

COMMUNITY SERVICES (COMPLAINTS, APPEALS AND MONITORING) ACT 1993 No. 2

NEW SOUTH WALES



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**COMMUNITY SERVICES (COMPLAINTS, APPEALS AND
MONITORING) ACT 1993 No. 2**

NEW SOUTH WALES



Act No. 2, 1993

An Act to provide for complaints, appeals and monitoring in relation to the provision of community services; to provide for Community Visitors and their functions; to constitute, and confer and impose functions on, the Community Services Commission and the Community Services Appeals Tribunal; and for other purposes. [Assented to 8 April 1993]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Community Services (Complaints, Appeals and Monitoring) Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation, being a day or days not later than 12 months after the date of assent.

Objects and principles

3. (1) The objects of this Act are as follows:

- (a) to foster, in community services and programs, and in related services and programs, an atmosphere in which complaints and independent monitoring are viewed positively as ways of enhancing the delivery of those services and programs;
- (b) to provide for the resolution of complaints about community services and programs, especially complaints by persons who are eligible to receive, or receive, those services, by families and by persons advocating on behalf of such persons or families;
- (c) to encourage, wherever reasonable and practicable, the resolution of complaints at a local level;
- (d) to encourage, wherever reasonable and practicable, the resolution of complaints through alternative dispute resolution;
- (e) to provide independent and accessible mechanisms for the resolution of complaints, for the review of administrative decisions and for the monitoring of services, programs and complaint procedures; and
- (f) to encourage compliance with the objects, principles and provisions of the community welfare legislation.

(2) The following principles must be observed in exercising functions under this Act:

- (a) the paramount consideration in providing a service for a person must be the best interests of the person;

- (b) a person who is eligible to receive, or receives, a community service is also to receive an adequate explanation of the service, is to be heard in relation to the service and may question decisions or actions that affect the person in relation to the service;
- (c) a service provider is to promote and respect the legal and human rights of a person who receives a community service and must respect any need for privacy or confidentiality;
- (d) a service provider is, to the best of his or her ability, to provide such information about the service as may enable an appropriate decision to be made by the person for whom the service is, or is to be, provided;
- (e) a service provider is to enable a complaint about the service to be dealt with fairly, informally and quickly and at a place convenient to the complainant;
- (f) a complaint about the provision of a service is to be dealt with even if it is made by another person or behalf of the person eligible to receive, or receiving, the service.

Definitions

4. In this Act:

“**Commission**” means the corporation constituted by section 77;

“**Commissioner**” means the Commissioner for Community Services holding office under section 78;

“**community service**” means:

- (a) a service rendered under the community welfare legislation; or
- (b) a service rendered by an organisation that is covered by an arrangement referred to in paragraph (d) of the definition of “service provider” in this section;

“**community welfare legislation**” means:

- (a) this Act and any other Act administered by the Minister within the Department; and
- (b) the Home Care Service Act 1988; and
- (c) any instrument in force under those Acts;

“**Department**” means the Department of Community Services;

“**Deputy President**” means the Deputy President of the Tribunal;

“**Director-General**” means the Director-General of the Department of Community Services;

“**exercise**” of a function includes, where the function is a duty, the performance of the duty;

“**function**” includes a power, authority and duty;

“**Investigation Division**” means the Investigation Division of the Commission constituted by section 80;

“**member**” means a member of the Tribunal;

“**person eligible for a service**” includes a person claiming to be eligible for a service;

“**President**” means the President of the Tribunal;

“**public authority**” means a government department, administrative office or declared authority specified in Schedule 1, 2 or 3 to the Public Sector Management Act 1988, and includes an authority prescribed as a public authority by the regulations;

“**Review Council**” means the Community Services Review Council constituted by section 107;

“**service provider**” means:

- (a) the Department or a person or organisation funded by the Minister to provide a service; or
- (b) a person or organisation authorised by the Minister to provide a service; or
- (c) the Home Care Service of New South Wales or a person or organisation funded by the Home Care Service to provide a service; or
- (d) a person or organisation that is covered by an arrangement (made after the commencement of this section) between the Minister and a State or Commonwealth Minister and whereby that State or Commonwealth Minister agrees to the person or organisation being a service provider for the purposes of this Act;

“**Solution Facilitation Division**” means the Solution Facilitation Division of the Commission constituted by section 80;

“**Tribunal**” means the Community Services Appeals Tribunal constituted by section 92.

Administration of community welfare legislation

5. The determination of an issue under this Act, decisions and recommendations on matters arising from the operation of this Act must not be made or taken in a way that is (or that requires the taking of other action that is):

- (a) beyond the resources appropriated by Parliament for the delivery of community services; or

- (b) inconsistent with the way in which those resources have been allocated by the Minister and the Director-General in accordance with Government policy; or
- (c) inconsistent with Government policy, as certified in writing by the Minister and notified to the Tribunal, Commission or other person or body making the determination.

Act binds the Crown

6. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—COMMUNITY VISITORS

Appointment of Community Visitors

7. (1) The Minister may, after consultation with the Review Council, appoint an eligible person to be a Community Visitor for the purposes of this Act.

(2) An eligible person is one who, in the opinion of the Minister:

- (a) has appropriate knowledge and expertise in the matters relating to community services in which the person would be most involved as a Community Visitor, and
- (b) has a commitment to the objectives of the community welfare legislation; and
- (c) has skills in the solving of problems about access to, and the use of, community services; and
- (d) is not employed in the Department as an officer or temporary employee within the meaning of the Public Sector Management Act 1988.

(3) A Community Visitor holds office for such period not exceeding 2 years as is specified in his or her instrument of appointment but, if qualified, is eligible for appointment for consecutive terms of office totalling not more than 4 years.

(4) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the Community Visitors and a Community Visitor is not subject to that Part.

Functions of Community Visitors

8. (1) A Community Visitor may:

- (a) at any reasonable time, enter and inspect a place at which a visitable service is provided; and
- (b) confer alone with any person who is resident or employed at such a place; and
- (c) inspect any document held at such place which relates to the operation of a visitable service; and
- (d) provide the Minister and the Commission with advice or reports on any matters relating to the conduct of such a place; and
- (e) exercise such other functions as may be prescribed by the regulations for the purposes of this section.

(2) Before inspecting a document as referred to in subsection (1), the Community Visitor must take all reasonable steps to ascertain, and must have regard to (but is not bound by), the wishes of any person to whom the document relates and for whom a service is provided at that place.

(3) A Community Visitor must, in exercising a function under this section, act in such a manner as preserves, as far as possible, the privacy of each person resident at that visitable service.

(4) In this section “visitable service” means:

- (a) an accommodation service provided by the Department or by a funded agency where a person using the service is in the full-time care of the service provider; or
- (b) a service prescribed by the regulations as a visitable service.

Co-ordination of Community Visitors

9. (1) The Commission has a general oversight and co-ordination role in relation to Community Visitors and may determine priorities for the services to be provided by Community Visitors.

(2) The Commission may convene such meetings of Community Visitors, and take such other action, as may be necessary for the exercise of its functions under this section.

(3) At least one such meeting is to be held in each calendar year.

Annual report

10. (1) During each year, as soon as practicable after 30 June but on or before 31 December, the Commission is to prepare and forward to the Minister a report of the work and activities of the Community Visitors for the period of 12 months ending on 30 June in that year.

(2) The Minister is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

PART 3—PERSONS IN CARE

Review of situation of person in care

If. (1) The Commission may, on application or on its own initiative, review the situation of a child in care or a person in care.

(2) In carrying out a review, the Commission is to look at such aspects of the welfare, status, progress and circumstances of the child in care or person in care as are referred to in the application or as it thinks fit,

(3) On completion of a review, the Commission is to make a written report that:

- (a) informs the Minister of the results of the review; and
- (b) advises the Minister as to whether any change (and, if so, what change) in the circumstances or status of the child in care or person in care whose situation was reviewed would, in the opinion of the Commission, promote the welfare and interests of the child or person.

(4) In the exercise of its functions under this section in relation to a child in care or person in care, the Commission may:

- (a) inspect files, records and papers in respect of the child or person that are kept in the offices of the Department or an applicable service provider; and
- (b) hear or receive submissions from any person, including the child in care or the person in care.

