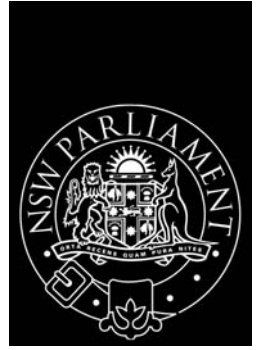


PARLIAMENT OF NEW SOUTH WALES



Committee on the Office of the Ombudsman and the Police Integrity Commission

STAKEHOLDER REVIEW OF THE MERGER OF THE COMMUNITY SERVICES COMMISSION INTO THE OFFICE OF THE OMBUDSMAN

Together with Minutes

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Table of Contents

Membership & Staff.....	iii
Terms of Reference.....	v
Chairman’s Foreword	vii
CHAPTER ONE - STAKEHOLDER REVIEW	1
CHAPTER TWO - BACKGROUND TO THE MERGER	3
CHAPTER THREE - STAKEHOLDER RESPONSE	11
CHAPTER FOUR - THE OMBUDSMAN’S RESPONSE	15
CHAPTER FIVE - CONCLUSION	21
APPENDIX 1: COMMITTEE MINUTES	23
APPENDIX 2: LIST OF SUBMISSIONS	29

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Terms of Reference

In accordance with its functions under s.31B of the *Ombudsman Act 1974* the Committee on the Office of the Ombudsman and the Police Integrity Commission is to conduct a stakeholder review of the merger of the Community Services Commission into the Office of the Ombudsman, and any issues arising from this.

Chairman's Foreword

This stakeholder review of the merger of the Community Services Commission into the Office of the Ombudsman is a precursor to the Committee's review of the Community Services (Complaints, Reviews and Monitoring) Act to be undertaken in 2007. The Committee considered that it would be informative to get a sense of how major interest groups in the community services sector deemed the Community Services Division of the Ombudsman's office was working for them.

It is apparent from the responses received by the Committee that initially some stakeholders had reservations about the merger of the Commission into a large organisation. These misgivings appear to have been assuaged in part by the strength of the legislative powers available to the Ombudsman.

However, some concerns remain. It is hoped that the issues which have emerged from this review will be examined in greater detail and form part of the deliberations of the Committee of the 54th Parliament when it conducts the statutory review in 2007.

I would like to thank those organisations which made submissions to the review and the NSW Ombudsman for his response.

Paul Lynch MP
Committee Chairman

Chapter One - Stakeholder Review

1.1 The Committee on the Office of the Ombudsman and the Police Integrity Commission is required to review the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA), to determine whether the Act's policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.¹ The review is to be undertaken as soon as possible after the period of five years from the date of assent, on 3 July 2002, to the *Community Services Legislation Amendment Act 2002*² (the Amendment Act).

1.2 The Amendment Act abolished the Community Services Commission (CSC) and conferred its functions on the Ombudsman. So that it could gauge how peak groups affected by the legislation consider the current scheme to be working, the Committee resolved that, prior to the statutory review in 2007, it would conduct a stakeholder review as follows:

In accordance with its functions under s.31B of the *Ombudsman Act 1974* the Committee on the Office of the Ombudsman and the Police Integrity Commission is to conduct a stakeholder review of the merger of the Community Services Commission into the Office of the Ombudsman, and any issues arising from this.³

1.3 The Chairman wrote to the following organisations, seeking a submission on the merger:

Child and family agencies

- Aboriginal Child, Family and Community Care Secretariat
- Association of Childrens Welfare Agencies (ACWA)
- CREATE NSW
- Foster Care Association NSW Inc
- Council of Social Services of NSW (NCOSS)
- NSW Family Services Inc
- Women's Refuge Resource Centre
- Youth Accommodation Association

Disability agencies

- People With Disabilities Australia Inc
- Indigenous Disability Advocacy Service
- Disability Council of NSW
- Brain Injury Association of NSW
- Family Advocacy
- Carers NSW
- Multicultural Disability Advocacy Association (MDAA)
- Physical Disability Council of NSW
- ACROD NSW

¹ CS-CRAMA section 53(1)

² CS-CRAMA section 53(2)

³ Resolved at the deliberative meeting held on 7 July 2005

Stakeholder Review

- NSW Council for Intellectual Disability
 - NCOSS
- 1.4 Five submissions were received: from ACWA, the Foster Care Association (NSW) Inc, People with Disability Australia Inc, NSW Council for Intellectual Disability and the Aboriginal Child, Family and Community Care State Secretariat.
- 1.5 In March 2006, the Committee resolved to forward the submissions to the Ombudsman on a confidential basis for a response, with a view to the Committee determining the need for hearings. The Ombudsman's response was received by the Committee on 23 July 2006.

Chapter Two - Background to the merger

2.1 PREVIOUS LEGISLATION

2.1.1 The Community Services (Complaints, Appeals and Monitoring) Act (CAMA), the legislation that provides for complaints, appeals and monitoring in relation to the provision of community services, was passed by the New South Wales Parliament in March 1993. The Act also provided for Community Visitors and their functions and constituted and set out the functions of the Community Services Commission, the Community Services Appeals Tribunal and the Community Services Review Council. In his second reading speech, the Hon James Longley MP, then Minister for Community Services, promoted the legislation as a means to reform and improve the client/service provider relationship through better complaint and grievance handling and monitoring of service provision. He stated that:

The organisational framework in this bill provides a motivation for service providers, a safety net for clients and an educational and information base to assist the sector in developing improved processes for clients.⁴

