



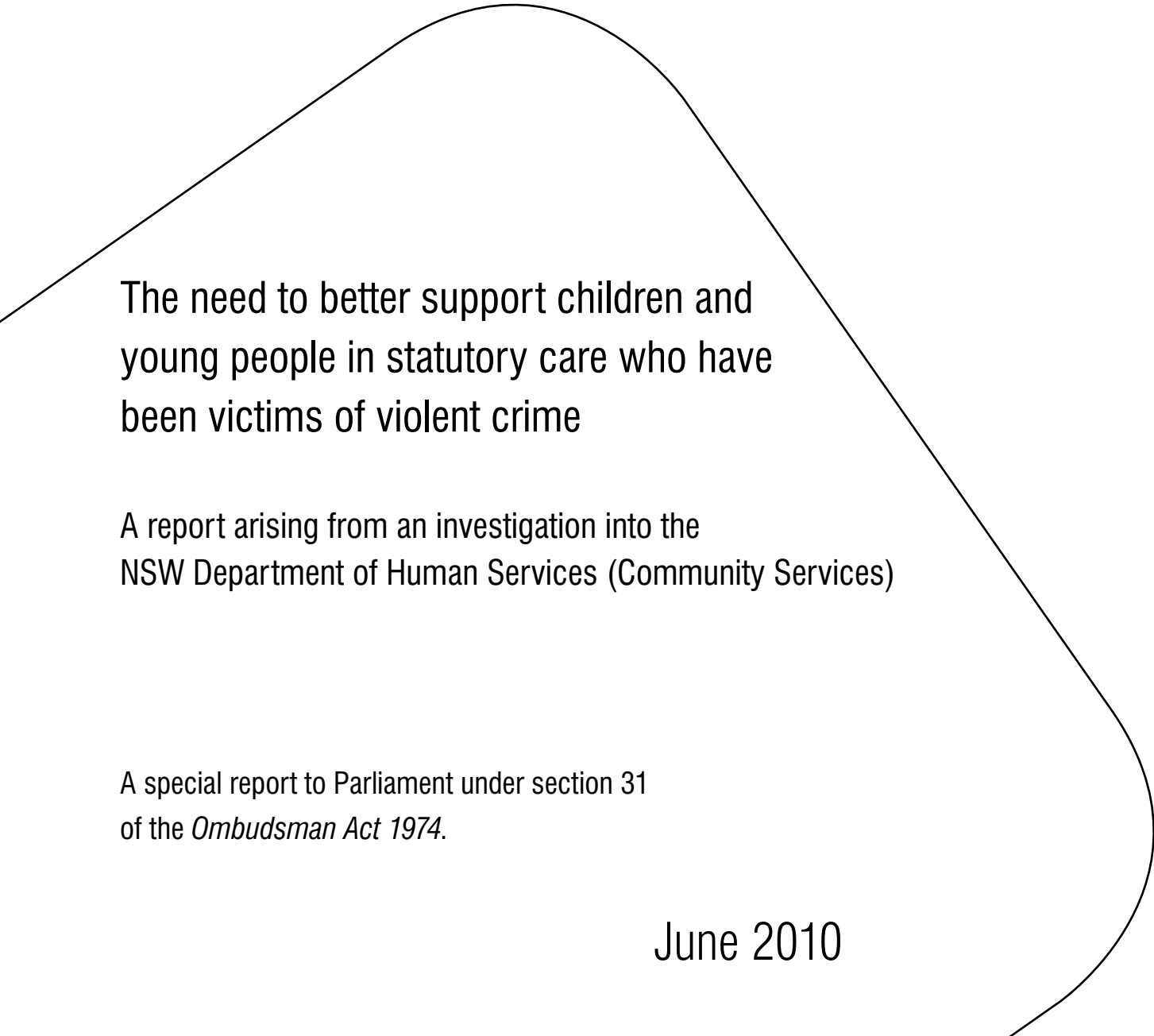
NSW Ombudsman

The need to better support children and young people in statutory care who have been victims of violent crime

A report arising from an investigation into the NSW Department of Human Services (Community Services)

A special report to Parliament under section 31 of the *Ombudsman Act 1974*.

June 2010



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Our logo has two visual graphic elements; the 'blurry square' and the 'magnifying glass' which represents our objectives. As we look at the facts with a magnifying glass, the blurry square becomes sharply defined, and a new colour of clarity is created.

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June 2010

The Hon Amanda Fazio MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Richard Torbay MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Madam President and Mr Speaker

I submit a report pursuant to s.31 of the *Ombudsman Act 1974*.

I draw your attention to the provisions of s.31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make it public forthwith.

Yours faithfully



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Ombudsman



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Foreword

This report concerns my office's investigation into Community Services' handling of victims compensation claims for children and young people under the parental responsibility of the Minister for Community Services.

Victims of violent crime in NSW, including children and young people, may be entitled to apply for a range of services, support and financial compensation.

