

REPORT 90 SUMMARY (1999) - REVIEW OF THE COMMUNITY SERVICES (COMPLAINTS, APPEALS AND MONITORING) ACT 1993 (NSW)

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Introduction

The New South Wales Law Reform Commission was asked to review the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) (CAMA) and the associated regulations to look at whether the policy objectives of CAMA are still valid and whether the terms of the Act are appropriate for securing those objectives. The Commission was also asked to review the *Disability Services Act 1993* (NSW) (DSA).

In September 1993, the Commission published Issues Paper 15 on its review of CAMA and Issues Paper 16 on its review of the DSA. The Commission consulted extensively on the issues raised in these papers. It held several public seminars in Sydney and regional areas, engaged consultants to conduct a series of focus groups with people with disabilities and with children who used or had used substitute care services, and received over 90 oral and written submissions.

Our consultations revealed widespread community support for CAMA and the processes and programs it establishes. Except for some changes to particular provisions, mainly to address an anomaly or omission that was brought to our attention, the Commission recommends that the overall legislative framework remain intact. The Commission also recommends that the Government continue to support the work of the Community Services Commission and the Community Visitors to ensure that they continue to perform their functions effectively.

Objects and Principles

The objects and principles of CAMA were widely supported. The Commission makes some recommendations, mainly to ensure that the objects reflect the various aims of the legislation and the programs designed to achieve those aims. It also recommends some changes to streamline and clarify the principles so that they apply to all persons and bodies exercising functions under CAMA.

Section 5

The Commission recommends the repeal of section 5. It provides that the Community Services Commission and the Community Services Division of the Administrative Decisions Tribunal cannot make recommendations or decisions which affect or are inconsistent with resource allocation or government policy. The Commission concludes that the provision is unnecessary as it relates to the Community Services Commission which can only make recommendations. In addition, section 5 is probably redundant in so far as the Community Services Division is concerned as it is governed by a different, less onerous, provision in the *Administrative Decisions Tribunal Act 1997* (NSW). That provision requires that the Administrative Decisions Tribunal apply government policy unless the policy is unlawful or would produce an unjust result in the circumstances.

Community Services Commission

The Community Services Commission enjoys wide community support. Its structure and independence is considered vital. To ensure it remains truly independent, the Commission recommends that a Parliamentary Joint Committee be established to oversee the operation of the Community Services Commission. Such committees already exist to oversee the functions of various bodies including, for example, the NSW Ombudsman and the Independent Commission Against Corruption (ICAC). One of the functions of the proposed Parliamentary Joint Committee is to approve the appointment of the Community Services Commissioner.

A number of other recommendations are made in Chapter 3 which address some of the specific issues raised in the consultation documents. For example, the Commission recommends that:

the Community Services Commission be able to review groups of children in care;

retribution against a service user for lodging or intending to lodge a complaint be an offence even where the complaint was brought by another person; and

the jurisdiction of the Community Services Commission be extended to cover residents of boarding houses, children in foster care and the actions of the Children's Guardian.

The Commission also recommends that stronger and clearer powers be given to the Community Services Commission. For example, it is recommended that the Community Services Commission have powers to require service providers to answer questions and to provide information, when requested, on the implementation of recommendations made by the Community Services Commission as a result of a complaint investigation, review or inquiry.

Community Visitor Scheme

The Community Visitor Scheme operating under CAMA is a worthy and widely supported program. Community Visitors play an important role in protecting and advocating for the interests of children, young people and adults in residential care. They help residents identify and solve concerns at the local level and complement the monitoring and review work of the Community Services Commission.

The Commission makes recommendations designed to ensure the continued independence of community visitors and to streamline and clarify existing provisions. The functions and powers of the

Community Visitors should, for example, be located in CAMA itself rather than the Regulation as is currently the case. The Commission also recommends that Community Visitors continue to have powers to enter premises without notice at any reasonable time and to confer alone with residents. In the Commission's view, the Community Visitor Scheme can only be effective if it is adequately resourced to enable regular and frequent visits to be made to services.

Community Services Division of the Administrative Decisions Tribunal

The Community Services Division of the Administrative Decisions Tribunal (ADT) replaces the former Community Services Appeals Tribunal (CSAT) that had operated under CAMA. The new Community Services Division now exercises most of its functions and powers under the *Administrative Decisions Tribunal Act 1997* (NSW). It does retain some functions and powers under CAMA. However, the Commission feels this is cumbersome and may lead to confusion. It therefore recommends that all provisions dealing with the powers, functions or procedures of the Community Services Division be transferred from CAMA to the *Administrative Decisions Tribunal Act 1997* (NSW).

The Commission makes some recommendations in relation to the constitution of the Community Services Division. In particular, the Commission recommends that members of the Community Services Division should have knowledge and experience of disability issues and issues affecting children and young people. The Commission also makes recommendations in relation to which decisions should be reviewable by the Community Services Division. These recommendations are consistent with the Commission's view that all administrative decisions made under an enactment which are likely to affect the interests of a person should be reviewable on their merits. This includes decisions of non-government service providers who provide services under a contracting-out arrangement which would otherwise have been provided by government. In relation to who may bring an application to the Community Services Division, the Commission recommends that the standing provision should be interpreted broadly to allow actions to be brought in the public interest.

Community Services Review Council

The Commission considers that an independent body is required to oversee the operation of the complaints, review and monitoring processes set up under CAMA. There is also a need for a new and separate chain of accountability to ensure the independence of the bodies established by CAMA. However, due to the limitations of the Community Services Review Council, the Commission believes that it is no longer an appropriate body to perform these functions and therefore should be abolished.

In its place, the Commission recommends that a Parliamentary Joint Committee be established to oversee the operation of the Act. A consultative committee should also be established by the Community Services Commissioner (with the Minister's approval) comprising persons who represent the interests of consumers, families, carers, advocates and service providers. Together, these would provide advice to the Minister on matters concerning the operation of CAMA. The Community Services Commissioner should also be encouraged to set up an inter-agency forum, comprising representatives of the various relevant agencies including the Department of Community Services, the Ageing and Disability Department, the Ombudsman and the Children and Young Persons Commission. They should meet regularly to exchange information, discuss issues of overlap and duplication and devise strategies to co-ordinate their services in a more effective way.