

Institutional Responses to Child Sexual Abuse in Out- of-Home Care

Legal Aid NSW Submission
to the Royal Commission into
Institutional Responses to
Child Sexual Abuse

May 2016

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW welcomes the opportunity to provide comments to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper: Institutional Responses to Child

Sexual Abuse in Out-of-Home Care (the Consultation Paper).

Legal Aid NSW is uniquely placed to provide comments in response to the Consultation Paper through the experiences of our specialist legal services that provide assistance, casework and representation to young people in Out-of-Home Care (OoHC).

Should you require further information or would like to discuss any of our recommendations, the contact officers are:

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Response to Consultation Paper

Recommendations of Legal Aid NSW

In response to Chapter 8 of the Consultation Paper, Legal Aid NSW recommends:

1. the establishment of a nationally consistent therapeutic care framework for residential OoHC service delivery.
2. that when developing a national therapeutic framework, emphasis is placed on reducing interaction with police and decriminalising children and young people in residential OoHC.
3. the development and implementation of a strategy to professionalise the residential care sector, including the introduction of a minimum qualification.
4. the development of national standards for the training and accreditation of residential carers in OoHC settings.
5. the expansion of resources allocated to the residential OoHC sector to:
 - a) establish a larger range of targeted placements to provide more options in the continuum of care, and
 - b) increase staff to client ratios in houses so there is appropriate supervision and support of young people in residential OoHC.
6. increasing the leaving care age from eighteen to twenty-one years.
7. that there should be greater accountability around the commencement and completion of leaving care planning, including:
 - a) the development of a uniform system across the residential OoHC sector for the leaving care planning process
 - b) monitoring of leaving care planning by the Office of the Children's Guardian
 - c) automatic notification of the NSW Ombudsman where a young person leaves care without a leaving care plan, and
 - d) reporting on leaving care outcomes achieved by residential OoHC services and the NSW Department of Family and Community Services (FaCS), including the participation of young people in the process, and the rates of culturally appropriate plans developed for Aboriginal children and young people.
8. establishing a centralised and separate leaving care team within FaCS to advise on the development of leaving care plans and supporting young people after care.
9. establishing separate case worker positions dedicated to supporting young people leaving care within each designated agency that has case management of young people in statutory OoHC.
10. allocating more resources to the aftercare sector, including more Aboriginal specific organisations.
11. establishing systematic reporting and monitoring arrangements for ensuring timely and efficient identification and processing of victims compensation matters.
12. establishing accessible avenues for a child or young person in care to seek legal advice or make a complaint around issues that they are experiencing while in care.

Delivering specialist legal services to vulnerable young people

Legal Aid NSW has extensive experience working with vulnerable young people, including those in, or with a history of, OoHC. Legal Aid NSW represents children and young people in care and protection matters before the Children's Court. The Legal Aid NSW Children's Legal Service (the CLS) advises and represents children and young people aged under eighteen involved in criminal cases before the Children's Court. The Children's Civil Law Service (the CCLS), established in 2013, provides a targeted and holistic legal service to young people identified as having complex needs. The CCLS works in collaboration with criminal lawyers in the CLS, the Aboriginal Legal Service NSW/ACT and Shopfront Youth Legal Centre to provide joined up legal services to vulnerable young people.

Lawyers in both the CLS and CCLS have observed that young people with complex needs are over-represented in their client base, in particular young people with a history of OoHC. A 2013 study has also indicated that the vast majority of Legal Aid NSW's most frequent service users' between 2005 and 2010 were under eighteen, and many of these users had multiple and complex needs: more than half were homeless, 94% had spent time in a juvenile detention centre and 46% had spent time in OoHC. In a 2011 Issues Paper, *The Drift from Care to Crime*¹, Legal Aid NSW also identified a growing trend towards the criminalisation of young people in OoHC.

Many children and young people come into contact through the child protection system having experienced significant trauma, including sexual abuse and family violence. As noted in the Consultation Paper, children and young people in OoHC remain vulnerable to further sexual abuse, either by carers or staff through child sexual exploitation or through child to child sexual abuse when placed with other young people in OoHC placements.

Legal Aid's comments in response to the Consultation Paper will address 'Chapter 8: A supportive and quality care environment', based on our experience with children and young people in residential OoHC.² Some relevant factors to note when looking at the cohort of children and young people who are in residential OoHC include:

- this cohort comprises only 2.9% of the OoHC population in NSW (503 young people)³,
- residential OoHC is mainly used for children and young people who have complex needs⁴, and,
- they have experienced multiple placement breakdowns prior to entering residential OoHC.