Community Services does not consolidate information on the reasons why children and young people are removed from their families and placed in care. Nevertheless, it is clear that many children are removed because of abuse. Prior to their removal from their families many of these children have been the victims of violent crime, and therefore possibly eligible for victims compensation.

In 2005, there were 10,041 children and young people in statutory care. By June 2009, this number had grown to 16,524. However, between 2005 and 2009 only 368 victims compensation claims were lodged by Community Services with Victims Services on behalf of children and young people in statutory care.

Our investigation found that there are significant deficiencies in Community Services' identification and handling of victims compensation claims for children and young people in out-of-home care. Despite the agency's obligations under the Charter of Victims Rights, children and young people who are eligible to make a claim are often not being identified. For those who are identified, Community Services' processing of their claim is often poorly handled.

I have decided to make this special report to Parliament because the issue is an important one. As the case examples in my report show, many of the children and young people who are placed in statutory care have had to deal with the most disturbing and horrendous situations. For many, their experience of violence will stay with them forever. It is completely unacceptable to deprive these children and young people of their entitlements because of administrative failure.

At a time of significant change in the way care and protection services are delivered in NSW, it is vital that those children and young people already in care, and those who enter care in the years to come, receive the supports and assistance they are entitled to.



Bruce Barbour
Ombudsman

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1. Introduction

In 2009, this office undertook a review of a group of young people who were turning 18 and leaving statutory out-of-home care. A number of these young people had been placed in care by the Children's Court because of serious abuse.

Victims of violent crime in NSW are entitled to make a claim under the state's statutory scheme for victims compensation. For children and young people who have been placed in care because of serious abuse, responsibility for making a compensation claim on their behalf falls to Community Services (formally DoCS).

Through our review of the support being provided to care leavers, we identified that many had not had an application for victims compensation made on their behalf during their time in care despite child protection histories indicating abuse prior to entry into care.

In response, we investigated Community Services' handling of victims compensation claims for children and young people in out-of-home care. Our purpose was to establish whether Community Services has the necessary systems in place to identify those children who may be eligible to lodge a claim and to process these.

This report outlines why there is a need for Community Services to significantly improve its handling of victims compensation for children and young people in statutory care.

1.1 The Department of Human Services, Community Services

Community Services is the agency within the NSW Department of Human Services with lead responsibility for providing funding, accommodation and support for children and young people who cannot live at home because of abuse or neglect.

As at 30 June 2009, there were 16,524 children and young people in NSW in this situation. Of these, 11,871 had final care and protection orders.

Although these children are referred to as being in statutory or 'out-of-home' care, most live with extended family or foster carers. These carers and family are authorised by either Community Services or by non government 'designated' agencies to provide such care.

1.2 Victims Compensation

The *Victims Support and Rehabilitation Act 1996* provides a scheme of compensation and counselling for victims of violent crime in NSW.

Victims of crime, who have been injured as a result of the crime, are entitled to apply for a range of services, support and financial compensation. This includes children and young people.

The statutory scheme for victims compensation is government funded, and places the awarding of compensation in the hands of an independent tribunal – the Victims Compensation Tribunal. The scheme is administered by Victims Services which is part of the NSW Department of Justice and Attorney General.

Under the Act, injuries can be physical, psychological or offence based, which includes domestic violence and sexual assault. A person who is the victim of an act of violence is known as a 'primary victim'. A 'secondary victim' is a person who is injured as a result of witnessing an act of violence committed against another person or learning about such an act. A 'family victim' is defined as a member of the immediate family of a homicide victim. 'Secondary' and 'family' victims may be eligible to claim compensation.

Under the *Victims Rights Act 1996*, victims of crime in NSW have the Charter of Victims Rights to protect and promote their rights. The Charter sets out how government departments should treat and assist victims of crime. The Charter outlines 17 rights for victims of crime in NSW including their right to information about services and remedies, their right to access to services, and their right to make a claim for victims compensation.

1.3 Community Services' victims compensation policy and practice

Community Services' guidelines state that the agency has a responsibility to ensure that children and young people in out-of-home care who have been victims of crime receive appropriate support services. This may include making a claim for victims compensation on behalf of a child or young person. This responsibility

extends to those children and young people under the parental responsibility of the Minister for Community Services who are with carers supported by non government agencies.

The Community Services guidelines clarify that a claim for compensation may be made without charges being laid in relation to the incident/s. A claim can also be finalised before an offender is identified or dealt with by a court.

Community Services caseworkers are expected to identify children and young people who may be eligible to lodge a claim for compensation and to refer these cases to legal officers. Where grounds for compensation exist, legal officers are expected to lodge an application with Victims Services, and to manage the application while it is before the Victims Compensation Tribunal.

The guidelines explain the agency's obligations under the NSW Charter of Victims Rights to children and young people who have been victims of violent crime.