(5) A child in care or a person in care is not eligible for a review under this section unless the child or person has been-in care for a period of more than 3 months, or an aggregate period of 6 months, in the period of 12 months preceding the application for review or the decision to review.

(6) In this section:

“applicable service provider” means a service provider, or a service provider of a class, prescribed by the regulations as an applicable service provider for the purposes of this section;

“child in care” means:

- (a) a child who is in the custody of the Director-General pursuant to a temporary care arrangement; or
- (b) a child residing in a residential child care centre, otherwise than as a member of the household of any other person who resides there; or

- (c) a child who is being fostered by a person into whose care the child has been placed:
 - (i) by an authorised private fostering agency; or
 - (ii) by or with the written approval of the Minister or the Director-General; or
- (d) a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii) of the Children (Care and Protection) Act 1987; or
- (e) a child who is a ward or protected person;

“person in care” means a person who is in the care of the Director-General or an applicable service provider.

PART 4—COMPLAINTS

Division 1—Making of complaints

Complaint of unreasonable conduct by service provider

12. A person may make a complaint to the Commission that a service provider has acted unreasonably:

- (a) by not providing a community service to a particular person; or
- (b) by providing a community service to a particular person; or
- (c) in the way in which a community service was provided to a particular person; or
- (d) by withdrawing or varying a community service to a particular person; or
- (e) in the administration of a community service in relation to a particular person.

Who may make a complaint?

13. (1) A complaint may be made by any person who demonstrates to the satisfaction of the Commission that he or she has a genuine concern in the subject-matter of the complaint.

(2) Without limiting the generality of subsection (1), a complaint may be made by any person who is responsible for, or is a next friend of, the person to whom the relevant service was provided.

(3) A person found by the Commission to be unjustifiably interfering in a matter is not entitled to make a complaint in relation to the matter.

(4) In determining whether a person is unjustifiably interfering in a matter, the Commission is to take into account, to the extent that it is practicable to do so, the wishes and interests of any other persons who have an interest in the matter.

Persons to be notified of complaint

14. (1) On receiving a complaint, the Commission must give written notice of the making of the complaint, the nature of the complaint and the identity of the complainant to the person against whom the complaint is made.

(2) This section does not require the Commission to give notice if the giving of the notice will or is likely to:

- (a) prejudice the investigation of the complaint; or
- (b) place the health or safety of a person to whom a service is provided at risk; or
- (c) place the complainant at risk of intimidation or harassment.

(3) Regulations may be made for or with respect to:

- (a) the recording of complaints made to the Commission and complaints shown on returns made by service providers; and
- (b) the maintenance of a central register of those complaints; and
- (c) the publication of information about those complaints.

Can a complaint be withdrawn?

15. (1) A complainant may withdraw the complaint at any time by notice in writing to the Commission.

(2) On the withdrawal of a complaint, the Commission may cease to deal with it or may continue to deal with the matter the subject of the complaint if it appears to the Commission that:

- (a) the matter raises a significant issue of public safety or public interest; or
- (b) the matter raises a significant question as to the appropriate care or treatment of a client by a service provider.

Division 2—The preliminary inquiry stage

Reference to the Investigation Division

16. On its receipt by the Commission, a complaint is to be referred to the Investigation Division for assessment.

The purpose of assessment

17. The assessment of a complaint within the Investigation Division is for the purpose of deciding whether:

- (a) the complaint should be referred to the service provider for resolution, if possible; or
- (b) the complaint should be the subject of alternative dispute resolution, investigated or referred to another person or body for investigation; or
- (c) the Commission should decline to entertain the complaint.

Commission may require further information

18. For the purposes of the assessment, the Commission may require the complainant to provide further particulars of the complaint within the time specified by the Commission.

Time for completion of assessment

19. The Commission is required to carry out its assessment of a complaint:

- (a) as soon as possible but no later than 28 days after receiving the complaint; or
- (b) if the Commission has required the complainant to provide further particulars of the complaint, within 28 days after the date on which the Commission required those particulars to be provided.

Reference of complaint to another person or body for investigation

20. (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint) to another person or body if, during the assessment, it appears that the complaint raises issues which require investigation by the other person or body.

(2) Despite the referral of a complaint (or part), the Commission may, if it considers there are appropriate reasons to do so, continue to deal with the complaint.

In what circumstances can the Commission decline to entertain a complaint?

21. (1) Following the assessment, the Commission may decline to entertain a complaint (or any part of a complaint) for any one or more of the following reasons:

- (a) in the opinion of the Commission, the complaint is able to be resolved at a local level;

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- (b) the complaint (or part) is frivolous, vexatious or not made in good faith;
 - (c) the subject-matter of the complaint (or part) is trivial or does not warrant either alternative dispute resolution or investigation;
 - (d) the complaint does not have sufficient relevance to the best interests of the person receiving the service;
 - (e) the subject-matter of the complaint (or part) has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings;
 - (f) the complaint (or part) raises issues which require investigation by another person or body;
 - (g) there is or was, in relation to the matter complained of, an alternative means of dealing with the matter which is satisfactory to the complainant;
 - (h) the complaint (or part) relates to a matter which occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint;
 - (i) the complainant has failed to provide further particulars of the complaint (or part) within the time specified by the Commission and does not have sufficient reason for doing so;
 - (j) the complaint (or part) concerns a matter that falls within the responsibility of the Commonwealth.
- (2) This section does not exhaust the circumstances in which the Commission may decline to entertain a complaint (or part).

Reference of complaint for alternative dispute resolution

22. (1) Following the assessment:

- (a) if it appears to the Commission that the complainant has taken all reasonable steps to resolve the matter the subject of the complaint with the person against whom the complaint is made; and
- (b) the parties to the complaint consent to the complaint being referred for alternative dispute resolution,

the Commission may refer the complaint for alternative dispute resolution in accordance with Division 3.

(2) This section has effect subject to sections 23 and 24.

Reference of complaint for investigation

23. Following the assessment, if it appears to the Commission that:

- (a) the complaint raises a significant issue of public safety or public interest; or
- (b) the complaint raises a significant question as to the appropriate care or treatment of a client by a service provider; or
- (c) the complaint raises a question as to whether a service provider has acted unreasonably as referred to in section 12,

the Commission may refer the complaint to the Investigation Division for investigation in accordance with Division 4.

Effect of agreement between parties to complaint

24. (1) The Commission must not refer a complaint for alternative dispute resolution if the parties to the complaint have reached agreement concerning the matter the subject of the complaint.

(2) However, the Commission may, despite any such agreement (whenever made), refer the complaint for investigation if it appears to the Commission that:

- (a) the complaint raises a significant issue of public safety or public interest; or
- (b) the complaint raises a significant question as to the appropriate care or treatment of a client by a service provider.

Notice of action taken or decision made following assessment

25. (1) The Commission must give the parties to the complaint notice in writing of the action taken or decision made under this Division by the Commission concerning the complaint.

(2) This section does not require the Commission to give notice of action taken or a decision made to refer a complaint to the Investigation Division if the giving of the notice would:

- (a) prejudice the investigation of the complaint; or
- (b) place the health or safety of a client at risk; or
- (c) place the complainant at risk of intimidation or harassment.

(3) If the Commission declines to entertain the complaint (or part of the complaint) the Commission must include in the notice to the complainant the reasons for its decision.

(4) The Commission must notify a complainant whose complaint is one that can properly be made under this Act that, if the complaint is not resolved to the complainant's satisfaction, the complainant may ask the Commission to further consider the complaint. The Commission may further consider the complaint accordingly.

Division 3—Alternative dispute resolution

Solution facilitators

26. (1) Persons may be employed under Part 2 of the Public Sector Management Act 1988 to be solution facilitators for the purposes of this Act.

(2) The Commission may approve persons to be solution facilitators for the purposes of this Act.

(3) A solution facilitator has the functions conferred or imposed on a solution facilitator by or under this or any other Act.

Resolution of complaint

27. On the referral of a complaint to the Solution Facilitation Division by the Commission, the Commission must nominate a solution facilitator to deal with the complaint.