2.1.2 At the time of the 1999 review of CAMA by the NSW Law Reform Commission (LRC), such was the community support for the legislation that the LRC focused its review on ways to increase the effectiveness of each of the CAMA bodies, rather than change the framework of the legislation.⁵ These bodies were:

- the ***Community Services Commission***, whose functions included:
 - resolving complaints made by consumers against service providers;
 - helping service providers improve their complaints procedures;
 - making inquiries into the situation of children or persons in care;
 - monitoring and reviewing the delivery of community services; and
 - helping develop standards for delivering community services, and educating people about them.
- the ***Community Visitors Scheme***, whose functions were to monitor, protect and advocate for the interests of children, young people and people with disabilities in residential care.
- the ***Community Services Division of the Administrative Decisions Tribunal*** (which had replaced the Community Services Appeals Tribunal on 1 January 1999) whose function was to review certain decisions made under community welfare legislation.
- the ***Community Services Review Council***,⁶ whose membership comprised the Community Services Commissioner, the Ombudsman, the heads of relevant

⁴ NSW Legislative Assembly Hansard, 11th March 1993

⁵ NSW Law Reform Commission, *Report 90 (1990) – Review of the Community Services (Complaints, Appeals and Monitoring) Act 1999 (NSW)*, Chapter 2, par 2.6

⁶ The Community Services Review Council was abolished by the *Community Services Legislation Amendment Act 2002*.

Background to the Merger

agencies and others with appropriate experience appointed by the Community Services Minister. Its functions were to:

- encourage co-ordination of the functions of the bodies established by CAMA and others involved in providing community services; and
- give the Minister strategic advice about the operational effectiveness of the review and monitoring system established under the Act.

2.2 JURISDICTIONAL ISSUES

2.2.1 The Law Reform Commission noted in its review, however, that jurisdictional problems with the legislation had emerged. It reported that the Crown Solicitor had advised the NSW Ombudsman that the child protection functions carried out by the Department of Community Services (DoCS) did not fall within the definition of “community service” for the purpose of the community welfare legislation and were thus outside the Community Services Commission’s jurisdiction. The CSC argued that, as child protection issues constituted a significant part of its work, the CAMA definitions of “community service” and “service provider” should be amended to clarify that all child protection matters were included in its jurisdiction.⁷

2.2.2 In November 2000 the Government obtained its own advice from the Crown Solicitor that certain complaints were outside the jurisdiction of the CSC, in particular, complaints about certain child protection and out of home care matters. Until these jurisdictional issues could be resolved, the Ombudsman dealt with the complaint and investigative work which had to be diverted from the CSC.

2.2.3 Subsequently, the Cabinet Office co-ordinated a review, prompted in part by the jurisdictional issues concerning the Commission, which aimed to improve the system of monitoring community service providers in New South Wales. During debate on the *Community Services (Complaints, Reviews and Monitoring) Amendment (Application) Bill (No 2)*—a Private Member’s Bill introduced in March 2001 by the NSW Opposition to extend the application of CAMA to the exercise of functions under the community welfare legislation, to extend the category of service providers to which CAMA applied and to extend the investigative powers of the Community Services Commission—the Hon Carmel Tebbutt MLC explained the rationale for the Government’s review:

One of the important issues raised in the Crown Solicitor's advice to the Minister for Community Services is that the monitoring and review environment for the Department of Community Services has altered markedly since the establishment of the Community Services Commission. Since the establishment of the Community Services Commission the following bodies have been established: the Child Death Review Team, the Office of Children and Young People, the Commission for Children and Young People, the Children's Guardian, the Privacy Commission, the Disability Death Review Team and the specialist child protection function within the Office of the Ombudsman.

The Ageing and Disability Department has been set up to fund and monitor disability services, including those provided by the Department of Community Services. A parliamentary [Joint] Committee on Children and Young People has also been

⁷ NSW Law Reform Commission, op cit, Chapter 3, par 3.158

established, as well as the Legislative Council's Standing Committee on Social Issues. The legal advice received by the Government suggests that any proposed expansion of the powers of the Community Services Commission should be carefully considered in the light of all existing avenues of review, including these new agencies. As this raises broader legal and policy questions, the Minister for Community Services has requested advice from a whole-of-government perspective, and this is being co-ordinated by the Cabinet Office.⁸

2.3 MERGER PROPOSAL

2.3.1 Following on from the review, in October 2001 the Cabinet Office circulated for comment by community services sector stakeholders a proposal to transfer the powers of the CSC to the Ombudsman. The proposed merger elicited opposition, with some stakeholders arguing that the Ombudsman would not be an advocate for the community services sector as the CSC had been.

2.3.2 At the Committee's tenth Annual General Meeting with the NSW Ombudsman in June 2002, the Ombudsman indicated that the Office had undertaken extensive consultation and negotiations to facilitate a merger with the CSC, should the proposal proceed. The Ombudsman considered that the merger was in the public interest and offered significant benefits, in that it would:

- provide more streamlined, comprehensive and effective oversight by expanding the legislative powers, skills and resources available to investigate community service providers;
- strengthen the independence of the monitoring, review and complaint handling functions, especially through independent reporting to Parliament and the Committee on the Office of the Ombudsman and the Police Integrity Commission;
- introduce economies of scale;
- provide a more coordinated response to systemic issues relevant to the community services sector and other agencies already within the Ombudsman's sector;
- reduce the chance of people falling through the gaps and give clearer access to the oversight system for clients through a single entry point;
- maximise the opportunity for using information from individual deaths to inform monitoring and review of service providers and to recommend changes to systems and practices; and
- increase the credibility of investigations and reports, by removing any perceived lack of impartiality arising from advocacy functions (which also would be likely to increase the uptake of recommendations).⁹