Where a claim is successful, the compensation payment for the child or young person is placed in trust with the NSW Trustee and Guardian, until they turn 18 or older.

1.4 Our concerns about Community Services' actions to meet its obligations under the Charter of Victims Rights

As noted, in 2009 this office undertook a review of a group of young people who were turning 18 and leaving statutory care. A number of our reviews raised questions as to whether Community Services had adequate systems in place for identifying and progressing claims for children and young people in statutory care, who may be eligible for victims compensation. For example:

- In April 2007, a Community Services legal officer identified that a young person, who was then aged 15 and in care as a result of sexual abuse, was possibly eligible for victims compensation and that a claim should be commenced as soon as possible. The legal officer noted the claim had to be submitted to the Victims Compensation Tribunal before the young person turned 18. We reviewed the young person's leaving care planning two months before she turned 18. Not only did we find that she did not have a leaving care plan, but also that Community Services staff responsible for her case management could not tell us what was happening in relation to the compensation claim. We subsequently established that a claim had not been submitted.
- In August 2007, Community Services lodged a victims compensation application on behalf of a young person, who was then aged 15. The application related to the young person suffering physical abuse and psychological harm between 1992 and 1999. The young person's care order had been finalised when he was eight. It was unclear to us why there had been a seven year delay in submitting the claim. We were also concerned that the claim appeared to have been compromised by the delays because health and police records to support the claim were no longer available.
- In August 2008, a solicitor established that there were grounds to make an application on behalf of a young person who, at the age of seven, was placed in care following the non accidental death of her younger brother. She was subsequently indecently assaulted by a relative, who was her carer at the time of the assault. At the time of our leaving care review, Community Services had taken no action to progress a compensation claim on either ground on the young person's behalf.
- At the leaving care planning meeting for a young person who entered care at the age of three, a Community Services manager identified that the young person's caseworker should follow-up the possibility of a referral for victims compensation. At the time of our review, this had not occurred.

As a result of case examples such as these, we decided to look more broadly at the number of claims Community Services had made on behalf of the children and young people for whom the agency has responsibility. The following information is taken from Community Services' annual reports and other information provided by the agency for our investigation.

- In 2005 there were 10,041 children and young people in statutory out-of-home care and in 2006, there were 10,623. In 2005/06, Community Services lodged 108 claims for children and young people under the parental responsibility of the Minister for Community Services.
- In 2007, there were 12,712 children in statutory care and by 2008 this number had grown to 14,667. In 2006/07, Community Services lodged 94 claims and in the 2007/08 financial year, 114.
- In 2009, there were 16,524 children and young people in statutory care. In 2008/09, the agency lodged 52 claims for compensation on behalf of children and young people in care.

As noted, data on the reasons why these children and young people were determined to be unable to live at home is not available. This is because this data is not aggregated by either the NSW Children's Court or Community Services.

However, if data concerning risk assessment outcomes is considered, a significant proportion of the children and young people are likely to have been victims of violent crime prior to their entry into care. Of the 10,142 children and young people in NSW who had a finding of actual harm following comprehensive risk assessment in 2008/09, 1,957 (13.7%) had been physically abused, 1,644 (11.5%) had been sexually abused and 3,247 (22.7%) had suffered emotional abuse. 4,830 children and young people entered out-of-home care during that year.

In this context, the number of victims compensation claims being lodged by Community Services on behalf of the children and young people in out-of-home care – 368 over the four year period between 2005 and 2009 or an average of 92 each year – appeared small.

It concerned us that many children and young people in statutory care may not be benefiting from the statutory compensation scheme because Community Services is either not recognising that they are eligible to apply for compensation, or is failing to make timely applications to Victims Services on their behalf.

2. Our investigation

Because of our concerns, we decided to investigate Community Services' identification and processing of victims compensation claims for children and young people who have been victims of crime and who are under the parental responsibility of the Minister for Community Services.

We notified Community Services of our investigation on 19 June 2009.

2.1 The investigation process

Our investigation was extensive and included the following steps:

- We identified a group of 95 children and young people, where documentary evidence indicated that they were likely to have been a victim of violent crime prior to their entry into care. This group consisted of 82 children and young people who we identified by reviewing Children's Court records for children and young people who had care orders finalised between 2006 and 2007. We identified the remaining 13 children by reviewing the records of siblings of child homicide victims.
- We interviewed casework managers responsible for ensuring the 95 children and young people in the group receive appropriate support under the *Victims Support and Rehabilitation Act 1996*. Our particular focus was on financial compensation. We asked managers about any action taken to review whether each child or young person in the group was eligible to lodge a claim for compensation.
- For those children in the group who had been reviewed by Community Services and identified as eligible to lodge a claim for compensation, we collected information about Community Services' actions to prepare an application for compensation and to lodge it with Victims Services.
- We asked managers about the systems and strategies in place at local Community Services offices to meet the agency's obligations under the Charter of Victims Rights.
- Information in relation to the 95 children and young people from our interviews with casework managers was then collated quantitatively and qualitatively, to analyse the relevant issues. This analysis took into account legislative requirements and Community Services' policies and procedures concerning victims of violent crime who are under the parental responsibility of the Minister for Community Services.
- We also asked Community Services to tell us about the strategies it has put in place to fulfil its responsibilities under the Charter of Victims Rights.
- We provided Community Services with our preliminary investigation report and sought the agency's views on the accuracy of the information in our report, and on our findings, observations and provisional recommendations. Before finalising our investigation, we provided a draft of the investigation report to the Minister for Community Services. We finalised our investigation in May 2010.