Notification of arrangements for resolution of a complaint

28. Within 14 days after the referral of a complaint by the Commission to the Solution Facilitation Division, the Commission must give written notice to the parties to the complaint of:

- (a) the referral of the complaint; and
- (b) the details of the arrangements made concerning the process for alternative dispute resolution.

Solution facilitation to be voluntary

29. Participation in the process for alternative dispute resolution by the parties to a complaint is voluntary.

What is the role of a solution facilitator?

30. The function of a solution facilitator is to deal with a complaint:
- (a) by bringing the parties to the complaint together for the purpose of promoting the discussion, negotiation and settlement of the complaint; and

- (b) by undertaking any activity for the purpose of promoting that discussion, negotiation and settlement; and
- (c) if possible, by assisting the parties to the complaint to reach agreement.

Are the parties entitled to be represented?

31. (1) A party to a complaint is not entitled to be legally represented in proceedings before a solution facilitator or, except as provided by this section, represented by an agent.

(2) The Commission may permit a party to a complaint to be represented by an agent if it appears to the Commission that:

- (a) an agent should be permitted to facilitate resolution of the complaint; and
- (b) the agent proposed has sufficient knowledge of the matter the subject of the complaint to enable the agent to represent the party effectively.

(3) The Commission's permission may be given subject to conditions. The entitlement of an agent to represent a party is subject to compliance by the agent with any such conditions.

(4) This section does not prevent an officer of a corporation which is a party to a complaint from representing the corporation.

(5) Contravention of this section does not invalidate any proceedings before a solution facilitator.

Confidentiality of proceedings before a solution facilitator

32. (1) Evidence of anything said or admitted during proceedings before a solution facilitator, and any document prepared for the purposes of the proceedings:

- (a) are not admissible and cannot be used in a proceeding in a court or before a person or body (other than a court) authorised by law, or by consent of parties, to hear and receive evidence; and
- (b) cannot be used by the Commission as a ground for exercising a power of investigation.

(2) A solution facilitator or a party to proceedings before a solution facilitator must not disclose information obtained during the proceedings, except for the purposes of section 34.

Maximum penalty: 10 penalty units.

(3) Subsection (2) does not prevent a solution facilitator from disclosing to the Commission any matter which, in the opinion of the solution facilitator, involves a serious issue of public safety or relates to the commission of a serious offence within the meaning of section 311 of the Crimes Act 1900. However, the solution facilitator is to make the disclosure only if he or she considers that no action will be taken on the matter unless the disclosure is made.

Conclusion of proceedings before a solution facilitator

33. (1) Proceedings before a solution facilitator are concluded:

- (a) if either party terminates the proceedings at any time; or
- (b) if the parties reach agreement concerning the matter the subject of the proceedings.

(2) The person who begins proceedings before a solution facilitator must notify the Commission without delay if the parties reach agreement otherwise than during the proceedings.

(3) Proceedings before a solution facilitator are to cease if they are terminated by the solution facilitator after having formed the view:

- (a) that it is unlikely that the parties will reach agreement; or
- (b) that a significant issue of public safety or public interest has been raised which requires that the proceedings be terminated,

Preparation and distribution of report on conclusion of proceedings before a solution facilitator

34. (1) On the conclusion of proceedings before a solution facilitator, the solution facilitator must report the result of the proceedings to the Commission.

(2) The report may contain a recommendation that the Commission investigate the complaint on which the proceedings were based.

(3) As soon as practicable after receipt of the report, the Commission must give a copy of the report to the parties to the complaint.

Can a complaint be referred for investigation after proceedings before a solution facilitator?

35. (1) The Commission may decide to investigate a complaint that has been subject to proceedings before a solution facilitator.

(2) A complaint may be investigated under this section only if:

- (a) the report of the solution facilitator contains a recommendation that the Commission investigate the complaint; or

- (b) new material concerning the matter the subject of the complaint becomes available and that material raises a matter which would cause the Commission to refer the complaint for investigation in accordance with section 23.

Division 4—Investigation of complaints

The purpose of investigation

36. (1) The investigation of a complaint within the Investigation Division is for the purpose of obtaining information concerning the matter complained of and to determine what action should be taken in respect of the complaint.

(2) The investigation of a complaint is to be conducted as expeditiously as the proper investigation of the complaint permits.

Persons investigated to be given opportunity to be heard in certain circumstances

37. (1) If, following the investigation of a complaint against a service provider the Commission considers there are grounds for adverse comment in respect of the service provider, the Commission must, before making the adverse comment, inform the service provider of the substance of those grounds and give the service provider an opportunity to make submissions.

(2) Any such submission must be made in writing within 28 days after the service provider is so informed or within such further period as the Commission may allow.

(3) This section does not apply if the Commission is satisfied that it is in the public interest to take immediate action without first informing the service provider.

Report on completion of action

38. (1) On completion of an investigation of a complaint, the Commission:

- (a) is to report the result of the investigation, and any action recommended by the Commission, to the complainant and to the service provider the subject of the complaint; and
- (b) may provide a copy of the report to the Minister and inform the Minister of any action taken under subsection (2).

(2) The Commission may:

- (a) request a service provider to report to the Commission on action taken by the provider in response to a recommendation of the Commission resulting from the action taken in relation to a complaint; or
- (b) refer information or evidence from the action taken to another authority having power to investigate the information or evidence; or
- (c) recommend that the Minister send a copy of the report to another Minister, if the other Minister is responsible for a service provider the subject of the complaint; or
- (d) if no action is taken within a reasonable time on a recommendation of the Commission, recommend that the Minister lay before Parliament a special report prepared by the Commission in relation to the recommendation.

Dismissal or termination of matter

39. (1) The Commission may:

- (a) dismiss a complaint by notice to the complainant if the complaint is found to be one that the Commission could have declined to entertain; or
- (b) terminate the matter by sending a letter of explanation or clarification to the complainant.

(2) In any such case, the Commission is not required to make a report under section 38.

PART 5—APPEALS

Division 1—Appeals to the Tribunal

Appeals to the Tribunal

40. (1) A person may make an appeal to the Tribunal:

- (a) on any ground expressly provided for by the community welfare legislation; and
- (b) on the ground that an investigation of a complaint being conducted by the Commission is beyond its powers; and
- (c) on the ground that a decision of the Commission was beyond its powers; and

- (d) against a decision that was made by the Minister, the Director-General or a service provider and is of a class prescribed by the regulations for the purposes of this section; and
- (e) against a decision made by any other State Minister, any Commonwealth Minister or any public authority, if it is within a class of decisions that, with the consent of that Minister or public authority, is prescribed by the regulations for the purposes of this section.

(2) If there is a failure within a reasonable time to make a decision that, if made, could be the subject of an appeal to the Tribunal under subsection (1) (b) or (c), the Tribunal may:

- (a) treat the decision as having been made in a manner unfavourable to the applicant for the decision; and
- (b) permit the applicant to appeal to the Tribunal as if the unfavourable decision had in fact been made.

(3) In this Part, a reference to a decision, in relation to the Commission, includes a reference to action taken by the Commission and to a recommendation made by the Commission.

Who may appeal?

41. (1) An appeal to the Tribunal may be made by any person who demonstrates to the satisfaction of the Tribunal that he or she has a genuine concern in the subject-matter of the decision appealed against.

(2) Without limiting the generality of subsection (1), an appeal may be made by any person who is responsible for, is a next friend of or is appointed by the Tribunal to represent the person to whom the appeal relates.

(3) The Tribunal may, on application, grant leave to appeal against a decision to any person who was entitled to, but did not, appeal against the decision within the time allowed for an appeal.

(4) A person found by the Tribunal to be unjustifiably interfering in a matter is not entitled to an appeal in relation to the matter.

(5) In determining whether a person is unjustifiably interfering in a matter, the Tribunal is to take into account, to the extent that it is practicable to do so, the wishes and interests of any other persons who have an interest in the matter.

Parties to appeal

42. (1) The parties to an appeal are:

- (a) the appellant; and
- (b) the person whose decision is appealed against; and
- (c) a person who, under section 41, is granted leave to appeal; and
- (d) any person who, if the decision were reversed or varied, would be entitled to appeal against the decision as reversed or varied.