2.4 MERGER OF THE COMMUNITY SERVICES COMMISSION WITH THE OFFICE OF THE NSW OMBUDSMAN

2.4.1 In December 2002, on the commencement of the *Community Services Legislation Amendment Act 2002*, the Community Services Commission amalgamated with the NSW Ombudsman. A statutory Community Services Division (CSD) within the Office of the Ombudsman was established, headed by a Deputy Ombudsman/Community

⁸ NSW Legislative Council Hansard, 11 April 2001

⁹ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report on the Tenth General Meeting with the NSW Ombudsman*, p.33

Background to the Merger

and Disability Services Commissioner. The amendments to the *Community Services (Complaints, Reviews and Monitoring) Act 1993* meant that the Ombudsman's legislative functions in relation to community services operated on three levels: individual, service-based and systemic.

2.4.2 The Ombudsman now had eight key areas of responsibility:

- dealing with complaints;
- reviewing complaint-handling systems;
- providing information and training;
- reviewing the situation of persons in care;
- reviewing the deaths of certain children and people with a disability;
- monitoring, reviewing and setting standards for the delivery of community services;
- inspecting visitable services where children, young people, people with a disability and residents of licensed boarding houses live.

2.4.3 In her second reading speech, the Hon Carmel Tebbutt MLC said that the fundamental principles underlying the Community Services Legislation Amendment Bill were:

...that the independence of oversighting agencies, the transparency and 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 complaints handling are to be improved; and that none of the current protections in the review and monitoring systems of community services should be weakened.¹⁰

2.4.4 With the amalgamation, the capacity of the Community Services Division to investigate the conduct of both government and non-government community service providers was strengthened by the Ombudsman's investigative and Royal Commission powers.

2.5 CONSOLIDATION OF THE MERGER

2.5.1 For its eleventh General Meeting with the NSW Ombudsman in November 2003, approximately one year after the amalgamation, the Committee asked a question on notice as to whether any efficiencies had resulted from the merger. The Ombudsman advised:

The amalgamation of the Community Services Commission... into the Office was a major project... [T]he CSD has been successfully restructured and the corporate staff of the former CSC have been successfully integrated into the Corporate Support Team of the Office.

Before and after the amalgamation, a range of areas were identified for training of CSC/CSD staff including about the approach of the Ombudsman and the investigation powers available under the Ombudsman Act.

¹⁰ NSW Legislative Council Hansard, 18 June 2002, p.3199

The complaint handling procedures of the CSC have been reviewed and redrafted by the CSD to bring them into line with the equivalent procedures in the General Team of the Office.

The integration of the work and staff of the former CSC into the Office is an on-going project. As is common with such projects, the early stages are characterised by certain inefficiencies and various unavoidable extra costs. The efficiencies and benefits that will undoubtedly result from this amalgamation will accrue over time.¹¹

2.5.2 Mr Barbour commented during his opening address to the Committee at the General Meeting on 23 November:

At this time it is a difficult process to actually assess the full impact of the amalgamation. However, early indications for this financial year are that complaints have increased approximately 10 percent. I believe that this reflects a better understanding of our role and has been contributed to by education programs run by the office [of the Ombudsman] in the community sector. . .

The amalgamation of the Community Services Commission has not been without its challenges. It has, however, brought the increased coherence of a one-stop shop to the oversight of community services in the State. In my view it has been especially successful in ensuring the appropriate oversight of the Department of Community Services to the benefit of the department, its clients, and the community. . .

A review and restructure of the Community Services Division has seen a more functional arrangement which should enhance our complaints work while increasing the effectiveness of our reviews and other projects. Some of the anticipated efficiencies from the amalgamation are slowly being realised. Reduced commitments to administrative services through amalgamation of corporate functions are now freeing up other officers to engage in frontline complaint resolution and investigation work, and reviews of systemic issues.

Experts from across the office, including lawyers, investigators and project managers, are now working closely with officers within the division and with a range of community sector experience to contribute to major projects and investigations.¹²

2.6 RECENT WORK OF THE COMMUNITY SERVICES DIVISION, NSW OMBUDSMAN'S OFFICE

2.6.1 In his 2003-2004 Annual Report, the Ombudsman saw a particular strength of the Community Services Division as being the capacity to conduct 'own motion' investigations, enabling the examination of matters arising not only from complaints, but also from other areas of the Division's work, such as reviews of the death of vulnerable children and adults in care, concerns raised by official community visitors, or reviews of circumstances of people in care. He anticipated that own-motion investigation would "become an increasingly important area of our work"¹³. He also saw special reports to Parliament, which provide an opportunity to place significant issues in the public domain, as a counterbalance to the confidentiality

¹¹ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report on the Eleventh General Meeting with the NSW Ombudsman*, p.28

¹² *ibid*, pp.73 and 75

¹³ NSW Ombudsman, *Annual Report 2003-2004*, p.20

Background to the Merger

provisions of the legislation which otherwise constrain the Ombudsman. Mr Barbour observed that issues arising for people relying on community services in other public sector areas, such as housing, health and police, could be addressed because of the Office's broad jurisdiction.

2.6.2 For the year 2004-2005 the Ombudsman reported on the Community Services Division's on-going promotion of improvements to the delivery of community services through:

- resolving problems and achieving better outcomes for individuals receiving or needing community services;
- reviewing the effectiveness of the overall system for delivering community services and, where appropriate, making recommendations for change; and
- monitoring the progress of agencies in achieving outcomes in areas the CSD had identified.

