related to the individual and the needs of the individual. You are saying here that the way it is worded it tends to relate to the form of accommodation.

Mr BARBOUR: Yes and also the nature of the service provision. For example, you could have older people receiving Home Care Services in their home and those services might be almost full-time but technically they still would not be a visitable service. So there are a range of issues around this that require some degree of consideration and, I think, some decision around what is intended to be covered by these processes.

Mr KINMOND: Another interesting area concerns children in out-of-home care in foster care arrangements. If, for example, the foster care situation is simply the payment of an allowance, in those circumstances they do not come within the jurisdiction. But if, for example, the foster carer is being paid as a contractor, then, notwithstanding it is their private home, it is the advice of counsel that, in fact, is within jurisdiction. That is an example of the Ombudsman talking about an area that in the past we have thought was outside jurisdiction. On the basis of this advice it would appear that it is within jurisdiction.

Mr BARBOUR: Of course, that is a particularly live issue because there has already been put to the Wood commission considerable support for the view that out-of-home care ought to be rolled out more in terms of non-government service providers rather than government service providers. The nature of those circumstances are often much more of a contractual kind than they are by way of allowance.

Mr MALCOLM KERR: Who provided that legal advice, Mr Barbour?

Mr BARBOUR: Peter Garling, QC.

Mr MALCOLM KERR: You referred to evidence given by the Department of Community Services. I am trying to think of the woman's name.

Mr BARBOUR: Donna Rygate?

Mr MALCOLM KERR: Yes. You said it was inaccurate in relation to the completion of some material that the Ombudsman wanted, is that correct?

Mr BARBOUR: No. I indicated that her advice that we had been provided with the outcomes of the review of the complaint handling system was inaccurate. I do not mean to imply in any way that it was intentionally inaccurate but simply that we do not have it yet. I envisage that we would get it.

Mr MALCOLM KERR: Intentionally or unintentionally it was inaccurate, and that is a very serious matter because the evidence given to the Committee should be accurate. Have you had an opportunity to read the transcript of her evidence?

Mr BARBOUR: No.

Mr MALCOLM KERR: I wonder if it might be provided to Mr Barbour when it is available. Chair, I am just wondering how we deal with this matter if there are inaccuracies. No doubt the transcript will be posted but the public is entitled to the truth in this matter.

CHAIR: My understanding is that the drafts are currently being corrected by the witnesses and if there are some inaccurate statements I, as Chair, can write to a particular witness in relation to that. That could resolve the matter you have just raised.

Mr MALCOLM KERR: It may or may not, but anyway we should see.

Mr PETER DRAPER: I was interested that the Police Force has released its "Aboriginal Strategic Direction 2007-2011" and it includes objectives focusing on Aboriginal substance abuse and a stronger response to policing sexual assaults in Aboriginal communities, including the

investigation of child sexual assault. Given what is happening in the Moree area at present, I would appreciate your comments on that particular statement.

Mr BARBOUR: We have had a very close relationship in auditing the Police Force's Aboriginal Strategic Direction framework for quite some time. You are correct: the focus has now shifted to those two areas as being areas of priority and we have already engaged with police around a program to ensure that we are able to audit those initiatives in the future. Steve Kinmond, Juliana Demetrius and representatives from our Aboriginal Complaints Unit are involved in the Police Aboriginal Strategic Advisory Council [PASAC] committee, which meets regularly to discuss these types of issues. Another thing we are doing is to ensure that we do not simply look at this purely from a policing initiative but that we actually work on this issue together, with our understanding of problems associated with the Department of Community Services' practice on the ground in relation to regional New South Wales and Aboriginal communities, and also other agencies. We have written to the Department of Community Services asking it to provide us with details of its strategies in relation to remote New South Wales, particularly Aboriginal communities that we understand have an inadequate response to these sorts of issues on the part of DOCS.

We could spend many hours listing the very complex issues that arise in indigenous communities, particularly in remote New South Wales. We are very troubled by the adequacy of the response of some agencies. We have met with the Department of Aboriginal Affairs—I met with the director general—and have looked at what their work will be in monitoring and focusing on the initiatives that come out of the State Plan in relation to these areas. We see it as being a priority of our office to identify what programs are under way and whether or not those programs are working effectively and/or are adequate. I do not know whether there is anything specific you want me to address in relation to those things, but—

Mr PETER DRAPER: Not specifically. I was encouraged to see in your report that one of your strategies for 2008 and beyond is to actually take the Ombudsman into country areas. Would this be something of interest?