During the course of the investigation, we consulted with the NSW Children's Court, the NSW Children's Guardian and the Department of Justice and Attorney General's Victims Services. We asked for their views about strategies to ensure children and young people in care, who have been victims of violent crime, are appropriately assisted to apply for the services and support that they are entitled to.

3. What we found

3.1 Overall findings and observations

As noted, our investigation considered two issues.

The first was whether Community Services has adequate systems for identifying children and young people in statutory care who have been victims of crime in NSW, and therefore, eligible to apply for victims compensation.

Community Services told us that in recent years it has put in place a range of strategies to ensure victims compensation claims are made for eligible children and young people. The agency said that it had created legal support teams and tasked legal officers acting for Community Services to identify those children who may be eligible to claim for victims compensation as they enter care. The agency has also undertaken file audits of children and young people already in care and provided staff training on victims compensation.

Broadly, we found that these strategies have not had an identifiable impact on the number of victims compensation claims Community Services makes on behalf of children and young people in care.

The second issue we explored was whether Community Services has adequate systems to process compensation applications, once a child has been identified as eligible to claim. The evidence shows that it does not.

3.2 Community Services' identification of potential victims compensation claimants

As noted, we identified a group of 95 children and young people, where documentary evidence indicated that they were likely to have been a victim of violent crime prior to their entry into care. We asked Community Services managers whether the children and young people in the group had been reviewed to determine their eligibility to claim victims compensation.

In some cases, our investigation prompted Community Services to undertake a review to determine eligibility to lodge a claim for compensation. Noting this, prior to the commencement of our investigation, less than half (40) had had their files reviewed for victims compensation purposes. This is despite most having been in care for two years or longer.

Table 1: Review of files to identify possible victims compensation claimants

	Frequency	Percentage (%)
Reviewed prior to commencement of investigation	40	42
Reviewed following commencement of investigation	20	21
Yet to be reviewed	35	37
Total	95	100

In relation to the 60 children and young people whose files were reviewed either prior to or during the course of our investigation grounds were identified to lodge a claim for compensation in 82% of the cases.

Table 2: Grounds identified to lodge a claim

	Frequency	Percentage (%)
Grounds identified	49	82
Grounds not identified	11	18
Total	60	100

3.2.1 Factors impacting on Community Services' compliance with its obligations under the Charter of Victims Rights

While our group was limited in number, our interviews with departmental managers indicated a broader problem in relation to identifying children and young people in out-of-home care who have been victims of violent crime.

Over one third of the Community Services teams we interviewed in relation to the group of 95 children told us that they do not have adequate strategies in place to identify children and young people who have been victims of violent crime. Even when they said they had adequate strategies, we found children for whom these teams were responsible, had not been reviewed. Other teams said that they were unaware of Community Services' arrangements with legal officers to identify potential claimants as they enter care.

One team we spoke with reported having over a hundred children and young people under their supervision who do not have an allocated caseworker and another team reported having hundreds of unallocated cases. Neither had a strategy for reviewing victims compensation eligibility for these children and young people, or for that matter any other purpose including whether they are being properly cared for.

Our investigation identified a number of factors that have had a bearing on Community Services' failure to identify all those children and young people in care who are eligible to apply for victims compensation. These include staff not having read the relevant guidelines; staff not having an adequate understanding of Community Services' responsibilities under the Charter of Victims Rights; competing casework priorities; children not having an allocated caseworker; inadequate file transfer arrangements between teams; and inadequate legal and casework resources.

Some managers told us that they had not attended relevant training on victims compensation. Others said that they have not read the relevant guidelines. Some said that they could not even locate these on Community Services' intranet.

Case example 1

Care proceedings for a child, born in 2001, were finalised in September 2006. Court records for the child state that Community Services removed the child on the grounds that she was at imminent risk of being physically assaulted by her mother. The records note that the police intended to charge the mother with assault of the child. A manager told us that the child's files had not been reviewed to identify her eligibility to lodge a claim for victims compensation as case management priorities for the team did not include compensation.

