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Intellectual Disability  
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Dear Sirs/Mesdames

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

Thank you for the opportunity to provide our views on the operation of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. This is an area that concerns people with an intellectual disability and we welcome the opportunity to make a submission.

**About IDRS**

The Intellectual Disability Rights Service (IDRS) is a community legal centre that provides legal services to people with an intellectual disability throughout New South Wales. This includes telephone legal advice and legal representation in selected matters. We also engage in policy and law reform work and community legal education with a view to advancing the rights of people with an intellectual disability.

**Do the policy objectives of the Act remain valid?**

The objects in s.3(1) of the *Community Services (Complaints, Review and Monitoring) Act 1993* (CRAMA) are as relevant today as when the statutory scheme commenced. People with an intellectual disability continue to experience dreadful conditions and terrifying incidents while receiving disability services. They are also often powerless to take these issues up themselves. There is a need for an independent complaints system to ensure that these matters can be resolved.

***The experiences of consumers of disability services***

Some recent examples that have come to the attention of IDRS:

- Care workers failed to administer pain relief to a client following an operation. When the client then fell and split open stitches there was a failure to seek

medical attention. The client was later taken out against medical advice and sustained another fall resulting in facial injuries and broken teeth but was not taken to hospital.

- A client's Webster pack for administering medication was incorrectly filled by the pharmacist and he was given the wrong medication for nearly one week. Procedures required that staff should count and check medications before administering them. Incorrect treatment of the client's diabetes resulted in him collapsing and losing consciousness. The client stopped breathing and oxygen was administered by staff. Staff attributed the incident to a seizure and did not get the client checked by a doctor.
- A client was told to go to bed but he said he wanted to watch the end of a TV show. In response the staff member threw water over him. On another occasion a staff member was reported to be hitting the client whilst driving. As a result the car left the road.

The CRAMA legislation is vital to families and other advocates in providing an avenue to have such serious complaints investigated. Without the powers in the current legislation families would have no recourse other than to pursue costly and lengthy legal action which would not necessarily deal with their concerns about the welfare and safety of their own family member and other service users.

There are many other situations about which we have provided legal advice, such as assaults and sexual assaults in care and where residents have sustained injuries as a result of the negligence of staff. We would be happy to provide detailed case studies should the Committee so wish.

### ***Powerlessness of consumers of disability services***

People with a disability receiving accommodation and other support services are highly vulnerable. They may be non-verbal or have real difficulties communicating. They may not understand that what happened to them was unacceptable or wrong. They may be unaware of their rights or the fact that they can make a complaint. They may not know how to make a complaint or who to direct it to.

Without the assistance of family, friends and disability advocates many complaints would not be raised. People living in supported accommodation are in an environment that might be totally controlled by those they seek to complain about. They and their families may fear that they will be victimised if they do make a complaint. They may fear they may lose a service that they desperately need if they did lodge a complaint.

Many people with an intellectual disability who are accommodated in disability services have no contact with family or advocates outside the service. Unlike those involved in the cases above, there is no-one to raise concerns about the service provided to them. IDRS would like to stress the importance of the Official Community Visitor Scheme provided for in the legislation in monitoring services and raising concerns about service quality and the welfare of individuals who otherwise may have no-one to raise problems that affect them. It is important that this scheme remain effective and that it is able to meet the demands of the growing number of services to be visited. Unless properly resourced, there is the risk that the Community Visitor Scheme will lose its effectiveness.

## **Do the terms of the Act remain appropriate for securing its objectives?**

Many aspects of CRAMA have made a real impact in improving the lives of people with an intellectual disability. We note the positive impact of the complaint made to the Ombudsman in relation to the role of the Department of Ageing, Disability and Home Care in the Senior Officers Group on the issue of the involvement of people with an intellectual disability and the criminal justice system.

There have been some benefits to the merger of the Community Services Commission with the Ombudsman's office. Complaints can be made about issues which apply to more than one government agency or agencies that fall outside of CRAMA. The Ombudsman can also use the powers available to him under the *Ombudsman Act 1974* (NSW).

We have chosen to use this submission to highlight some areas that we believe could be looked at with a view to improving the system or indeed delivering on the promise of the Act.

### ***Is the Community Services Division underutilised?***

In 2005/2006 only 219 formal complaints were made to the Community Services Division in relation to accommodation and support services for people with an intellectual disability (refer to the Ombudsman's Annual Report).

This number of complaints cannot truly reflect the number of issues needing to be resolved via an external complaints body. There are many thousands of people with an intellectual disability who are users of community services.

### ***Small numbers of direct investigations***

There are only a handful of complaints the subject of direct investigation by the Community Service Division (3% of community services complaints). Four such investigations were finalised in 2005/2006. There have also been a low number of reviews of the circumstances of people with a disability in care. This raises questions about the effective resourcing of the Division.

### ***Lack of enforceability of Ombudsman's recommendations; lack of use of the ADT***

The Ombudsman has no power to enforce the recommendations it makes to service providers. Agencies are asked for their responses and the Community Services Division monitors implementation. It is difficult to get a sense of how the success of complaints is measured and what is involved in the monitoring of the implementation of recommendations.

Clause 5(1)(a) of the *Community Services (Complaints, Reviews and Monitoring) Regulation 2004* (the Regulations) provides for a review by the Administrative Decisions Tribunal (ADT) of a decision by a service provider not to take action recommended by the Ombudsman.

We are not aware of any instances of where this jurisdiction of the ADT has been utilized by on or behalf of people with a disability. As far as we are able to ascertain, when the ADT has been used to challenge the funding of a disability service it has been done by peak bodies, most often People with Disability Australia Inc. We could find only one

decision, *DV v Community Services Commission* [2002] NSWADT 246 in which an individual had brought the application.

It is difficult to gauge the numbers of complaints that have merit but are not able to be resolved by the Community Services Division. Perhaps these cases form part of the 32% of community service complaints declined after making inquiries.

### ***Engagement with advocacy groups***

It is clear from the drafting of the new s.83 post the merger with the Ombudsman that the Community Services Division was intended to have a more distant relationship with advocacy groups in the disability sector.

The old s.83 (of the *Community Services (Complaints, Reviews and Monitoring) Act*) gave the Commission functions of:

- Promoting, liaising with and assisting advocacy services and organisations
- Supporting the development of advocacy programs

These functions were removed. There is a new provision relating to promoting access to advocacy support to ensure that persons participate in decision making about the services they receive (s.11(1)(j) of CRAMA). This is a very different thing from engaging directly with advocacy services themselves and supporting their development.

The function of consulting with advocacy groups remains post the merger, but consultation is very different from engagement with such services.

Should staff assisting the Committee wish to discuss these issues further, please contact Linda Rogers, solicitor, on 9318 0144 or 0400 077 244. IDRS is available to give evidence to the Committee should it require us to do so.

Yours faithfully,



**Janene Cootes**  
**A/Executive Officer**  
**21 September 2007**