2.6.3 During 2004-2005, the Community Services Division:

- initiated 19 investigations into the care and protection of children using 'own motion' powers, examining the conduct of DoCS in particular, and in some cases the conduct of other agencies such as NSW Police, NSW Health and the Department of Education and Training. The CSD identified a number of key issues needing to be addressed and made specific recommendations.
- began six investigations into services for people with a disability. Three of the investigations were finalised, concerning:
 - DADHC's conduct as lead agency for a cross-government senior officers group examining the needs of people with an intellectual disability who come into contact with the criminal justice system;
 - DADHC's management of the program of appliances for disabled people;
 - DADHC's handling of allegations of assault of a resident of a group home by a staff member.

2.6.4 It was reported that the Community Services Division also:

- followed up on recommendations to DADHC in the Ombudsman's special report to Parliament about deficiencies in the way DADHC was implementing their policy for children and young people with a disability who could not remain living with their families.
- reported on DADHC's lack of progress in monitoring effectively the provision of services to people with a disability.
- drew attention to inadequate individual and health care planning for people with a disability living in supported accommodation.
- followed up on DoCS' implementation of recommendations in the Ombudsman's special report to Parliament on the accessibility of accommodation and support services to homeless people and worked with SAAP (Supported Accommodation Assistance Program) peak bodies and individual organisations to assist implementation of the report's recommendations.

2.6.5 Since the establishment of the Community Services Division, the Ombudsman has tabled two annual reports on reviewable deaths. The Ombudsman has responsibility for reviewing a child's death where the child:

- (or their sibling) was reported to DoCS within three years of their death;
- died while in care or in detention;
- may have died from abuse or neglect or in suspicious circumstances.

2.6.6 The Ombudsman also reviews the deaths of people with a disability who were living in a residential care service or a licensed boarding house. The purpose of these reviews is to prevent or reduce deaths.

2.6.7 In relation to the reviewable deaths of children, both annual reports made findings about risk of harm assessment, case closure, the need for interagency coordination and cooperation, and the over-representation of Aboriginal children and young people in child deaths.

2.6.8 Both annual reports made findings in relation to reviewable disability deaths about the need for health-related support and coordination, better health care planning and better documentation and record keeping.

Chapter Three - Stakeholder response

- 3.1 After the Chairman wrote to peak child and family and disability agencies in September 2005 seeking their comments on the merger of the Community Services Commission into the Office of the Ombudsman, the Committee received five submissions. While some of the agencies appreciated the benefits of the increased investigative powers available under the new legislation and the Ombudsman's capacity to make special reports to Parliament, some regretted that the Community Services Division was not an advocate for their particular interests in the way the Commission had been. Other complaints were that the Division does not have a high profile with consumers and does not take immediate action to assist vulnerable individuals whose situation is urgent.
- 3.2 ASSOCIATION OF CHILDRENS WELFARE AGENCIES (ACWA)
ACWA acknowledged that the CSD had been influential in improving policy and services for children and young people at risk or in out-of-home care by drawing attention to issues raised in a number of reports which recommended directions for reform. ACWA also acknowledged the wide jurisdiction of the Division. However, several areas remained of concern: sector engagement, the reviewable deaths function, the advocacy role, consumer focus and accessibility, reviews, communication and publications.
- 3.3 ACWA considered that, in relation to:
- *sector engagement*: The CSD is not as actively or extensively involved in the community services sector as had been the Community Services Commission, which was not only a strong force in exposing systemic and organisational issues but also collaborated with the sector to address the problems which had been uncovered.
 - *reviews of child deaths*: The CSD should follow up the implementation of report recommendations.
 - *advocacy*: The CSD's role is more focused on investigation than advocacy. There is no authority charged with systematically advocating for children and young people at risk or in out-of-home care.
 - *consumer focus and accessibility*: Despite a youth liaison position in the Ombudsman's Office, information about complaints assistance is predominantly targeted at organisations and government departments and does not have a high public profile, particularly among children, young people and their families and carers. A large number of children and young people in out-of-home care have not been allocated a caseworker, the person who would normally pass on information about how to make a complaint.
 - *communication and publications*: The Ombudsman's newsletter on the Office's community services work, *Communicate*, is infrequent and limited in content and there is not a summarised version of the Ombudsman's Annual Report which would make it more reader-friendly for children and young people. Reports produced by the Community Services Commission prior to the merger are not available on the Ombudsman's website despite their continuing relevance to current policy debates. There is a need for reports on important issues to be released more frequently.

Stakeholder Response

- *review processes:* The CSD should have enhanced capacity to undertake individual and group reviews of children and young people in care in both a proactive and a responsive manner.

3.4 FOSTER CARE ASSOCIATION (NSW) LTD

The Association felt that the merger has resulted in the loss of an advocate for carers, who had previously felt that they could approach the Community Services Commission to intervene on their behalf with DoCS to resolve issues before they proceeded to a more formal process. The Association claimed that carers currently feel that the Ombudsman's Office is more passive. While acknowledging the need for reporting on systemic issues, the Association argued that carers often require urgent assistance with an immediate problem, previously provided by the Commission. Because of delays by DoCS in responding to problems, vulnerable children can be put at risk, and carers need an organisation which will give priority to assisting them with their problems.

3.5 PEOPLE WITH DISABILITY AUSTRALIA INCORPORATED

While People with Disability acknowledged that the CSD had continued the work of the Commission in relation to community education, engagement with the sector, investigating complaints and conducting reviews, and appreciated the Ombudsman's capacity to report to Parliament, they claimed that the CSD does not provide strong leadership to effect change in disability services. In their view there is less public attention since the merger on the need for reform of disability service policy and programs (eg institutional closures), as the Community Services Division is not as proactive in engaging the media and public when launching its reports and so issues have fallen off the government's and public's agenda.