Case example 2

A Community Services manager said that workload is so great that victims compensation has never been a priority and while the caseworkers generally know the guidelines and what is required of them, identifying potential victims compensation claims is not seen as a priority. The manager said some training was provided two to three years ago; however, the staff have changed a lot and more training is needed. Victims compensation will only be included as a case plan item for case conferences and case reviews if it has already been identified as an issue or if there is an application underway. The manager, whose team is responsible for children with an allocated caseworker including children in high cost placements, said her team has no system in place to identify children who may be eligible for victims compensation other than compensation being identified on the regional transfer pro-forma. However, this information *'has never been paid any attention'* unless *'there have been really extenuating circumstances'*. Another manager from the same centre said that there is no system for identifying which of her team's 400 unallocated cases may be eligible for victims compensation. The manager said victims compensation is not considered when cases are transferred from other teams within the centre.

The evidence we examined also showed that inadequate caseworker knowledge about the grounds to claim for victims compensation is resulting in potential claims being overlooked. This is particularly so in relation to psychological injuries and children who have been subjected to domestic violence.

Case example 3

Court records for a young person included a psychologist's report which describes an extensive child protection history of the young person both witnessing assaults on his mother and being subjected to physical abuse. According to the Children's Court records we examined, this has resulted in him suffering severe trauma and significant psychological damage. Based on our interview with departmental staff, it appeared that they had formed an undocumented view that the young person was not eligible for victims compensation because his injuries were too minor. We identified that staff had overlooked or were unaware of the young person's psychological trauma and injuries.

Despite Community Services' advice about its requirement for legal officers to identify potential victims compensation cases when children's matters are before the Children's Court, the agency's current guidelines in relation to victims of crime do not reflect this requirement. They currently vest responsibility for identification of potential claimants with 'the caseworker'. As discussed below, caseworkers change as children progress through the care system. We found that in some cases this lack of specificity in the guidelines about roles and responsibilities is resulting in no one taking responsibility for identifying children who may be eligible to claim compensation.

The guidelines do not canvass Community Services' responsibilities in relation to children and young people who were victims of crime in another state, prior to their entry into care in NSW. All states and territories in Australia have victims compensation legislation and schemes. In our view, if a child or young person is under the parental responsibility of the Minister for Community Services and was the victim of a violent crime in another state or territory, Community Services has a responsibility to lodge a claim for compensation in the appropriate jurisdiction.

We also found that the agency's systems for recording and tracking victims compensation on children's electronic and hard copy files are inadequate. Only some regions require the consideration of victims compensation when children's files are transferred from one team to another. Legal officers do not enter information onto the electronic files used by caseworkers and caseworkers do not have access to the legal officers' data base. In providing advice for our investigation, the only way Community Services could tell us how many compensation claims the agency had lodged in 2008/09, was to manually interrogate the legal officers' data base.

3.2.2 Circumstances where children may not be identified as eligible to claim compensation

A number of managers told us that children and young people in statutory care who are placed with relatives are particularly likely to get overlooked in relation to victims compensation because these children will generally not have an 'allocated' Community Services caseworker, and their files sit in 'resubmit'.

Our investigation identified other groups who are likely to get overlooked in relation to victims compensation.

Children in care who are supervised by child protection teams

Most Community Services offices have child protection and out-of-home care teams. When final care orders are made for a child, their file is generally transferred from a child protection to an out-of-home care team.

At the time of our investigation inquiries, child protection teams held the files for 12 of the 95 children and young people in our group. Prior to the commencement of the investigation the files of three of the 12 had been reviewed by Community Services for the purpose of identifying victims compensation eligibility.

Managers advised that four of the 12 children did not have an allocated caseworker.

The files of none of these four children had been reviewed for victims compensation purposes prior to the commencement of our investigation.

Three of the 12 children whose files have remained with a child protection team following finalisation of their care order, are no longer under the parental responsibility of the Minister. While they were in care, their cases were not reviewed for victims compensation purposes. The following case is illustrative.

Case example 4

Court records for a child show that sexual assault had left her with medical complications by the age of six. In mid 2007, she was placed under the parental responsibility of the Minister. In mid 2009, following an appeal, she was placed under the sole parental responsibility of her mother with Community Services' supervision. The manager casework advised that the child's file was reviewed in response to our investigation, to determine whether she may be eligible to claim victims compensation. The review identified grounds. Community Services has since written to the mother, advising her of her options to pursue a claim on the child's behalf.

This does not mean that children whose supervision is transferred to an out-of home care team are guaranteed that their eligibility for victims compensation will be identified. Some of the out-of-home care managers we interviewed told us their focus is on finding and maintaining placements for children, not pursuing victims compensation. Other out-of-care managers said that unless a victims compensation issue is identified when files are transferred between teams, victims compensation will not be considered. This is because teams do not have access to the child protection files or because the teams do not review the child's protection history when files are transferred. A number of managers also confirmed that children's files often get transferred to out-of-home care teams without being allocated a caseworker.