(2) If required to do so by the Tribunal before or during the hearing of an appeal, the appellant must give notice of the appeal to any person nominated by the Tribunal as being entitled to the notice.

(3) The Tribunal may, before or during the hearing of an appeal, join a person as a party to the appeal and require the appellant to give the person notice of the joinder.

(4) If 2 or more appeals are considered by the Tribunal to arise from the same circumstances, it may deal with all of the appeals at the same hearing.

Representative appeals

43. (1) The Tribunal may, on application, give leave for an appeal to be dealt with as a representative appeal if it is satisfied that:

- (a) 3 or more persons are entitled to an appeal arising from the same, similar or related circumstances as those to which the application relates but their joinder as appellants is impracticable; and
- (b) the applicant is one of those persons and the others consent to a representative appeal; and
- (c) the application is made in good faith; and
- (d) the applicant is capable of adequately advocating the interests of the persons entitled to appeal; and
- (e) a representative appeal would be to the advantage of the persons entitled to appeal; and
- (f) a representative appeal would be an efficient and effective means of dealing with the claims of the persons entitled to appeal.

(2) The Tribunal may make orders about the making, notification, conduct and determination of a representative appeal.

(3) The decision of the Tribunal on a representative appeal is binding on the persons referred to in subsection (1) (a).

Time for appeals

44. An appeal must be made within 28 days of receipt of notice of the decision appealed against or within such further period as the Tribunal allows.

Appeal to be by way of rehearing

45. Proceedings on an appeal to the Tribunal are to be by way of a new hearing.

Alternatives to Tribunal determining the matter

46. (1) The Tribunal must take such steps as to it seems reasonable to encourage the parties to an appeal to effect an amicable agreement.

(2) The Tribunal may, before it hears an appeal, or before it determines a matter the subject of an appeal, refer the appeal or matter:

- (a) to the service provider for resolution at a local level; or
- (b) to the Commission for alternative dispute resolution or investigation under this Act; or
- (c) for investigation by any other appropriate investigative authority.

Powers of Tribunal in relation to appeals

47. (1) The Tribunal may, before determining an appeal, make an interim order having effect pending determination of the appeal.

(2) In making an interim order and in determining an appeal, the Tribunal has, with respect to, the subject-matter of the appeal, the functions of the person who made the decision the subject of the appeal.

(3) Instead of determining an appeal, the Tribunal may remit the case to be heard and decided again by the person who, or body which, made the decision the subject of the appeal (either with or without the hearing of further evidence) in accordance with the directions of the Tribunal.

(4) The Tribunal may decline to hear or determine an appeal if, in the opinion of the Tribunal:

- (a) the appellant has available an alternative and satisfactory means of redress; or
- (b) the appellant has not made appropriate attempts to have the matter to which the appeal relates resolved otherwise; or
- (c) the ground for the appeal is unacceptable having regard to the frequency of appeals previously made by or on behalf of the appellant in respect of the same subject-matter.

(5) In giving its decision on an appeal, the Tribunal may make recommendations for consideration by the Minister and, if any recommendations are made, the parties affected by the decision are entitled to be informed:

- (a) of any action taken in relation to the recommendations; or
- (b) that it is not proposed to take any such action.

Operation and implementation of decisions pending appeal

48. (1) Subject to this section and section 47, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(2) The Tribunal or the President may, on request being made by a party to an appeal and if the Tribunal or President considers that it is desirable to do so after taking into account:

- (a) the interests of any persons who may be affected by the determination of the appeal; and
- (b) any submission made by or on behalf of the person who made the decision to which the appeal relates; and
- (c) the public interest,

make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) While an order is in force under this section (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal or President may, on application by a party to the appeal, vary or revoke the order by another order.

Restrictions on ordering stay of proceedings

49. (1) Neither the Tribunal nor the President may:

- (a) make an order under section 48 unless the person who made the decision to which such an order would relate has been given a reasonable opportunity to make submissions in relation to the matter; or
- (b) make an order varying or revoking an order in force under section 48 (including an order as varied) unless:
 - (i) the person who made the decision to which such an order would relate; and

- (ii) the person who requested the making of the order; and
 - (iii) if the order has previously been varied by an order or orders under section 48—the person or persons who requested the making of the only, or the later or latest, such order,
- have been given a reasonable opportunity to make submissions in relation to the matter.

(2) This section does not prevent the Tribunal or the President from making an order under section 48 without giving to any person referred to in that section a reasonable opportunity to make submissions in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give the person such an opportunity.

(3) If an order under this section is made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not take effect until a notice setting out the terms of the order is served on the person.

Conditions of order

50. An order in force under section 48 (including an order that has previously been varied on one or more occasions) is subject to such conditions as are specified in the order and the order has effect:

- (a) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal takes effect; or
- (b) if no period is so specified—until the decision of the Tribunal on the appeal takes effect.

Finality of decisions of Tribunal

51. (1) No appeal, other than an appeal to the Supreme Court under Division 3, lies against a decision of the Tribunal with respect to proceedings before it.

(2) A decision of the Tribunal is to be given effect as if it had been made by the person in respect of whose decision the appeal was made, but this subsection does not operate to permit a further appeal just because the decision of the Tribunal is taken to have been a decision of that person.

Division 2—Proceedings before the Tribunal

Proceedings generally

52. (1) The Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit subject to the rules of procedural fairness.

(2) Proceedings before the Tribunal are to be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

(3) The Tribunal is to take such measures as are reasonably practicable:

- (a)** to ensure that the parties to the proceedings before it understand the nature of the assertions made in the proceedings and the legal implications of those assertions; and
- (b)** if requested to do so—to explain to the parties any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceedings; and
- (c)** to ensure that the parties have the fullest opportunity practicable to be heard in the proceedings.

Examination of witnesses

53. In any proceedings before the Tribunal, a member of the Tribunal may examine or cross-examine a witness to such extent as the member thinks proper in order to elicit information relevant to the exercise of the functions of the Tribunal in the proceedings.

Preliminary conferences

54. (1) The Tribunal may, before formally commencing to hear an appeal, confer informally with, or arrange for a member of the Tribunal to confer informally with, the parties to the proceedings and make any determination with respect to the proceedings that is agreed to by the parties.

(2) If proceedings are referred under this section to a member of the Tribunal and the parties agree to the determination of the member, the determination has effect as a decision of the Tribunal.

(3) A determination is not to be made under this section unless the Tribunal, or the member making the determination, is satisfied that the determination is in the best interests of the person whose interests are considered by the Tribunal or member to be paramount.

Lodging of material documents with the Tribunal

55. (1) The respondent to an appeal to the Tribunal must, within 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in the possession, or under the control, of the respondent and is considered by the Tribunal to be relevant to the determination of the appeal.

(2) If the Tribunal considers that a party to an appeal would or might suffer hardship if the period of 28 days provided by subsection (1) is not shortened or extended, the Tribunal may, at the request of the party, make an order directing that the copies referred to in that subsection be lodged with the Tribunal within such shorter or extended period as is specified in the order.

(3) If the Tribunal considers that other particular documents, or that other documents included in a particular class of documents, may be relevant to the determination of the appeal, it may cause to be served on the respondent a notice in writing:

- (a) stating that the Tribunal is of that opinion; and
- (b) directing the respondent to lodge with the Tribunal, before a date specified in the notice, such number of copies as it may specify of each of those other documents that is in the possession, or under the control, of the respondent.

(4) A person must not fail to comply with a direction given to the person under this section unless the person has a reasonable excuse for the failure.

Maximum penalty: 5 penalty units.

Proceedings to be open to the public

56. Proceedings before the Tribunal are to be open to the public unless the Tribunal, in any particular case, determines that the proceedings are to be conducted wholly or partly in the absence of the public.

Publication of names etc.