¹ Legal Aid NSW, *The Drift from Care to Crime: A Legal Aid NSW Issues Paper*, October 2011, available at: http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0019/18118/The-Drift-from-Care-to-Crime-a-Legal-Aid-NSW-issues-paper.pdf

² Defined as an OoHC placement in a residential building for children and young people where there are paid staff

³ Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, Child welfare series no. 61, 2015.

⁴ Ibid.

Therapeutic responses in residential Out of Home Care

Legal Aid NSW recommends the establishment of a nationally consistent therapeutic framework for OoHC service delivery. The implementation of a therapeutic care framework is particularly important in the residential OoHC setting, given the increasing representation of children and young people with complex needs.

The provision of care within a residential OoHC setting should be a trauma informed response. It should aim to provide a safe and supportive environment to address the combined impacts of abuse, neglect and separation from family. Currently in NSW, there is no prescribed therapeutic framework underpinning the provision of services in the residential OoHC sector, which has resulted in vastly varying and inconsistent standards of care for young people in residential OoHC.

Reliance on police as a behaviour management tool

Many young people in residential OoHC have experienced complex trauma. For young people, the impact of past experiences of trauma can manifest in a range of disruptive and difficult behaviours, often characterised by a limited capacity to regulate behaviours and emotions.

The lack of a consistent therapeutic framework has proved problematic in relation to managing challenging behaviours of young people in residential OoHC. For Legal Aid NSW, a key issue is the inappropriate use of police as a behaviour management tool by residential OoHC providers⁵. This has resulted in unnecessary and frequent interaction with the criminal justice system for this group of vulnerable young people. Often these young people come before the Children's Court having been charged for absconding from placement, relatively minor assault charges or property offences that occur in the residential OoHC environment. Legal Aid NSW submits that an over-reliance on apprehended violence orders results in the criminalisation of behaviour that would normally be dealt with as a disciplinary matter if occurring in a family home. This leads to an ongoing cycle of conflict, and the unnecessary criminalisation of a vulnerable young person.

Case study: SD

SD is 16 years old and lives in a residential OoHC placement. She was removed from her mother as a baby and placed in various foster care placements. After numerous placement breakdowns, SD was placed in a residential OoHC at the age of eleven. SD has a diagnosis of ADHD and ODD and is medicated for these conditions.

During a Friday afternoon, workers were aware that SD was feeling unsettled and on edge. A worker took SD's mobile phone from her as a punishment for her misbehaviour which upset SD. SD attempted to get the mobile phone from the worker who then threw

⁵ Legal Aid NSW, *The Drift from Care to Crime: A Legal Aid NSW Issues Paper*, October 2011, available at: http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0019/18118/The-Drift-from-Care-to-Crime-a-Legal-Aid-NSW-issues-paper.pdf

the mobile phone to another worker. SD then grabbed the worker from behind to try and get her mobile phone back. SD then kicked the walls and caused damage. The workers called Police who arrested SD and took her to the police station where she was then charged with assault and destroying/damaging property and released on bail. Police also took out an Apprehended Domestic Violence Order against SD on behalf of the worker.

Challenging behaviours need to be managed in the residential OoHC environment in a way that not only supports the young person who is exhibiting the behaviours but also ensures the safety of all residents and workers. Legal Aid NSW submits that the over-use of police as a behaviour management tool is punitive in nature and inconsistent with a therapeutic response. For a child or young person who has experienced significant trauma, the presence of the police can have an additional harmful impact on the young person.

Legal Aid NSW has led systemic change and advocacy around this issue through our recent work with the NSW Ombudsman's Office in the development of a State wide *Joint Protocol to Reduce the Contact of Young People in Residential Out of Home Care with the Criminal Justice System* (the Protocol). The Protocol sets out guidelines for appropriate responses to young people with challenging behaviours by both the residential OoHC service provider and NSW Police, emphasising a trauma informed response. It is a multi-agency collaborative effort which aims to reduce the frequency of interactions between young people in residential OoHC and the NSW Police.

The launch of the new NSW Child Safe Standards by the NSW Children's Guardian has also reinforced the need to better support young people with challenging behaviours in OoHC⁶. Standard 11 'Behaviour Support' now requires residential OoHC agencies to have clear protocols regarding the use of police as a behaviour management strategy or in response to risk taking behaviour by children and young people.