Children whose carers are supervised by non government agencies

Fifteen of the 95 children in our group were placed with foster carers supervised by non government agencies. According to Community Services' guidelines, the agency is responsible for identifying these children's eligibility to apply for victims compensation. In 2008, 14% of children in statutory care lived with carers supervised by non government agencies.

Prior to the commencement of our investigation, the files of six of these 15 children had been reviewed by Community Services for victims compensation purposes. Most of the children who had not been assessed for victims compensation purposes did not have a Community Services caseworker. The following case is illustrative.

Case example 5

Court records for a child state that in August 2006, child protection caseworkers attended the child's home before taking him to hospital. An affidavit to the court states medical assessment found he had extensive bruising, bite marks and circular burns. The child was placed in long term care through a non government agency. A Community Services manager told us her review of the child's file for the purpose of our investigation identified that he had also sustained injury as a result of being shaken, possibly on more than one occasion. An application for victims compensation had not been considered. The manager said that as the child is placed with a non government agency, he does not have an allocated Community Services caseworker.

Young people supervised by Community Services' intensive support services

Eight of the 95 children and young people in our group were supervised by intensive support services. These were all young people with high support needs associated with challenging behaviours and social and emotional difficulties.

Prior to the commencement of our investigation, three had been reviewed for victims compensation purposes. One of these reviews was completed after the young person had left care.

The other two reviews had not been documented. We found both were inadequate.

Case example 6

The 2006 care application for a child recorded a history of 25 risk of harm reports including physical abuse and sexual harm ('sexual penetration'). At the time of our investigation the young person was being case managed by an intensive support service. A manager told us that the young person's caseworker had formed a view that he would not be eligible for victims compensation.

In response to our investigation, the young person's files were referred to an external legal officer for review. We asked Community Services to provide us with advice on the outcome of the legal review of the young person's files.

The solicitor's advice notes her opinion that there are several grounds which would support an application for victims compensation, noting that the young person had struggled with the effects of '*physical, psychological and sexual abuse from numerous individuals*'.

Young people leaving care

Eighteen of our group of 95 were aged 16 years or older at the time we initiated our investigation. In relation to these 18 young people, Community Services had reviewed the files of eight for victims compensation purposes.

Under NSW's care and protection legislation, all agencies providing statutory care are required to prepare a plan for young people leaving care. The plan is meant to outline the type of assistance the young person may need once they have left care.

Some teams told us that they will consider the issue of victims compensation as part of the leaving care planning process.

There are many problems with this approach to victims compensation not least that leaving care planning does not occur for all care leavers. This aside, evidence of injuries may get lost or destroyed over time and after many years young people themselves may not be willing to participate in assessments to support a compensation claim.

Often the young person will turn 18 before a claim for compensation is lodged. As a consequence, the responsibility for lodging the claim will be transferred from Community Services to the young person.

This seems to be an unfair burden to place on young people who more often than not will face significantly greater challenges in achieving a successful move towards independence and adulthood than their peers who have supportive families. Having their entitlements fully explored and executed before leaving care would enhance care leavers' likelihood of successful transition to independence by providing them with financial support when they most need it.

Case example 7

Children's Court records for a young person indicate that he was the victim of numerous violent acts prior to his placement in care. In the context of our investigation a manager told us the young person's original files were sent for external legal review 'some months ago'. The team received the results of the review a month after the young person turned 18. These indicate the file audit had identified possible grounds for claiming compensation. As the young person is no longer in care, a letter prepared by the legal officer was given to the young person, advising him that he may be eligible to claim victims compensation. The letter explains the process.

Community Services does not have any responsibility or power to act in relation to a legal claim for any child or young person no longer under the parental responsibility of the Minister.

Where Community Services has failed to meet its obligations to young people under the Charter of Victims Rights, there is a strong argument that while it does not have the power to act on their behalf, Community Services should provide whatever assistance is required to ensure individuals in this situation receive appropriate supports, including the support required to make an application for criminal injuries compensation.

In this regard we note that despite the existence of Ministerial guidelines that provide for young people to be followed up by designated agencies when they leave care, according to the managers we spoke with in the context of our review of leaving care planning and support, Community Services generally does not do this.

Family victims (immediate family of a homicide victim)

Of the 95 cases we looked at, 15 were family victims. We found nine had had their files reviewed to identify their eligibility to lodge a claim for compensation. The other six had not had their files reviewed for this purpose. We were told this was because the cases were either unallocated or the issue of compensation had been overlooked.

3.2.3 The adequacy of the reviews to identify grounds to claim for victims compensation

While our investigation did not focus on the adequacy of the reviews undertaken by Community Services to establish whether there were grounds to claim for victims compensation for the 95 children and young people in our group, we found that some of the reviews that reportedly had been undertaken were inadequate.

This was because in some instances information about a child was overlooked when their file was being reviewed to identify grounds to lodge a claim for compensation.