57. (1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:

- (a) who appears as a witness before the Tribunal in any proceedings;

- (b) to whom any proceedings before the Tribunal relate; or
- (c) who is mentioned or otherwise involved in any proceedings before the Tribunal,

whether before or after the proceedings are disposed of.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

Right of appearance

58. (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or, by leave of the Tribunal, may be represented by a barrister or solicitor or by an agent,

(2) The Commissioner has a right to appear in proceedings before the Tribunal in order to assist the Tribunal otherwise than as a party, unless the proceedings are an appeal against a decision of the Commission.

(3) In proceedings before it in relation to a prescribed person, the Tribunal may appoint a person to act as guardian ad litem for the person.

(4) In proceedings before it in relation to a prescribed person, the Tribunal may, if it considers that the person should be separately represented:

- (a) order that the person be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the person.

(5) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Tribunal has made an order under subsection (4).

(6) In this section:

“**prescribed person**” means a child or a person of a class prescribed for the purposes of this section by the regulations.

Presentation of cases

59. A party to proceedings before the Tribunal may do any of the following:

- (a) call and examine any witness;
- (b) cross-examine any witness called by another party;
- (c) by leave of the Tribunal, examine any copy of a document or part of a document lodged with the Tribunal in relation to the proceedings;
- (d) give evidence on oath;
- (e) produce documents and exhibits to the Tribunal;
- (f) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

Presiding member may compel attendance of witnesses etc.

60. (1) The member presiding at a sitting of the Tribunal may, by a written document, require any person on whom the document is served:

- (a) to appear before the Tribunal for the purpose of giving evidence; or
- (b) to produce to the Tribunal any document that is relevant to the proceedings before the Tribunal,

at a time, date and place specified in the document.

(2) The member presiding at a sitting of the Tribunal may:

- (a) require a person who appears before the Tribunal to give evidence on oath; and
- (b) administer the oath.

(3) The Tribunal may, for such period as it considers necessary for the purpose of hearing proceedings before it, take possession of a document produced to the Tribunal for the purpose of the proceedings.

Witnesses to answer questions

61. (1) A member of the Tribunal may require a person who appears before the Tribunal to answer a question that is reasonably related to the proceedings before the Tribunal.

(2) A person is excused from answering such a question on the ground that the answer might tend to incriminate the person.

Refusal to attend or to answer questions etc.

62. A person must not:

- (a) fail to comply with a requirement made of the person under section 60 or 61 to the extent to which the person is lawfully able to comply with the requirement; or
- (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing before the Tribunal.

Maximum penalty: 5 penalty units.

Expenses of witness

63. (1) A person who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of the person.

(2) This section does not apply to a person who is an officer or employee within the meaning of the Public Sector Management Act 1988.

Adjournment of Tribunal or absence of member

64. (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places, and for such reasons, as it thinks fit.

(2) In the absence from a sitting of the Tribunal of one or more, but not all, of the members nominated to constitute the Tribunal at that sitting, the remaining member or members may exercise the powers of the Tribunal under this section.

Decisions of the Tribunal to set out reasons etc.

65. (1) A decision of the Tribunal with respect to proceedings before it is, as soon as practicable after the decision is given, to be published in writing that includes the reasons for the decision and is signed by the member who presided at the sitting of the Tribunal at which the decision was made.

(2) A decision of the Tribunal is not vitiated merely because of any informality or want of form,

Costs

66. (1) The Tribunal may, if in the particular circumstances of the case it is of the opinion that it is appropriate to do so, make orders with respect to the payment of costs of proceedings before it.

(2) Any such costs may be recovered as a debt.

(3) A certificate purporting to be signed by the President, the Deputy President or the Registrar and containing a statement as to any matters relating to the award of costs under this section is admissible as evidence of those matters.

Division 3—Appeals to the Supreme Court

Rights of appeal to the Supreme Court

67. (1) A party to proceedings before the Tribunal may appeal to the Supreme Court, on a question of law, against any decision of the Tribunal in the proceedings.

(2) If a person:

- (a) has appealed to the Tribunal against a decision and the Tribunal has decided that the person was not entitled to appeal; or
- (b) has applied to be made a party to proceedings before the Tribunal and the Tribunal has refused the application,

the person may appeal to the Supreme Court against the decision of the Tribunal.

(3) An appeal by a person under this section must be made:

- (a) within 28 days after the Tribunal gives the person a written document setting out the terms of the decision the subject of the appeal; or
- (b) within such further time as the Supreme Court may allow.

Orders on appeal to the Supreme Court

68. (1) The Supreme Court is to hear and determine the appeal and may make such orders as it thinks appropriate in the light of its decision.

(2) The orders that may be made by the Supreme Court on an appeal include, but are not limited to:

- (a) an order affirming or setting aside the decision of the Tribunal; and
- (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

Appeal does not stay decision

69. Subject to any interlocutory order made by the Supreme Court, an appeal under this Division does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.

Division 4—Miscellaneous

Misconduct in proceedings before the Tribunal

- 70.** (1) A person must not, in proceedings before the Tribunal:
- (a) wilfully insult the Tribunal; or
 - (b) wilfully misbehave during proceedings before the Tribunal; or
 - (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal; or
 - (d) without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

Maximum penalty: 5 penalty units.

(2) The Tribunal may, in proceedings before it, direct a person who does anything referred to in subsection (1) to leave the place where the proceedings are being conducted.

(3) A person to whom such a direction is given must comply with the direction.

Maximum penalty: 5 penalty units.

Record of proceedings

71. (1) The member presiding at a sitting of the Tribunal is to cause a record to be kept of any decision made at the sitting and of the reasons for the decision.

(2) The regulations may make further provision with respect to the keeping of records of proceedings before the Tribunal.

Authentication of documents etc.

72. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the President, the Deputy President or the Registrar.

(2) Judicial notice is to be taken of the signature of the President, the Deputy President or the Registrar when appearing on a document issued by the Tribunal.

Immunity of judicial officer who is a member of the Tribunal

73. Any member of the Tribunal who is a judicial officer within the meaning of the Judicial Officers Act 1986 has, in the execution of his or her functions as a member of the Tribunal, the same protection and immunity as he or she has as such an officer.

Rules

74. (1) The President and 2 other members of the Tribunal may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Tribunal.

(2) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

Reports

75. (1) The President is to submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal.

(2) A report is to deal with such matters as the Minister directs and with such other matters as the President considers appropriate to include in the report.

Service of documents etc. by the Tribunal

76. (1) Any document or other instrument authorised or required by this Act to be served by the Tribunal on a person is sufficiently served if the document or other instrument is:

- (a) delivered personally to the person; or
- (b) left with a person who is apparently of or above the age of 16 years at, or sent by post to, the address last known to the Tribunal of the person on whom the document or other instrument is to be served; or
- (c) where no address of the person is known to the Tribunal, published or otherwise dealt with as may be prescribed by the regulations.

(2) If such a document or instrument is published or otherwise dealt with as referred to in subsection (1) (c), it is taken to have been served at such time as may be prescribed by the regulations.

PART 6—THE COMMUNITY SERVICES COMMISSION

Division 1—Establishment of the Commission

Constitution of the Commission

77. (1) There is constituted by this section a corporation with the corporate name of the Community Services Commission.

(2) The affairs of the Commission are to be managed by the Commissioner for Community Services.

(3) Any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.

(4) The Commission is a statutory body representing the Crown.

Commissioner for Community Services

78. (1) There is to be a Commissioner for Community Services appointed by the Governor on the recommendation of the Minister after consultation with the Review Council.

(2) The person appointed to be Commissioner is to be a person who, in the opinion of the Minister:

- (a) has a commitment to the objectives of the community welfare legislation; and
- (b) has skills in the solving of problems about access to, and the use of, community services.

(3) The employment of the Commissioner is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(4) The Governor may remove the Commissioner from office only for incapacity, incompetence or misbehaviour.

Acting Commissioner

79. (1) The Minister may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of Commissioner) and the person, while so acting, has all the functions of the Commissioner.

(2) The Minister may, at any time, remove a person from the office of acting Commissioner.

(3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Investigation Division and Solution Facilitation Division

80. The Commission is to include within its organisation an Investigation Division and a Solution Facilitation Division.

Seal of the Commission

81. The seal of the Commission is to be kept by the Commissioner and is to be affixed to a document only:

- (a) in the presence of the Commissioner or a member of the staff of the Commission authorised for the purpose by the Commissioner; and
- (b) with an attestation by the Commissioner or authorised person of the fact of the affixing of the seal.