Recommendations

Legal Aid NSW recommends:

1. the establishment of a nationally consistent therapeutic care framework for residential OoHC service delivery.
2. that when developing a national consistent therapeutic framework, emphasis is placed on reducing the interaction of police and decriminalising children and young people in residential OoHC.

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http://www.kidsguardian.nsw.gov.au/ArticleDocuments/449/ChildSafeStandards_PermanentCare.pdf.aspx?Embed=Y

Enhancing placement stability

Multiple placements and instability

Many of the young people who are clients of the CLS and CCLS have experienced multiple placement breakdowns, particularly those who are in residential OoHC. Research around key vulnerable periods for children and young people in OoHC reveals that the stability and number of placements that a young person experiences is indicative of the likelihood of the young person engaging in criminal behaviour. The transitioning between placements is known to increase the risk of post-placement offending⁷.

In Legal Aid NSW's experience, it is not uncommon for a young person to have spent short, transient periods of time in a residential OoHC placement, with frequent bouts of time spent in juvenile custody as a result of ongoing conflict within residential OoHC houses with other co-residents and staff. The interrupted time spent in custody often means that there is little opportunity for the young person to meaningfully create attachments with care workers, and does little to encourage a young person to view their allocated placement as a safe place, let alone a home environment.

Legal Aid NSW considers there to be several key factors that contribute to the instability of placements within the residential OoHC sector. One is the lack of professional, specialist and highly trained staff working with and caring for young people with complex needs and a history of trauma. Legal Aid NSW has observed vast differences in the quality and skills sets of workers employed in various residential OoHC service providers. There is no current specialised training or qualification required in order to be employed in the residential OoHC sector. The positions in residential OoHC services are often poorly paid and there are limited resources to support staff to participate in specific training. By comparison, Family and Community Services (FaCS) workers are in a professionalised workplace and have degrees in Social Work or Psychology. The case management of young people in residential OoHC in NSW has recently transferred from FaCS to the non-government sector. The disparity in training, qualifications and skills between the government and non-government sector is of great concern as it has such a significant impact on young people in OoHC.

The work force in the residential OoHC sector is also highly casual, in particular workers who are rostered on during the weekends or during the night. Staff have limited knowledge of the individual young person and their needs. The constant turnover of workers in a young person's life means that they are less likely to create and form connections. These workers often lack the skills or knowledge of the young person to manage their behaviours

⁷ Cashmore, Judy "The link between maltreatment and adolescent offending: Systems neglect of adolescents" – Family Matters No, 89 2011.

and de-escalate confrontational situations appropriately, which subsequently results in police involvement.

Legal Aid NSW has also observed an inappropriate client mix in the allocation of placements. There is very little client matching applied to placements to take into account the particular needs and vulnerabilities of the young person. Legal Aid NSW's experience has been that a client is not so much matched to a placement, but allocated to the only placement that might be available because of limited resources available in the sector. This often results in young people being placed in houses with other young people who might be an entirely inappropriate mix for them (including, for example, a twelve year old child being placed in a house with seventeen year old youths with criminal histories). This increases the risk of further trauma being caused by conflict with, or victimisation by, other young people living at the service.

There are also inappropriate geographical placements to locations where the young person has no attachment. This often results in the young person absconding from the placement to return to a familiar area and where they have closer contact with their families. The importance of maintaining connections to family and community is a key factor in minimising the impact of being in care, and this is often overlooked in decisions about placement.

Further, there are inappropriate client to house ratios. Many of the young people that are seen by Legal Aid NSW complain about having too many young people in a house (usually around five young people to a house) with limited staff support. In view of the vulnerabilities and complexities of young people who are placed in residential OoHC, having fewer young people in each house would decrease conflict, ease anxieties and allow greater capacity for staff to care for each young person.

Finally, there are limited resources and funding for more targeted placements to provide greater options in the continuum of care. A range of alternative placement options should be available to provide varying degrees of assistance and care tailored to the needs of young people. An appropriate client mix and consideration around appropriate placements is key to minimising placement instability in residential OoHC services.

Case study: EN

EN is a fifteen year old and comes from a refugee background. He has experienced significant trauma as a result of family violence, neglect and exposure to drugs and alcohol. He was placed into care when he was fourteen and was moved into a residential OoHC placement two hours away from where he had settled in NSW, and where his family resided.