- 3.6 People with Disability also claimed that the CSD is not seen as willing to take direct action in crisis situations and they believe that the Division should respond urgently to problems which threaten immediate serious consequences for those with disability, such as loss of accommodation or services or continuing abuse.

3.7 NSW COUNCIL FOR INTELLECTUAL DISABILITY

The Council had initial concerns about the merger, but now considers that the work of the CSD has been practical and effective. They appreciate the benefit of the Ombudsman's legislation and regard the bi-annual stakeholder meetings with the Deputy Ombudsman as very useful. However, feedback to the Council on the individual complaint function of the Division has been mixed.

3.8 ABORIGINAL CHILD AND FAMILY & COMMUNITY CARE STATE SECRETARIAT (AbSec)

AbSec considered that the CSD should develop a much stronger profile in community services, particularly targeting Aboriginal children and young people and their families or carers. AbSec also considered that the CSD should be resourced so that it can be proactive and responsive in undertaking both individual and group reviews of children and young people in care.

- 3.9 It was AbSec's opinion that the CSD does not engage with the sector, for example on policy issues, to the extent that the Community Services Commission had, and

that there is a lack of communication with service providers and peak bodies. The submission claimed that community services clients, particularly children and young people, are not informed about the complaints process and the specific needs of Aboriginal people are not supported.

Chapter Four - The Ombudsman's response

- 4.1 Following receipt of submissions to the stakeholder reviewer, the Committee resolved at its deliberative meeting on 29 March 2006 to forward the responses to the Ombudsman for comment.
- 4.2 The Ombudsman's submission noted those aspects of the Division's activities which were appreciated by the agencies that had made submissions. However, the major part of the Ombudsman's submission responded to the criticisms made in relation to:
- the CSD's level of sector engagement;
 - the extent of CSD consumer focus and accessibility, particularly in regard to children and young people;
 - CSD capacity to conduct reviews of children and young people in care;
 - the level of attention given to Aboriginal children;
 - CSD handling of some complaints, leading to poor outcomes for complainants;
 - the role of the Ombudsman as an agent for sector change.

4.3 *Sector engagement*

The Ombudsman noted that in the first six months of 2006 representatives of the CSD attended over 104 meetings, conferences and consultations with, and presentations to, a range of stakeholders, service providers, community groups and consumers. The Deputy Ombudsman/Commissioner for Community and Disability Services was involved in over 60 of the meetings.

- 4.4 The Community Services Division also meets twice a year with peak agencies in both the disability and child and family services fields. These meetings help to inform the Division's business planning and specific inquiry, investigation, monitoring and review activities.
- 4.5 In addition, the CSD constantly reviews the effectiveness of its engagement with the sector and assesses the nature of the engagement so as to safeguard the Ombudsman's independence and impartiality. In relation to this assessment, the Ombudsman commented: "In this regard, it is critical for community sector advocacy organisations to distinguish their important role of representing particular groups within the community from our broad role of representing the public interest."¹⁴

4.6 *Consumer focus and accessibility*

The Ombudsman advised that, to ensure that vulnerable consumers of community services are supported, the Community Services Division has its own complaints intake system, separate from the Ombudsman's general complaints intake system, so that those handling the complaints have the requisite specialist expertise. Many of the very experienced staff of the former Commission now work for the Ombudsman and provide leadership in all areas of the CSD's work.

¹⁴ NSW Ombudsman, *Community Services Review: Submission to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission*, p.6

The Ombudsman's Response

4.7 In order to raise the profile of the Community Services Division with children and young people, the Ombudsman engaged a Youth Liaison Officer in November 2004, who has consulted with agencies, made presentations to youth service networks, individual youth services and youth conferences and conducted work in regional areas across the State. A Memorandum of Understanding has been finalised with Kids Helpline so that Helpline counsellors can make a three-way call to the Ombudsman's Office, ensuring that a child or young person is supported if they wish to make a complaint or make known their concerns. Feedback has been obtained through a survey and focus groups in order to improve the Division's services and accessibility to children and young people and to develop guidelines for Ombudsman staff on dealing with youth complaints. New youth brochures, posters, postcards and fridge magnets have been widely distributed.

4.8 *Aboriginal issues, particularly those concerning Aboriginal children and young people*

The Ombudsman advised that the Aboriginal Complaints Unit (ACU) in the Ombudsman's Office has extensive contact with local Aboriginal communities and organisations and with others who have significant contact with Aboriginal people. During 2005 and 2006 ACU officers visited Aboriginal organisations and individuals across the State. They also met with 64 youth and family service providers and visited four juvenile justice centres. The CSD regularly liaises with the ACU about complaints made by Aboriginal people.

4.9 The Deputy Ombudsman/Commissioner for Community and Disability Services, in his former role of Assistant Ombudsman (Police), developed a process of auditing the implementation of NSW Police's Aboriginal Strategic Direction and wants to explore the potential of this initiative for indigenous issues across all areas of the Ombudsman's jurisdiction, including the community services area. The Police audits have provided an opportunity for the Office to find out what concerns communities have about the nature and level of services provided by agencies which are within the CSD's jurisdiction.

4.10 The Ombudsman considers that the reports on reviewable deaths have clearly outlined the Office's concerns on Aboriginal child protection matters. Direct investigations by the Office have exposed serious problems in agencies' responses to child protection reports about Aboriginal children and young people and the Office has recommended that DoCS report to it on proposed strategies to deal with the issues which have been identified.