Mr BARBOUR: That is indeed what we have done previously, and our report to Parliament about our work in auditing the Aboriginal Strategic Direction has covered that in previous years. We do a lot of in-the-field work and Steve, the manager of our CAT team, Juliana Demetrius, and our Aboriginal unit are regularly travelling throughout New South Wales dealing with issues on the ground.

Mr KINMOND: The Aboriginal unit, for example, was away for two weeks solid in the Western region and came back just last week, as part of this exercise of developing a methodology to be able to examine the issue of how police approach Aboriginal child sexual assault under the interagency plan. That was two weeks of consultation in the Western region. I, for example, as illustrated in the submission, made a number of visits last year. I

was hoping it would be March but it probably will be April when I will go back to Bourke to enter into further discussions. We are certainly awaiting the response from DOCS as to its strategies for addressing staffing shortages, in the Western region in particular, to better service some of these areas. This will be an ongoing commitment, and it is a commitment that we have to make by working directly with communities as well. It is not the sort of thing that you can do from 580 George Street, Sydney.

Mr PETER DRAPER: Absolutely. Just out of personal interest, have you been to the Tamworth area?

Mr KINMOND: Yes, we went to Tamworth several times as part of the police audits. We have not returned there from an auditing point of view recently and if there are particular issues you would like us to look at we would certainly be keen to get your advice.

Mr PETER DRAPER: I was just curious because you stated you are trying to raise the profile of the organisation and improve access and awareness and all that sort of thing.

Mr KINMOND: Sorry, I was looking at it in a policing context. I was actually in Tamworth only last week under the three-year cycle I am embarking on in getting out to towns as part of my functions as Deputy Ombudsman in the community services area. There were about 50 different agencies represented at the disability forum and about another 20 agencies at the child and family forum. There was great feedback.

Mr BARBOUR: While we are talking about indigenous issues, can I also mention—we have referred to it in our submission—what I think is a very significant project that is just coming to conclusion now. We have done a project in relation to the level of support given by the Department of Community Services to Aboriginal foster carers. We have done an enormous piece of work, probably the first work of its kind to actually look at whether or not people who are providing out of home care to Aboriginal children are adequately supported by the Department of Community Services. We did lengthy interviews with over 100 foster carers and are putting together the results of that process. We will be talking with the Department of Community Services about our conclusions in the next week. We have also indicated to the Wood commission that we are happy to provide it with a copy of the report after we have had some discussions with DOCS. I have made it a commitment, as has Steve, to address as much as the office possibly can within our resource constraints the issue of support for indigenous people. On almost any measure of work in our community services area you will find an overrepresentation of indigenous communities, whether it be the overrepresentation of young children who are dead as a consequence of inappropriate treatment or, alternatively, the number of Aboriginal children that are in out-of-home care. I see that as a priority and one that we demonstrate our commitment to by putting in as many resources as we possibly can.

The Hon. LYNDA VOLTZ: What is the breakdown between Aboriginal communities and the population as a whole in the number of complaints received?

Mr BARBOUR: Aboriginal communities traditionally are very reluctant to make complaints.

The Hon. LYNDA VOLTZ: Which is why I am asking the question.

Mr BARBOUR: We find that our work with our Aboriginal unit is the best way for us to garner information and details about problems and also to generate complaints. One of the side benefits of our recent foster carer project, for example, was that we got 44 complaints directly from Aboriginal community members and/or foster carers about the types of issues that were being canvassed in our activities in the community. We saw that as being an enormous positive side benefit of what was a separate piece of work.

The Hon. LYNDA VOLTZ: How would that compare with what you would normally receive?

Mr BARBOUR: That is far and away in excess of what we would normally receive about those sorts of issues and that is why we saw it as being really important. For the indigenous communities to complain directly to us requires an enormous amount of trust and relationship building and a lot of work on the ground. We are also putting in a lot of work in outreach to those agencies that support indigenous communities. We have a very good working relationship with the Aboriginal Child, Family and Community Care State Secretariat [AbSec], for example, and we encourage those agencies to bring matters to our attention because traditionally individuals will not make complaints. We also have specialist brochures for our Aboriginal work to try to encourage more complaint making by people from indigenous communities.

The Hon. LYNDA VOLTZ: That leads to my next question because obviously there would be a reluctance in Aboriginal communities to deal with DOCS and the police in the first instance, so a complaint process that steps outside that is very important to them. AbSec pointed out how successful the use of community justice centres for Aboriginal communities was. Have you read that transcript?