EN had expressed that he would like to be placed in a residential OoHC placement closer to where his family reside and where his FaCS caseworker is from, but has continually been placed back in the same residential OoHC service. Because of the length of time it takes EN to travel on public transport to see his family and return to placement, EN will often abscond from his placement by remaining overnight with

family and friends. As a result of his frequent absconding, police have been involved as EN is breaching his bail conditions by not returning to his placement. This has resulted in EN spending frequent periods of time in custody.

Recommendations

Legal Aid NSW recommends:

3. the development and implementation of a strategy to professionalise the residential care sector, including the introduction of a minimum qualification. This would recognise the highly specialised role required in working with children and young people with complex needs.
4. the development of national standards for the training and accreditation of residential carers in OoHC settings.
5. the expansion of resources allocated to the residential OoHC sector to:
 - establish a larger range of targeted placements to provide more options in the continuum of care, and
 - increase staff to client ratios in houses so there is appropriate supervision and support of young people in residential OoHC.

Increased support when leaving care and in post-care life

A key component of the legal assistance and casework that the CCLS undertakes for clients involves advocacy around the statutory entitlements of young people transitioning out of care. This has included:

- advocating for the development of a young person's leaving care plan ("LCP") targeted to their needs
- advocating for greater involvement and support from FaCS or the NGO providing residential OoHC case management in supporting a young person transitioning out of care
- ensuring that a young person's entitlements to Victims' Support have been canvassed in a timely manner prior to leaving care, and
- seeking access to entitlements pursuant to a young person's LCP once the young person has left care.

Leaving Care Plans (LCP)

The types of assistance that may be provided to a young person leaving care is set out in Part 6 of Chapter 8 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the NSW Care Act). Section 165 of the NSW Care Act allows the Minister to provide or arrange such assistance for children and young persons who leave statutory out-of-home care from the ages of 15 until 25, having regard to their safety and welfare. Section 166 of the NSW Care Act mandates that the 'designated agency having supervisory responsibility for a child or young person must prepare a plan, in consultation with the child or young person, before the child or young person leaves out-of-home care'.

This plan must include specific supports and assistance to the young person across a range of areas, including: access to health assistance, education, employment, housing and legal assistance.

In Legal Aid NSW's experience, there is inadequate planning and support provided to the young person from either FaCS or the residential OoHC service prior to them leaving care. Many of our clients have left care without having a LCP developed at all, despite the statutory obligation on designated agencies to do so. For the vast majority of our clients who did have a LCP developed, they were template plans developed with limited or no participation from the young person and bore little relevance or resemblance to their needs or circumstances.

The issues around the preparation of LCPs were canvassed in the NSW Ombudsman's report, *The continuing need to better support young people leaving care* (August 2013).⁸ This report found that only 22% of young people left care with an endorsed LCP. Other key findings included:

- five months after exiting care, 19% of the cohort still did not have a LCP
- of the care leavers for whom a LCP was provided, planning of the LCP commenced in a timely manner for only 17% of care leavers
- of the care leavers for whom a LCP was provided, the planning and support was considered inadequate for almost half of them, and
- leaving care planning and support was inadequate for the care leavers who were in Juvenile Justice detention in the 12 months prior to exiting care.

Legal Aid NSW's experience advocating for clients leaving care mirrors the findings made by the NSW Ombudsman. In addition, we have identified systemic issues around:

- inconsistencies in the quality of the development of LCPs and the skills sets within FaCS staff and residential OoHC staff to develop LCPs
- a lack of participation and involvement of the young person in the leaving care process and developing the LCP
- different approaches from agencies around the leaving care process. In some cases, there appears to be motivation to close files quickly which has compromised the planning process and had a detrimental impact on the care leaver
- significant issues around the timeliness in the preparation of leaving care plans and inadequate support provided
- rigidity and inflexibility in developing tailored and targeted LCPs for care leavers. Legal Aid NSW has experienced barriers in advocating for more support or services within a young person's LCP, such as financial entitlements or counselling support. An example includes a worker declining to put in place provisions for financial support for counselling as the young person, who had been a victim of sexual assault, had not engaged with a counsellor/psychologist while she was residing in the residential OoHC placement. In Legal Aid NSW's view, the inflexible

⁸ https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0017/10880/The-continuing-need-to-better-support-young-people-leaving-care-web.pdf

application of the Minister's Guidelines for assistance⁹ is partly due to the inexperience and knowledge of workers preparing the LCP, as well as a perceived pressure to save resources. It is not uncommon for Legal Aid NSW to be told that a particular form of assistance would not be approved by the District Directors from FaCS.

- young people leaving care without adequate identification or supporting documentation, which leads to barriers when obtaining a driver's license, employment and access to Centrelink allowances.