4.11 The CSD has also fostered regular contact with AbSec, and the Deputy Ombudsman has met frequently with the AbSec CEO, including travelling to South Australia to learn more about that State's response to Aboriginal child protection and out-of-home care issues.

4.12 The CSD was writing a research paper about DoCS and the Children's Court, in which the issue of Aboriginal participation in care proceedings before the court will be addressed, and has written about its role and functions for AbSec's newsletter.

4.13 In-care reviews

The Office advised that, to maximise its resources, a Memorandum of Understanding had been put in place with the Children's Guardian, principally relating to the exchange of information, and from time to time referrals are received from the Children's Guardian of matters which might warrant the exercise of the powers available under CS-CRAMA and/or the Ombudsman Act.

- 4.14 Since 2002, the Office has reviewed the circumstances of over 100 children, young people, and people with a disability in care, targeting areas where there is evidence of a systemic problem, or particular concerns about an out-of-home care provider. This evidence can be provided by complaints, regular meetings with Official Community Visitors, regular contact with key sector agencies and regular analysis of information holdings. The CSD arranges regular meetings between the Official Community Visitors and DoCS' Director of Out of Home Care Services, so that the Visitors can discuss their concerns with the Director.

4.15 Complaint handling and complaint outcomes

The Ombudsman's submission indicated that the CSD has received over 1700 formal and informal complaints each year of its operation. The number of formal complaints which the Division has received is significantly higher than the number received by the former Commission. The percentage of all finalised formal complaints resolved by the CSD has increased from 38% in 2003-04, to 45% in 2004-05 and to 48% in 2005-06 (up until 31/3/06). A review of the structure and practices of the CSD complaint unit took place in 2003-04 with the aim of increasing the number of complaints resolved and investigated, as well as strengthening complaint-handling practices generally.

- 4.16 The CSD has undertaken over 60 direct investigations into complaints about community services and produced reports making recommendations to address those problems or deficiencies which were identified. A Principal Investigation and Project Officer position has been created to increase the CSD's capacity to undertake investigations and a Customer Services Co-ordinator appointed who will review new complaints so that urgent, serious or other significant matters can be quickly identified. In 2005 a Complaints Procedures Working Group was established to review and make recommendations for improving complaint-handling procedures.

- 4.17 In addition, the former Commission's complaints database is being replaced with the Ombudsman's complaints management database. The Ombudsman advised that this will improve the capacity to record, case manage, monitor and report on complaint trends. The submission indicated that the CSD values feedback on its complaint-handling practices and procedures and would like to work with agencies to investigate ways it can better track the outcomes from complaints.

4.18 The Ombudsman as an agent for change

The Ombudsman considers that the work of the CSD in handling complaints, conducting investigations and inquiries, undertaking reviews, providing comment to agencies on policy and service provision, and delivering training to agencies and consumers, is focused on achieving positive change in the delivery of community services.

The Ombudsman's Response

4.19 The CSD's reports clearly record investigation findings and recommend how an agency can address any failings. Agencies are asked to respond to recommendations and the CSD monitors their implementation. However, the Ombudsman noted that he must weigh up the public interest, individual privacy and the requirements of the secrecy provisions under the Ombudsman Act when deciding how widely to disseminate a report's findings.

4.20 The following information, derived from the Ombudsman's submission, outlines the CSD's work as an agent for change in the various areas under its responsibility:

4.21 Child protection

4.21.1 The CSD handles complaints about child protection, monitors developments in the child protection reform package being implemented by DoCS and reviews the deaths of children who were known to DoCS or who were the siblings of a child known to DoCS.

4.21.2 In April 2002 the Ombudsman tabled a report in Parliament, *DoCS – Critical Issues: Concerns arising from investigations into the Department of Community Services*, which helped to highlight the challenges facing DoCS, which subsequently received a \$1.2 billion reform package from the Government.

4.21.3 Many of the 35 child protection investigations the CSD conducted in 2005-2006 arose out of its reviews of deaths of children and were commenced using 'own motion' powers. The investigations resulted in recommendations directed to DoCS, NSW Police and NSW Health.

4.21.4 Although the publication of reports about child protection matters is not standard practice, in 2004 the Ombudsman reported to Parliament about an investigation into DoCS and NSW Police following the death of a three year old boy. Although significant issues of public interest were raised, there were privacy concerns, particularly in relation to the surviving sibling, who was subsequently identified in the media, despite efforts to prevent this occurring. The Ombudsman commented:

This illustrates the need for caution and deliberation in the public release of cases, even where the issues identified are primarily systemic.¹⁵

4.21.5 It was the Ombudsman's opinion that the report significantly influenced DoCS' work in improving casework responses to child neglect. The CDS continues to monitor how DoCS is implementing its recommendations.

4.21.6 Two annual reports on reviewable deaths have been tabled in Parliament, both of which raised systemic issues about the operation of the child protection system in NSW and made recommendations to DoCS, NSW Police and the Government. The Ombudsman advised that the recommendations have resulted in the agencies committing to changes in policies, procedures and practices, and in public

¹⁵ NSW Ombudsman, *Community Services Review: Submission to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission*, June 2006, p 17

statements of acceptance by both the Ministers for Community Services, in 2004 and 2005.

- 4.21.7 DoCS has committed to addressing many of the issues identified as a result of the CSD's reviewable deaths and investigation work through key initiatives in its reform program.