Case example 8

In 2008, Community Services lodged an application for victims compensation on the ground that a girl's sibling had been murdered. However, records available to this office indicated that the girl has an extensive history of abuse including sexual assault; physical abuse; exposure to severe domestic violence; and witnessing the sexual assault of her mother and another relative. In response to our investigation the manager advised that a legal officer would review the child's file to assess her eligibility to apply for further victims compensation. The agency subsequently told us that additional grounds to lodge a claim for criminal injuries compensation were identified.

In other cases, new information about a child's circumstances had become available but this did not prompt further review in relation to the issue of victims compensation.

Case example 9

In the case of two children we were told that at the time their files were transferred to the out-of-home care team in late 2006, no charges had been laid in relation to the death of a younger sibling and the police investigation concerning the death had not concluded. Their files were reviewed by a legal officer in April 2007, who provided advice that neither was eligible for victims compensation. However, when the mother was charged with the sibling's murder in early June 2008, this did not result in further review for victims compensation purposes. The manager told us the office does not have a system in place to track criminal proceedings or changed circumstances.

3.3 Community Services' processing of claims

In addition to examining Community Services' action to identify children and young people who may be eligible to claim for victims compensation, our investigation also considered the agency's actions to process applications once the initial step of identification had been completed.

We found that not only is inadequate identification by Community Services of potential victims compensation claimants a reason for the small number of claims, but delays by Community Services in processing claims is also likely to be a contributory factor.

Of the 40 children and young people whose files were reviewed prior to the commencement of our investigation, grounds to lodge a claim had been identified for 31 of the 40 children.

Of these 31 children and young people, application for compensation had been lodged for 11 children. The Victims Compensation Tribunal has settled five of these cases with compensation being awarded in each case.

We examined Community Services actions in relation to the remaining 20 cases where grounds to lodge a claim had been identified but an application for compensation had not been made.

We identified that in eight of the 20 cases, there had been significant delays between Community Services establishing eligibility to claim and processing the claim to the point where it can be submitted to Victims Services.

Our analysis of these cases identified that the lengthy delays have been due to caseworkers either failing or being very slow to respond to legal officers' requests for documents or other additional information; legal advice being mislaid or lost; requests for additional information being ignored; and actions not being recorded. The following case examples are illustrative.

Case example 10

The young person was removed from his parents when he was a toddler after he was admitted to hospital with extensive, life threatening injuries. He required surgery and remained in hospital for several months. In June 2008 the young person's long term carer heard about victims compensation and requested his caseworker commence a claim for the young person. The young person left care in September 2009 without an application having been made. This was despite grounds to lodge a claim for compensation being identified by a solicitor one year earlier.

Case example 11

In September 2008, Community Services referred a child's file to an external solicitor. In September 2009, the office supervising the child received the solicitor's advice, which is dated November 2008. The advice noted the file review had identified grounds for pursuing statutory compensation. The manager we interviewed could not explain the delay and advised the CSC has now acted on the solicitor's request for an additional report. In a statement of information, Community Services told us that the solicitor's correspondence had been sent to an acting manager at the office supervising the child in November 2008. We were told the correspondence had been 'mislaid' and that *'the Acting Manager Casework had only been recently appointed and may have been unclear of how to progress the Victims Compensation Claim'*.

Case example 12

In May 2007, a child entered care at the age of four months with acute brain injuries and medical evidence suggesting the injuries had been deliberately inflicted. In March 2008, a care legal officer reviewed the child's file and identified grounds for pursuing a victims compensation claim. When asked why an application on the child's behalf is yet to be lodged, the manager casework opined that changes in legal staff may be a factor. Another factor was that Community Services did not know the extent of the child's injuries. She advised that she had found it *'really difficult to track'* progress of the matter. She subsequently told us that a legal officer had requested medical records for the child in September 2009. This action appeared to be in response to our investigation.

Case example 13

In mid 2007, a care legal officer reviewed the files of three siblings. The review identified that the three siblings are eligible to lodge a claim for statutory compensation. The ground of sexual assault was identified for all three children and physical assault for two. The manager told us that he understood the legal officer had experienced difficulties in determining which abuse incidents occurred in NSW; however, there was nothing on the file to explain the lack of progress in relation to the claim since mid 2007. None of the three siblings has had an allocated caseworker since late 2007 and one turned 18 in early 2010. The legal officer had recently requested an updated counselling report for two of the siblings. In response to our request to Community Services for an explanation about the delays the legal officer advised that due to leave and other work commitments during 2008 she did not 'conduct a substantial review of the [siblings] files until April 2009'.

Put simply, the current situation means that significant numbers of children and young people who are, or have been, in care will suffer significant financial loss because of the failure of Community Services to ensure that timely and comprehensive victims compensation claims have been made on their behalf. In this regard we note that financial loss will be incurred when a claim is not made when it should have been, or when a claim is made but it is delayed because of inadequate administrative practice.