Staff of the Commission

82. (1) Such staff as may be necessary to enable the Commission to exercise its functions are to be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Commission may arrange for the use of the services of any staff or facilities of a Government department or administrative office.

Division 2—Functions of the Commission

Functions of the Commission

83. (1) The Commission has the following functions:

- (a) to promote and assist the development of standards for the delivery of community services;
- (b) to educate service providers, clients, carers and the community generally about those standards;
- (c) to monitor and review the delivery of community services;
- (d) to inquire, on its own initiative or at the request of the Minister, into matters affecting service providers and persons receiving, or eligible to receive, community services;
- (e) to receive, assess, resolve or investigate complaints under section 12 (which relates to unreasonable conduct by a service provider);
- (f) to assist service providers in improving their complaints procedures;
- (g) to assist in the making of complaints by persons receiving, or eligible to receive, community services;
- (h) to promote, liaise with and assist advocacy services and organisations for persons receiving, or eligible to receive, community services;
- (i) to support the development of advocacy programs;

- (j) to provide information, education and training, and to encourage others to do so, relating to the making, handling and resolution of complaints about the delivery of community services;
- (k) to review the causes and patterns of complaints and identify ways in which those causes could be removed or minimised;
- (l) to exercise and perform the other functions conferred and imposed on the Commission by or under this or any other Act.

(2) In the exercise of its functions, the Commission must, whenever possible:

- (a) consult and co-operate with other relevant investigative agencies and those concerned with the determination of the rights and interests of persons receiving, or eligible to receive, community services; and
- (b) consult persons and groups with an interest in the provision of community services, particularly organisations of persons receiving, or eligible to receive, community services and those advocating their interests; and
- (c) have regard to the needs of those persons (such as children) who are receiving, or are eligible to receive, community services and are least likely or able to complain.

(3) Following an inquiry, review or investigation under this Act, the Commission may make to the Minister, the Director-General, a service provider or other appropriate person recommendations for improvement of the delivery of community services.

(4) The Commission may request the Minister to consider tabling in Parliament any recommendations made under this section if the Commission considers that they raise a significant issue of public safety or public interest.

(5) The Commission may provide advice and assistance to the Review Council.

Division 3—Miscellaneous

Powers of entry by the Commissioner

84. (1) The Commissioner may enter any part of premises on which the functions of a service provider are exercised and may there exercise the powers conferred by this section, but only if the Commissioner:

- (a) is in possession of a certificate of authority issued by the Commission and produces the certificate if required to do so by the person apparently in occupation of the premises; and

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- (b) gives reasonable notice to the occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power; and
- (c) exercises the power at a reasonable hour of the day, unless it is being exercised in an emergency; and
- (d) uses no more force than is reasonably necessary.

(2) The Commissioner is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

(3) The Commissioner may do any of the following:

- (a) inspect the premises and make notes in relation to the inspection;
- (b) examine, seize, retain or remove any equipment that the Commissioner reasonably believes is, has been or may be used in connection with a complaint being investigated;
- (c) require a person having access to records relating to the conduct of the premises to produce the records for examination;
- (d) make copies of, or take extracts from, those records;
- (e) for the purpose of further examination, take possession of, and remove, any of those records;
- (f) require the owner or occupier of those premises to provide the Commissioner with such assistance and facilities as is or are reasonably necessary to enable the Commissioner to exercise functions under this section.

(4) The Commissioner may ask any person on the premises to answer questions, or to produce records, relating to the delivery of services at or from the premises.

(5) If damage is caused by the exercise of the powers conferred by this section, the Minister is to pay reasonable compensation for the damage unless the exercise of the powers was obstructed by the occupier of the premises.

(6) A Magistrate may, on the application of the Commissioner, issue a summons requiring a person:

- (a) to produce to a Local Court constituted by a Magistrate sitting alone any records that the person summoned has failed to produce in accordance with a requirement made under this section; or
- (b) to appear before such a Local Court and give evidence in relation to a matter in respect of which the person has failed to answer a question in accordance with such a requirement.

- (7) Documents produced in response to a summons under this section:
- (a) are, at the request of the Commissioner, to be made available to enable the Commissioner to make copies of, or take extracts from, the records; and
 - (b) are to be returned to the person summoned no later than 7 days after their production to the Local Court.
- (8) A person who, having been served with a summons under this section, fails to comply with the summons is guilty of an offence.
- Maximum penalty: 20 penalty units.

Search warrants

85. (1) The Commissioner may apply to an authorised justice for a search warrant if the Commissioner has reasonable grounds for believing that, on specified premises, this Act is being contravened or for the purposes of section 84.

(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant to the Commissioner to enter and search the premises.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) On entering any premises on the authority of a search warrant issued under this section, the Commissioner may search the premises and may seize and carry away anything considered by the Commissioner to be evidence of a contravention of this Act.

(5) This section does not authorise the Commissioner to carry away anything for which the Commissioner does not give a receipt.

(6) In executing a search Warrant, the Commissioner may be accompanied by a police officer.

(7) In this section, "authorised justice" has the same meaning as in the Search Warrants Act 1985.

Offence: obstructing the Commissioner

86. A person who:

- (a) prevents the Commissioner from exercising a function under section 84; or
- (b) hinders or obstructs the Commissioner in the exercise of such a function; or

- (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of the Commissioner asked in accordance with section 84; or
- (d) furnishes the Commissioner with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

Offence: impersonating the Commissioner

87. A person who impersonates or falsely represents that the person is the Commissioner is guilty of an offence.

Maximum penalty: 10 penalty units.

Expert assistance

88. In the exercise of any of its functions, the Commission may obtain assistance from a person who, in the opinion of the Commission, is sufficiently qualified or experienced to give expert advice on the matter in question.

Delegation

89. The Commission may delegate its functions, and the Commissioner may delegate his or her functions, other than this power of delegation, to any officer of the Commission.

Financial year

90. The financial year of the Commission is the year ending on 30 June.

Annual report

91. (1) During each year, as soon as practicable after 30 June but on or before 31 December, the Commission is to prepare and forward to the Minister a report of its work and activities for the period ending on 30 June in that year.

(2) Without affecting the generality of subsection (1), the Commission is to report on the exercise of each of its functions.

(3) The Minister is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

PART 7—THE COMMUNITY SERVICES APPEALS TRIBUNAL

Division 1—The Tribunal and staff

Constitution of the Tribunal

92. (1) There is constituted by this section a Community Services Appeals Tribunal.

(2) The Tribunal is to consist of:

- (a) a President appointed by the Governor on the recommendation of the Minister after consultation with the Review Council; and
- (b) at least 4 part-time members appointed by the Minister after consultation with the Review Council.

(3) The members are to be appointed from the following:

- (a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, child care, community services, education, law, medicine, psychology and social work;
- (b) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members.

(4) Of the part-time members, one is (by the instrument of appointment as a part-time member or by a subsequent instrument executed by the Minister) to be appointed as Deputy President of the Tribunal.

(5) At least one member must be a barrister or solicitor.

(6) The President may be appointed as a full-time member.

(7) The Tribunal has the functions conferred or imposed on it by or under this or any other Act.

Jurisdiction of the Tribunal

93. The Tribunal has jurisdiction to hear and determine appeals to the Tribunal under this Act and under other community welfare legislation.

Registrar and other staff of the Tribunal

94. A Registrar and such other staff as are necessary for the purpose of enabling the Tribunal to exercise its functions are to be appointed under Part 2 of the Public Sector Management Act 1988.

Composition of the Tribunal

95. (1) The Tribunal is, for the purpose of exercising its functions, to be constituted by no fewer than 3, and by no more than 5, of its members at least one of whom must be a barrister or solicitor.

(2) The Tribunal is, as far as is practicable, to be constituted so as to include at least one member who has knowledge or experience directly relevant to the subject-matter of the proceedings before the Tribunal.

(3) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular sitting of the Tribunal.