4.22 Services for homeless people

- 4.22.1 In 2004, the Ombudsman's special report to Parliament, *Assisting homeless people – the need to improve their access to accommodation and support services*, found that the level and nature of exclusions of homeless people from services funded by the Supported Accommodation Assistance Program (SAAP) were extensive and that sometimes these exclusions appeared to be unreasonable and possibly in contravention of SAAP and anti-discrimination legislation, and SAAP standards and guidelines.

- 4.22.2 The report's recommendations have resulted in: the development of a client risk assessment tool for SAAP services; the introduction of special conditions governing client entry and exiting in SAAP service agreements; and good practice guidelines for DoCS funded services.

4.23 Services for people with a disability

- 4.23.1 The CSD handles complaints about a wide range of disability accommodation and support services, monitors developments in the implementation of key programs and systems by DADHC and reviews the deaths of people with a disability who lived in care.

- 4.23.2 In 2004 the Ombudsman tabled a special report to Parliament, *DADHC – the need to improve services for children, young people and their families*, which found that DADHC's implementation of its children's policy had been ineffective and characterised by extensive failures. Consequently, DADHC committed to improving and supporting services through the implementation of a detailed action plan and in late 2005 reported to the CSD on an independent evaluation of the impact of the plan.

- 4.23.3 As a result of its monitoring of the Department's progress and to ensure continuing improvement in this area, the Ombudsman tabled a subsequent special report to Parliament in May 2006: *Services for children with a disability and their families: DADHC progress and future challenges*.

- 4.23.4 Another special report to Parliament found serious problems with the way boarding houses in NSW are licensed and monitored by DADHC. The Department is addressing the issues identified in the inquiry and the Minister for Disability Services has subsequently announced recurrent funding for the recruitment of caseworkers to support people living in licensed boarding houses.

- 4.23.5 Both annual reports on reviewable deaths have shown there are significant systemic issues in relation to the health care needs of people with a disability living in care, including licensed boarding houses. The reports made recommendations to DADHC

The Ombudsman's Response

and NSW Health, both of which have made commitments to change their policies, procedures and practices.

4.23.6 The CSD also investigated how DADHC provides and pays for aids and appliances for residents of the Department's accommodation services. DADHC has since developed new policies and guidelines.

4.23.7 In his submission the Ombudsman has addressed the issue of delays in the closure ('devolution') of large residential centres for people with a disability, previously intended to be completed by 2010. The former Commission and then the CSD had monitored DADHC's progress with its devolution program and it was identified in early 2004 that closures would not be completed within the Government's timeframes. In late 2004 the Minister for Disability Services took responsibility for developing and articulating the Government's plans for future provision of accommodation for people with a disability and in May 2006 released a ten year plan, *Stronger Together*. The Ombudsman commented:

The Minister's actions in relation to development of government policy in this area effectively take this matter outside the Ombudsman's jurisdiction.

4.23.8 However, the CSD intends to monitor DADHC's implementation of the plan and has sought the advice of a number of peak disability agencies.

4.24 Current activities

4.24.1 As at May 2006, the CSD was working on over 40 projects which included investigations, research projects, reviews, and monitoring developments in specific or new policies and programs as well as the implementation of recommendations from investigations and inquiries.

4.24.2 Projects include examining:

- the extent and adequacy of interagency work across NSW in relation to child protection issues;
- agency responses to children at risk due to parental substance abuse;
- the circumstances of children and young people in statutory care who are living in accommodation provided under SAAP;
- the interaction of people with disabilities in care and the NSW health system.

4.24.3 The Ombudsman commented that, where recommendations have been made for systemic improvements, an important part of the CSD's work is then convincing agencies of the need for change. Following an agency's acceptance of recommendations, the CSD monitors their implementation until there is a satisfactory resolution of the issues.

4.24.4 The progress made by agencies in implementing recommendations is set out in the Ombudsman's annual reports, in the annual reports on reviewable child and disability deaths and also through special reports to Parliament.

Chapter Five - Conclusion

- 5.1 The aim of the Committee's stakeholder review was to gauge the major issues and identify any problem areas that have emerged since the enactment of the *Community Services Legislation Amendment Act 2002*, in preparation for the statutory review of CS-CRAMA to be commenced by the Committee in 2007. The review has provided insights into the perspective of stakeholders on the current system, and their relationship and interaction with the Office of the Ombudsman. Obviously, the statutory review will require a much more wide-ranging inquiry exercise, involving public hearings to take evidence from key departments and public sector organisations, as well as the stakeholders who have participated in this review.
- 5.2 Therefore, this report is a precursor document intended to give an impression of the perceived problems and issues with the current system rather than an exhaustive, complete account accompanied by recommendations for reform. The changes that resulted from the merger were significant and required considerable effort and resources on the part of the Ombudsman's Office to consolidate this new area of jurisdiction.
- 5.3 The Ombudsman has stated that the focus of the Community Services Division's work is critical issues for vulnerable consumers in the community services sector and that to this end, the Division is conscious of the need to make strategic and well-informed decisions about where its resources are best utilised and where service improvement is best targeted.¹⁶ The Committee notes that such decisions involve difficult questions of balance. The approach to be taken in this regard is directly relevant to the extent to which the objectives of the Act can be realised.
- 5.4 The Committee considers that although a major thrust of the Division's work is recommending strategic improvements and monitoring agencies' progress in achieving them, the submission by the Ombudsman has provided evidence of initiatives taken to improve the Office's individual complaint handling processes and responsiveness, to increase accessibility for children and young people and to engage with both providers and users of community services.
- 5.5 The Ombudsman's special investigative powers and his capacity to make a special report to Parliament appear to have been appreciated by stakeholder groups and to have been of benefit to the community services sector.
- 5.6 In light of the information provided to the Committee during the review, the following issues are identified as matters warranting further assessment and evaluation during the statutory review, insofar as they pertain to the fulfilment of the Act's objectives:
- the extent of the implementation of the Ombudsman's recommendations made in reports to Parliament and arising from investigations;
 - the percentage of formal complaints which are resolved;

¹⁶ NSW Ombudsman, *Community Services Review: Submission to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission*, June 2006, pp.24 and 25

Conclusion

- the level of complainants' satisfaction with the handling of their complaints;
- the level of public recognition of the role of the Ombudsman in relation to community services.