Mr BARBOUR: No, we do not have any of the transcripts from the hearings.

The Hon. LYNDA VOLTZ: Given the nature of how Aboriginal communities work, it seemed a natural agency to work with them. I understand what you are doing with the foster carers but I am just wondering about the ability to reassure Aboriginal communities that there is a justice section when they are dealing with these agencies.

Mr BARBOUR: Over the past five years we have probably conducted tens and tens of visits directly to areas, both metropolitan and regional, where there are large Aboriginal communities. Much of that work has been identifying the people on the ground that we need to talk to and communicate with to get the best access to the broader community. We have chaired meetings, we have got people together, we have spoken to people in their homes, and we have spoken to police and worked very hard with them to improve the relationship between police and Aboriginal communities. One of the side benefits of our auditing work on the police strategic direction program with Aboriginal communities has been a vast improvement in the relationship between police and indigenous communities in regional New South Wales. We have seen enormous improvements there. We are very much focused on talking with people and working on the ground on those sorts of issues rather than applying what would be a traditional paper-based complaint process, because that does not work.

The Hon. LYNDA VOLTZ: No, that is what I thought was the efficacy of the community justice centres where the mediation-style disputes resolution suited Aboriginal communities.

Mr PETER DRAPER: Just on that issue, the report stated that you were meeting the Department of Ageing, Disability and Home Care [DADHC] last month to talk about the potential for your office to audit its engagement with Aboriginal communities about disability service issues. Can you update us on that?

Mr BARBOUR: This is a project that we are currently scoping out as something we want to see whether we can do. It is at a very early stage.

Mr KINMOND: I met with senior DADHC staff including the Deputy Director General, Carol Mills, a couple of weeks ago. Once again, this sort of work needs to be really practical in nature, not theoretical. We are exploring the possibility of our going to particular locations where it is clear from our consultations with a group called the Gathering, which represents Aboriginal disability services, and also the Aboriginal Disability Network, that at least reasonably good things are happening. We thought we would go to some of those locations, seek to identify some of the positive things taking place and then look at some of the gaps that exist from a consultation perspective. After looking at the solid locations we then propose to look at some areas that we think from our feedback are weaker. The aim of the exercise I suppose is to identify good practice and to ensure that it is promoted. Consultation is an easy thing to talk about in relation to the Aboriginal community, but it is much more difficult in practice. When we are dealing with disability services there is the challenge of mainstream services being provided to people with disabilities as well as specialist services. We are particularly interested in how DADHC is wrestling with that in terms of the implementation of its policy, its consultation strategy. At the moment we are doing some work on the methodology. We have agreed to go back to DADHC when we think we have a broad framework of how to look at things. Once again, we do not think there is a lot of value in a report that will be produced in two years' time. We

prefer to look at particular locations, sit down with DADHC, give them feedback as to what we have observed, and after we and DADHC have learnt from that exercise go back into the field. Through a process of continually feeding back issues we hope to effect change. That has been the strategy that we have used in relation to our auditing for a number of years now in the policing field. We are certainly hoping that might work in the disability area as well.

Mr PETER DRAPER: Do you see any barriers to that?

Mr KINMOND: Let me say, not at the moment. I think it is achievable.

Mr BARBOUR: It is interesting you ask that question though because related to this issue is the very reason why I created the cross agency team to do this project work. I am a great believer that the role of the Ombudsman, particularly in this State given the way in which services are provided, is very much going to change over the coming years and we are going to be very much more driven by project work and by systemic work. What I think presents challenges is trying to explain and convince agencies of the worth of that.

The typical response, because these projects are often done by way of investigation, is to be defensive. We have found it quite a challenge to convey to agencies that really we see this as being value adding and that it is a very constructive process for them to embrace, and one which ought not be seen to be threatening. What comes to mind is our joint guarantee of service [JGOS] project where we are looking at housing and health in relation to the way in which they provide support and assistance to people who have social housing tenants with mental health issues. They, particularly housing, were very concerned about the notion that we were coming in and looking at this particular issue. I am pleased to say, after a lot of work, that they are now very much embracing the notion that this project will potentially provide value to them and help them. I really think that is the way the office is potentially going to add more value.

CHAIR: To what extent are you assisting Community Services to develop their complaint systems?

Mr BARBOUR: Do you mean the Department of Community Services?

CHAIR: Yes.