(4) The presiding member at any sitting of the Tribunal is:

- (a) the President, if the Tribunal as constituted for the sitting includes the President;
- (b) the Deputy President, if the Tribunal as constituted for the sitting does not include the President but as so constituted includes the Deputy President; or
- (c) a member (other than the President or Deputy Resident) nominated by the President, if the Tribunal as constituted for the sitting does not include either the President or the Deputy President.

Sittings of the Tribunal

96. If there are 6 or more members of the Tribunal, more than one sitting of the Tribunal may be held at the same time.

Procedure at sittings of the Tribunal

97. The procedure for the arranging of, and for the conduct of business at, a sitting of the Tribunal is, subject to this Act, the regulations and the rules of the Tribunal, to be as determined by the Tribunal.

Decisions of the Tribunal

98. (1) A question (other than with respect to a point of law or procedure) arising at a sitting of the Tribunal is to be determined by a majority of the votes of the members present and voting.

(2) A question with respect to a point of law or procedure arising at a sitting of the Tribunal is to be decided by a legally qualified member.

(3) The member presiding at any sitting of the Tribunal has a deliberative vote and, if there is an equality of votes, a second or casting vote.

Annual report

99. (1) During each year, as soon as practicable after 30 June but on or before 31 December, the Tribunal is to prepare and forward to the Minister a report of its work and activities for the period ending on 30 June in that year.

(2) The Minister is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report

Division 2—Members of the Tribunal

Definitions

100. In this Division:

“full-time President” means the President if appointed as a full-time member;

“part-time member” includes the President if appointed as a part-time member.

Terms of office of members

101. (1) Subject to this Division, the President holds office for such period (not exceeding 5 years) as is specified in the President’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) Subject to this Division, a member holds office for such period (not exceeding 5 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

102. (1) A full-time President is entitled to be paid:

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the President.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

103. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a mentally incapacitated person; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) in the case of a full-time President—engages in any paid employment outside the duties of his or her office; or
- (i) in the case of a full-time President—is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (j) in the case of a member other than a full-time President—is absent from 4 consecutive meetings of the Tribunal of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (k) in the case of the President—is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth.

(2) The Governor may remove a part-time member from office at any time.

(3) The Governor may remove a full-time President from office only for misbehaviour, incompetence, incapacity or failure to comply with the conditions of the President's appointment.

Effect of certain other Acts

104. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

Delegation

105. The President may delegate the exercise of any of the President's functions, other than this power to delegate, to another member of the Tribunal.

Deputy President

106. (1) The Deputy President may exercise the President's functions:

- (a) if the President delegates those functions under section 105; or
- (b) if the Resident is absent from New South Wales; or
- (c) if the President is prevented by illness or other incapacity from exercising those functions; or
- (d) if the office of President is vacant.

(2) While the Deputy President is authorised to exercise the President's functions, a reference in this Act to the President is to be construed as a reference to the Deputy President.

(3) While the Deputy President exercises the President's functions the Deputy President is taken to be the President.

(4) No person is to be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President while exercising those functions are as valid and have the same consequences as if they had been done or omitted to be done by the President.

PART 8—THE COMMUNITY SERVICES REVIEW COUNCIL

Constitution of the Community Services Review Council

107. (1) There is constituted by this section a Community Services Review Council comprising the following part-time members:

- (a) the Commissioner;
- (b) the Director-General;
- (c) the Ombudsman;
- (d) the President of the Guardianship Board;
- (e) the President of the Tribunal;
- (f) the Public Guardian;
- (g) 6 persons appointed by the Minister.

(2) Of the members appointed by the Minister:

- (a) 2 are to have knowledge and experience gained as service providers; and
- (b) 2 are to have knowledge and experience gained as clients of service providers: and
- (c) 2 are to be persons considered by the Minister to be interested in the provision of community services.

(3) The Chairperson of the Review Council is to be appointed by the Minister from among its members.

Functions of the Review Council

108. The Review Council is:

- (a) to encourage co-ordination of the functions of the Tribunal, the Commission, the Community Visitors and other persons and authorities in so far as those functions relate to the provision of community services; and
- (b) to provide the Minister with strategic advice regarding the operational effectiveness of the appeals and monitoring system established under this Act.

Meetings of the Review Council

109. (1) As soon as practicable after the Review Council is first constituted, the Chairperson is to convene a meeting at which the Review Council is to decide:

- (a) the procedure for calling a meeting of the Review Council; and
- (b) the quorum for a meeting of the Review Council; and

- (c) the procedure at a meeting of the Review Council; and
- (d) any other matters necessary to enable the Review Council to exercise its functions.

(2) A decision supported by a majority of the members present and voting at a meeting of the Review Council at which a quorum is present is a decision of the Review Council.

(3) At a meeting of the Review Council, the Chairperson is to preside or, if the Chairperson is not present, a member elected for the purpose by those present is to preside.

(4) If there is an equality of votes at a meeting of the Review Council, the Chairperson or other member presiding has a second or casting vote in addition to a deliberative vote.

Term of office of appointed member

110. Subject to this Part, an appointed member is to hold office for such period (not exceeding 5 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of members

111. (1) A member of the Review Council who is not appointed by the Minister is entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

(2) An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of appointed member

112. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

- (f) becomes a mentally incapacitated person; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office for misbehaviour, incompetence, incapacity or failure to attend meetings.

PART 9—MISCELLANEOUS

Condition of provision of funds

113. It is a condition of the provision of funds under the community welfare legislation and any program administered by the Minister within the Department that the recipient of the funds must make such arrangements for their expenditure as are necessary to facilitate the resolution of complaints at a local level.

Reasons to be given for certain decisions

114. (1) If a decision of a class prescribed for the purposes of this subsection is made by the Minister, the Director-General or a service provider, the person who made the decision must:

- (a) record the reasons for the decision; and
- (b) give a written copy of the reasons to each person considered by the decision-maker to have been directly affected by the decision.

(2) In this section, a reference to a decision, in relation to the Commission, includes a reference to action taken by the Commission and a recommendation made by the Commission.

Service of documents on the Tribunal or the Commission

115. (1) A document may be served on the Tribunal by leaving it at, or by sending it by post to, the office of the Tribunal.

(2) A document may be served on the Commission by leaving it at, or by sending it by post to, the office of the Commission.

Notices etc. to be written in other languages

116. (1) If:

- (a) the Tribunal or the Commission is required, by or under this Act, to cause a document or other instrument to be served on any person; and

(b) it appears to the Tribunal or the Commission that the person is blind or illiterate or is not literate in the English language, the Tribunal or the Commission is, in so far as it is reasonably practicable, to cause the information contained in the document or other instrument to be communicated to the person in a manner that the person understands, which may include (in the case of a person who is literate in another language) by means of a document or other instrument written in that other language.

(2) Failure to comply with this section does not affect any thing done under any other provision of this Act.

Protection of complainant against retribution

117. (1) A person who takes or threatens to take detrimental action against another person because that other person:

- (a) makes, or proposes to make, a complaint to a service provider, Community Visitor or the Commission; or
- (b) brings, or proposes to bring, proceedings before the Tribunal; or
- (c) provides, or proposes to provide, information, documents or evidence to a Community Visitor, the Commission or the Tribunal,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) It is a defence to a prosecution for an offence under this section if it is proved:

- (a) that the action referred to in subsection (1) on which the prosecution was based was taken or proposed in bad faith; or
- (b) that any material allegation was known by the person making it to be false.

(3) In this section, “**detrimental action**” means action causing, comprising or involving any of the following:

- (a) injury, damage or loss;
- (b) intimidation or harassment;
- (c) discrimination, disadvantage or adverse treatment in relation to employment;
- (d) dismissal from, or prejudice in employment;
- (e) prejudice in the provision of a community service;
- (f) disciplinary proceedings.