5.7 In relation to access, the Committee is also of the view that, if the Deputy Ombudsman's audit initiative in relation to indigenous issues is extended across the Ombudsman's jurisdiction, any results relevant to the community services area should be considered in the statutory review or, if the auditing has not commenced, that the feasibility of extending the reach of this initiative be considered.

5.8 Of particular concern to the Committee is the extent to which, under the new legislative scheme, the Ombudsman is able to:

- promote access to advocacy support for people receiving, or eligible to receive, community services to ensure adequate participation in decision making about services they receive¹⁷; and
- facilitate immediate responses to emergency situations not adequately dealt with by DoCS or other service providers.

The integrity of the overall system within which the Ombudsman's Office carries out its community services jurisdiction is central to any assessment of the aforementioned issues.

¹⁷ *Community Services (Complaints, Reviews and Monitoring) Act 1993*, section 11(1)(j)

Appendix 1: Committee Minutes



PARLIAMENT OF NEW SOUTH WALES

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

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission

Wednesday 25 May 2005, 6:35pm
Room 1043, Parliament House

Members Present

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Clarke and Mr Corrigan

Apologies: Ms Hay and Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

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6. Inquiry program

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(c) Proposed inquiry program re oversight of the Office of the Ombudsman

The Committee discussed the Ombudsman's jurisdiction in relation to the Community Services Division. The Committee Manager briefed the Committee on a meeting with Mr Steve Kinmond, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner. The Secretariat was directed to prepare a brief for the Committee to consider outlining the scope for a possible Committee inquiry in this area.



Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission

Wednesday 7 July 2005, 4:00pm
Waratah Room, Parliament House

Members Present

Mr Lynch (Chairman), Mr Breen, Mr Clarke, Mr Corrigan, Ms Hay, Mr Kerr.

In attendance: Helen Minnican, Kylie Rudd, Pru Sheaves

Apologies

Ms Burnswoods (Vice-Chairman)

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3. Inquiry program

(a) *Proposed inquiry program re review of the Ombudsman's Community Services jurisdiction*

The Committee discussed the brief previously circulated on the proposed inquiry into the Ombudsman's jurisdiction with respect to Community Services.

Resolved on the motion of Mr Breen, seconded Ms Hay, that the Committee adopt the following terms of reference:

In accordance with its functions under s.31B of the *Ombudsman Act 1974* the Committee on the Office of the Ombudsman and the Police Integrity Commission is to conduct a stakeholder review of the merger of the Community Services Commission into the Office of the Ombudsman, and any issues arising from this.

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PARLIAMENT OF NEW SOUTH WALES

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

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission

Wednesday 12 October 2005, 6:30pm

Room 1043, Parliament House

Members Present

Mr Lynch (Chair), Mr Breen, Mr Clarke, Mr Corrigan, Mr Kerr

Apologies: Ms Burnswoods

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

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4. Inquiry Program

The Chairman discussed the inquiry program for the remainder of 2005, including:

- the stakeholder review of the Ombudsman's Community Services jurisdiction

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Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission

Wednesday 9 November 2005, 6.30pm

Room 1043, Parliament House

Members Present

Mr Lynch (Chair), Mr Breen, Ms Burnswoods, Mr Chaytor, and Mr Corrigan

Apologies: Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

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3. Inquiry Program

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Stakeholder review of the Ombudsman's Community Services jurisdiction:

The Committee Manager advised that late submissions were expected.

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Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission

Wednesday 29 March 2006 at 6.30pm

Room 1153, Parliament House

Members Present

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Breen, Mr Chaytor, Mr Clarke, and Mr Corrigan

Apologies

Mr Kerr

In attendance: Helen Minnican, Pru Sheaves, Jennifer North.

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4. Inquiry Program: Reports and new inquiries

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(d) Stakeholder review of the Community Services Division.

Discussion ensued. Resolved on the motion of Mr Chaytor, seconded Mr Corrigan, that the submissions received from Association of Children's Welfare Agencies, Foster Care Association (NSW) Inc and People with Disability Australia Incorporated (previously circulated) be forwarded to the Ombudsman on a confidential basis for response, with a view to the Committee determining the need for hearings.

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Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission

Thursday 3 August 2006 at 10.00am

Room 1043, Parliament House

Members Present

Mr Lynch (Chairman), Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan and Ms Rhiannon

Apologies

Mr Kerr

In attendance: Helen Minnican, Jennifer North and Hilary Parker

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2. Inquiry Program

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Review of the Community Services jurisdiction

The submission from the Ombudsman, dated 23 June 2006, was circulated to Committee Members.

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Appendix 2: List of submissions

1. Association of Childrens Welfare Agencies
2. Foster Care Association (NSW) Inc
3. People with Disability Australia Inc
4. NSW Council for Intellectual Disability
5. Aboriginal Child, Family and Community Care State Secretariat
6. NSW Ombudsman