Mr BARBOUR: Or do you mean all community services? As I said before, we provided comments to them when they provided us with a complaint handling framework back in 2007. We do not have a copy of the latest review document. We are not sure what they are doing in relation to that. We did offer, at their request, to scope out our own evaluation of their complaint handling processes, but the time line was not suitable to them. We did not have the capacity to do it for some time, so they have done their own

independent review and that is the review we are talking about, which we are yet to receive a copy of.

CHAIR: Why was your office unable to undertake that work within the timeframe?

Mr BARBOUR: We indicated to them—I think they wanted to try to get it done for the Wood inquiry, and it is not something that we were able to give priority to. We indicated to them that we would be able to do it in February of this year, but they wanted to have it completed by the end of the calendar year last year.

CHAIR: What criteria were used in recommending external parties to undertake the work?

Mr BARBOUR: I do not know. You would need to check with DOCS.

Mr KINMOND: We checked in terms of agencies who had proven performance in this area. For example, there was ARDT, whom we had used previously and who had shown themselves to be quite skilled from an auditing perspective. There was one agency, for example, that we mentioned that they might wish to approach. I also think it is important to bear in mind that we were quite keen to do the complaint handling review, but if we are doing these reviews we have to do them on our terms and not to some extent be an agent of an agency that we are oversighting. So the discussions that took place in relation to the complaint handling review possibility took place quite late last year, and we were going to turn around the review in the space of a couple of months, which is a pretty good review. We could not, however, lessen the timeframe without actually compromising the review itself.

CHAIR: What plans are in place for having input into the process and for monitoring the outcomes of the process?

Mr BARBOUR: As we understand it, the process is complete. There is a report. We have not received it yet.

CHAIR: You have not seen it?

Mr BARBOUR: Yes. I just confirmed with Steve that we are unaware of who the consultant is that they ultimately got to do it, and we do not know the terms under which that evaluation process has worked.

CHAIR: Do you want to make an additional comment?

Mr KINMOND: My problem is that as I get older my memory gets worse. I am just a little bit concerned that there might be an email sitting there where they told me at some stage. So to the best of our—I provide advice to the Ombudsman—

CHAIR: To the best of your knowledge, yes.

Mr KINMOND: I take responsibility for that.

Mr BARBOUR: If that is not a completely accurate representation, I am happy to follow up with something. I will check on that. But the advice that we have got is that we do not have those details.

CHAIR: Would enhancing the enforceability of recommendations that you make contribute positively to the achievement of policy objectives of the Community Services (Complaints, Reviews and Monitoring) Act [CRAMA]?

Mr BARBOUR: I believe one of the inherent advantages of the way in which Ombudsman offices work is that they are recommendatory only, and that ultimately it has to be left up to the agency and/or government to determine whether or not they are going to implement those recommendations. We are not a determinative body; I do not believe we should be. I think that in terms of our recommendations, the vast majority of our recommendations are accepted. We monitor them. We follow up. Sometimes they are not as well dealt with as we would like. Sometimes there are delays. But we continue to monitor and continue to see how they are progressing. It is very rare that an agency will say to us, "We are not going to comply with that recommendation." Usually that is because we have been able to convince them during the process of the investigation which precedes those recommendations being made of the merit of the recommendations. So I do not think we need to have any further enforceability in relation to those issues.

CHAIR: At Thursday's hearing, the People with Disabilities [PWD] compared the number of inquiries being conducted in the children's and disability areas and suggested that the situation was inequitable for people with disabilities. Could you respond to that, or would you like to take that on notice?

Mr BARBOUR: No. Look, I think that is an inappropriate comparison to try to draw, quite frankly. It is not simply about numbers. It is about the nature of the work and the focus of the work. Without doubt, complaints in relation to disability issues are often far more amenable to resolution without the need for investigation, and also the vast majority of services and people who are visited by official community visitors are people who are disabled. So the official community visitors are able to deal with a lot of these things on the ground as well. We do a considerable amount of work in relation to disability areas, and People with Disabilities, as far as I am aware, stands quite isolated in its views about that.

CHAIR: Are there any other further questions from members? There are some further questions we have regarding the submission. Would you object to taking those questions on notice?

Mr BARBOUR: No. That is fine.

CHAIR: Thank you. The Committee secretariat will be in touch with you regarding those. Thank you for appearing before us today. Your evidence has been most helpful in terms of assessing the policy objectives of the Community Services (Complaints, Reviews and Monitoring) Act [CRAMA]. This concludes the public segment of the Committee's hearing of the statutory review of the Community Services (Complaints, Reviews and Monitoring) Act 1993. I ask members of the secretariat to please clear the public gallery. I ask members to remain for the in camera session.

(Evidence continued in camera)