Offence: improper disclosure of information

118. If a person discloses information obtained in exercising a function under this Act and the disclosure is not made:

- (a) with the consent of the person to whom the information relates; or
- (b) in connection with the execution or administration of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) with other lawful excuse,

the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Exclusion of personal liability

119. Anything done by:

- (a) the Tribunal or a member of the Tribunal; or
- (b) the Registrar or any other member of the staff of the Tribunal; or
- (c) the Commission, the Commissioner or a member of the staff of the Commission; or
- (d) any person acting for or under the direction of the Tribunal, the Registrar, the Commission or the Commissioner,

does not, if it was done in good faith for the purpose of executing this or any other Act, subject the member of the Tribunal, the Registrar, the member of the staff of the Tribunal or of the Commission, the Commissioner or a person so acting, personally to any action, liability, claim or demand.

Section 3 not to give rise to or affect cause of action

120. (1) Nothing in section 3 nor in any application of that section by this Act gives rise to, or can be taken into account, in any civil cause of action.

(2) In this section, “cause of action” does not include proceedings on an appeal to the Tribunal.

Certain conduct excluded from Ombudsman Act 1974

121. Conduct of a public authority that could be, or is or has been, the subject of a complaint to the Commission or of an appeal to the Tribunal may not be the subject of a complaint under the Ombudsman Act 1974.

Proceedings for offences

122. Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Savings and transitional provisions

123. Schedule 1 has effect.

Regulations

124. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for giving effect to this Act.

(2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

Amendment of Acts

125. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Review of Act

126. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Community Services (Complaints, Appeals and Monitoring) Act 1993 No. 2

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 123)

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any provision of a regulation made under this clause may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Construction of references to Tribunal

2. In any other Act or instrument, a reference to the Community Welfare Appeals Tribunal is a reference to the Community Services Appeals Tribunal.

Continuity of Tribunal

3. (1) The Tribunal is a continuation of, and the same legal entity as, the Community Welfare Appeals Tribunal previously constituted under the Community Welfare Act 1987.

(2) Nothing in this Act affects the continuity of office of a person who was the President or Deputy President, or another member, of the Tribunal immediately before the commencement of this clause.

SCHEDULE 2—AMENDMENT OF ACTS

(Sec. 125)

Adoption Information Act 1990 No. 63

Section 36 (**Appeals to Community Services Appeals Tribunal**):

- (a) Omit “**Community Welfare Appeals Tribunal**”, insert instead “**Community Services Appeals Tribunal**”

SCHEDULE 2—AMENDMENT OF ACTS—*continued*

(b) At the end of the section, insert:

(2) An appeal against a decision made under or for the purposes of this Act by the Director-General may be made to the Community Services Appeals Tribunal if it is a decision of a class of decisions prescribed by the regulations for the purposes of this section.

(3) If there is a failure to make within a reasonable time a decision that, if made, could be the subject of an appeal under this section, the Tribunal may:

- (a) treat the failure as an unfavourable decision with respect to the applicant for the decision; and
- (b) permit the applicant to appeal to the Tribunal as if the unfavourable decision had in fact been made.

Adoption of Children Act 1965 No. 23

After section 67, insert:

Appeals to the Community Services Appeals Tribunal

67A. (1) An appeal against a decision made under or for the purposes of this Act by the Director-General may be made to the Community Services Appeals Tribunal if the decision:

- (a) is to refuse approval of an adoption agency; or
- (b) is to revoke or suspend the approval of an adoption agency; or
- (c) is within a class of decisions prescribed by the regulations for the purposes of this section.

(2) If there is a failure to make within a reasonable time a decision that, if made, could be the subject of an appeal under this section, the Tribunal may:

- (a) treat the failure as an unfavourable decision with respect to the applicant for the decision; and
- (b) permit the applicant to appeal to the Tribunal as if the unfavourable decision had in fact been made.

SCHEDULE 2—AMENDMENT OF ACTS—*continued***Children (Care and Protection) Act 1987 No. 54**(1) Section 3 (**Definitions**):

From section 3 (1), omit the definition of “**Community Welfare Appeals Tribunal**”, insert instead:

“**Community Services Appeals Tribunal**” means the Community Services Appeals Tribunal constituted by the Community Services (Complaints, Appeals and Monitoring) Act 1993;

(2) Section 112 (**Appeals to the Community Services Appeals Tribunal**):

From section 112 (1), omit “Community Welfare Appeals Tribunal”, insert instead “Community Services Appeals Tribunal”.

Community Welfare Act 1987 No. 52(1) Section 3 (**Definitions**):

(a) From section 3 (1), omit the definition of “**Tribunal**”, insert instead:

“**Tribunal**” means the Community Services Appeals Tribunal constituted by the Community Services (Complaints, Appeals and Monitoring) Act 1993.

(b) From section 3 (1), omit the definition of “**Visitor**”.

(2) Section 3B (**Visitors**):

Omit the section.

(3) Part 6 (**The Community Welfare Appeals Tribunal**):

Omit the Part.

(4) Section 78 (**Regulations**):

(a) In section 78 (1) (b), after “Fund”, insert “and”.

(b) From section 78 (1) (d), omit “Fund; and”, insert instead “Fund.”.

(c) Omit section 78 (1) (e).

(5) Schedule 3 (**Provisions relating to the Tribunal**):

Omit the Schedule.

SCHEDULE 2—AMENDMENT OF FACTS—*continued***Defamation Act 1974 No. 18**

Section 17KA:

After section 17K, insert:

Matters arising under the Community Services (Complaints, Appeals and Monitoring) Act 1993

17KA. There is a defence of absolute privilege:

- (a) for a publication to or by a solution facilitator for the purpose of the resolution of a complaint under the Community Services (Complaints, Appeals and Monitoring) Act 1993; and
- (b) for the publication by any such facilitator of a report or information under section 34 of that Act; and
- (c) for a publication in the course of proceedings before the Community Services Appeals Tribunal under that act; and
- (d) for the publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons for that decision.

Disability Services Act 1993(1) Section 20 (**Appeals**):

Omit “Community Welfare Appeals Tribunal”, insert instead “Community Services Appeals Tribunal”.

(2) Section 25 (**Section 3 and Schedule 1 not to give rise to or affect cause of action**):

Omit “Community Welfare Appeals Tribunal”, insert instead “Community Services Appeals Tribunal”.

Disability Services and Guardianship Act 1987 No. 257(1) Section 3 (**Definitions**):

From section 3 (1), omit the definition of “Community Welfare Appeals Tribunal”, insert instead:

“Community Services Appeals Tribunal” means the Community Services Appeals Tribunal constituted by the Community Services (Complaints, Appeals and Monitoring) Act 1993;

SCHEDULE 2—AMENDMENT OF ACTS—*continued***(2) Section 97 (Appeals to the Community Services Appeals Tribunal):**

From section 97 (1), omit “Community Welfare Appeals Tribunal”, insert instead “Community Services Appeals Tribunal”.

Home Care Service, Act 1988 No. 6

After section 17, insert:

Appeals to the Community Services Appeals Tribunal

17A. (1) An appeal may be made to the Community Services Appeals Tribunal constituted by the Community Services (Complaints, Appeals and Monitoring) Act 1993 against a decision made under or for the purposes of this Act by:

- (a) the Minister; or
- (b) the Service; or
- (c) any other person or body at the request of the Minister or the Service,

if it is a decision within a class of decisions prescribed by the regulations for the purposes of this section.

(2) If there is a failure to make within a reasonable time a decision referred to in subsection (1) (b) or (c) that, if made, could be the subject of an appeal to the Tribunal, the Tribunal may:

- (a) treat the failure as an unfavourable decision with respect to the applicant for the decision; and
- (b) permit the applicant to appeal to the Tribunal as if the unfavourable decision had in fact been made.

Public Sector Management Act 1988 No. 33**Schedule 3B (Senior executive positions)**

At the end of Part 2, insert “Commissioner for Community Services”.

SCHEDULE 2—AMENDMENT OF ACTS—*continued*

Search Warrants Act 1985 No. 37

Section 10 (Definitions):

Insert in the definition of ‘‘search warrant’’ in section 10, in alphabetical order of Acts:

section 85 of the Community Services (Complaints, Appeals and Monitoring) Act 1993

Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)

Schedule 2 (Public offices):

Insert at the end of Part 1 the following matter:

Full-time President of the Community Services Appals Tribunal

*[Minister’s second reading speech made in—
Legislative Assembly on 11 March 1993
Legislative Council on 31 March 1993]*