4. What Community Services told us in response to our findings

In early December 2009, we provided our provisional report and findings to the Executive Officer of Community Services and sought the agency's response.

In February 2010, Community Services provided its response. On receipt of the response, we asked Community Services for additional information and documents. Some of the requested information was provided to us in April 2010.

We had made a number of recommendations in our provisional report. Community Services told us that in the main it accepted these. The Chief Executive said that her agency is committed to improving its practice and to monitoring its progress in this area. We were told that her agency was preparing an action plan to manage its handling of victims compensation.

In response to our request for clarification about how Community Services proposes to meet its obligations under the NSW Charter of Victims Rights in relation to all the children and young people who do not have a caseworker or who are placed with a non government designated agency, the agency said that '*work is now commencing on the more detailed plan*' which will address this issue.

5. Concluding comments

As a result of the 2008 Special Commission of Inquiry into Child Protection Services in NSW, and the State Government's acceptance of most of the inquiry's recommendations, Community Services is at present focused on implementing significant changes to the child protection system in NSW.

The objectives of the changes are to make child protection a 'shared responsibility' with all relevant government agencies having prescribed responsibilities for ensuring the wellbeing of children. Community Services is now responsible for responding only to cases where there is risk of significant harm. Cases that do not meet the threshold for Community Services' involvement are now being handled by police, health, education and other relevant agencies.

These reforms are meant to be supported by an expansion of early intervention services and an enhanced role for the non-government sector in the provision of a range of early intervention and out-of-home care services.

While the changes to the care and protection system are complex and far reaching, it is important that the work involved in their implementation should not distract Community Services from its responsibility to ensure the 16,000 plus children and young people *currently* in care, are appropriately supported.

Our findings show that Community Services currently does not have the necessary systems in place to ensure that all children and young people in its care, who are entitled to apply for victims compensation, are assisted to do so in a timely manner. It is also apparent from our recent examination of the support provided by the agency to young people leaving care, that this too is inadequate. This means that if children and young people are to be appropriately supported, their eligibility to apply for compensation must be identified well before they leave care.

These are significant challenges. Despite the agency's advice that it is committed to improving its practice and to monitoring its progress in relation to its handling of victims compensation matters for children in its care, there is a real risk that the required changes to improve its practice in this area will not occur because of the broader inherent weaknesses in the out-of-home care system. Not least of these is the number of children and young people who do not have an allocated caseworker.

6. RECOMMENDATIONS

In my final report I have requested that Community Services provide me with detailed reports on its progress to implement the following recommendations¹:

Recommendation 1

Consider whether an amendment to s78 of the *Children and Young Persons (Care and Protection) Act 1998* – which would require care plans to consider the issue of victims compensation – is warranted. If so, Community Services should pursue this issue with the Minister for Community Services.

Recommendation 2

Review its practice guidelines in relation to children and young people who have been victims of violent crime. The review should ensure:

- a. the guidelines reflect the agency's recent directive that legal officers are now required to identify children and young people with potential claims for victims compensation during care proceedings.
- b. the responsibilities of legal officers and other relevant staff, and the timeframes for identifying children with potential compensation claims, are clearly stated.
- c. the responsibilities and timeframes of legal officers and caseworkers for taking the claim forward once identified are clearly stated.

Recommendation 3

Consider whether its victims of violent crime policy and guidelines, are located in the most appropriate place on the agency's intranet, to ensure optimum access to staff who need to access them.

Recommendation 4

Develop strategies to ensure all staff who have responsibilities under recommendation (2) above, have the necessary knowledge and skills to identify children and young people with potential claims.

Recommendation 5

Examine options to improve the functionality of KiDS in relation to victims compensation actions.

Recommendation 6

Ensure all regional file transfer checklists include victims compensation.

Recommendation 7

Ensure case review and case planning guidelines give adequate consideration to victims compensation.

Recommendation 8

Advise this office how it is monitoring, or how it proposes to monitor, the effectiveness of the system it has introduced to identify children who may be eligible to lodge a claim for victims compensation as they enter care.

Recommendation 9

Advise this office how it will meet its obligations under the Charter of Victims Rights to children and young people who have been victims of crime, who are currently under the parental responsibility of the Minister, and who:

- a. do not have an allocated Community Services caseworker;
- b. who are placed and/or case managed by a non government designated agency.

¹ I have requested the first of these reports by 30 July 2010, and the second by 30 November 2010.

Recommendation 10

Liaise with the Department of Justice and Attorney General's Victims Services about any strategies arising from the implementation of recommendation (9) to ensure that:

- a. Victims Services are able to manage and prioritise future claims;
- b. agreement can be reached between Victims Services and Community Services about strategies to assist Victims Services deal efficiently with claims for children in care.

Recommendation 11

Clarify the support it will provide to children and young people in circumstances where the agency has failed, or fails in the future, to meet its obligations to children who are victims of violent crime, prior to their exit from statutory care.

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