Case Study: KJ

KJ is an Aboriginal young man who was placed in a residential OoHC service eight months before he turned eighteen. KJ had come into contact with the criminal justice system due to his frequent absconding from his placement to return back to his family and friends.

The residential OoHC service started the leaving care planning process with KJ two days before he turned eighteen. The meeting took place over the course of half an hour and failed to provide supports. Of most concern was that the residential OoHC service did not have any accommodation options in place for KJ. KJ's worker had not submitted a Housing NSW application for priority housing, or arranged other referrals to supported accommodation services.

The only way KJ was not exited into homelessness was by FaCs extending the funding to the residential OoHC service to allow KJ to stay with them for a further four weeks to enable the service additional time to undertake proper leaving care planning.

Aboriginal Young People

The CCLS works with Aboriginal young people in partnership with the Aboriginal Legal Service (NSW/ACT) at the Youth Koori Court (the YKC).¹⁰ A significant proportion of young people in the YKC are in statutory OoHC. Many of these young people have received limited case work or other assistance from FaCS and their experiences of leaving care and receiving support while in care have been significantly compromised by a range of factors, discussed below.

The application of the Aboriginal Child Placement Principles has had unintended consequences. In Legal Aid NSW's experience, young Aboriginal people who are placed in kinship placements often do not get the benefit of casework assistance and support from FaCS. When kinship placements break down (usually for our clients, at an older age), FaCS may not have had any involvement with the young person for a significant period of time. These young people are typically not engaged with any service and it is

⁹ Guidelines on the provision of assistance after leaving out-of-home care

¹⁰ The Youth Koori Court has been trialled at Parramatta Children's Court since May 2015:
<http://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>

often not until Legal Aid NSW advocates with FaCS on their behalf that a case worker is allocated to either provide support and assistance, and to develop a LCP.

High rates of incarceration of Aboriginal young people have also meant that the assistance young people receive in care is compromised due to frequent periods of detention. There is often little contact or engagement from designated agencies where a young person is in custody, and there is nominal consultation and participation of the young person in planning the leaving care process.

There is limited support to develop culturally appropriate plans in the leaving care process. Legal Aid NSW's experience has been that there is a significant lack of Aboriginal identified staff to provide appropriate cultural planning as part of the leaving care process.

In Legal Aid NSW's experience, there also appears to be significant distrust by Aboriginal families and young people about involvement from government agencies who have been responsible for the separation and intergenerational removal of children from their families. This can act as a significant barrier in a young person's capacity to engage with FaCS and other agencies, and the perception of non-compliance or non-engagement further limits the provision of any meaningful support or assistance to the young person. In our view, there needs to be alternative and more innovative ways of engaging with Aboriginal young people, including the funding of other case management services to provide on the ground assistance and support to young people, while acting as a conduit in building a relationship with FaCS.

Case study: JT

JT was born in a regional community and removed from his parents at a young age and separated from his siblings. JT experienced significant trauma from the removal and disconnection from his family and his culture. Since the age of twelve, JT has had numerous placements with family, friends or community members and self-placed a number of times.

At seventeen years old, JT was placed in custody serving a period of control. It wasn't until some ten months later that he received a face-to-face visit from FaCS. JT's leaving care plan was not finalised until after he turned eighteen. Two days before his eighteenth birthday, JT had a short telephone conversation with his FaCS caseworker in order to prepare his LCP. JT's LCP was signed off and approved without any real involvement or participation by him in this process.

Subsequently JT was referred to Legal Aid NSW, who assisted JT in obtaining an amended LCP to include further cultural support while in custody and to include a referral to Aftercare services. FaCS also agreed to provide JT with his original birth certificate.

Case study: SA

SA was removed from the care of his parents at the age of two and placed in foster care placements. He experienced chronic homelessness, leaving his placements from the age of eleven and self-placing with relatives and friends. SA also was affected by the passing of his mother just before he turned eighteen, which resulted in ongoing loss and grief for which he had no appropriate cultural or clinical support. While involved with the YKC, Legal Aid NSW made enquiries on his behalf with FaCS in relation to his LCP.

Legal Aid NSW were advised that there was no open plan for SA and that a LCP had been developed and signed off without SA's participation or consultation as SA was homeless and non-contactable. Legal Aid NSW made submissions on his behalf to FaCS to seek funding for intensive casework support to be provided to SA from another agency, in view of the level of distrust that SA had towards FaCS. This was granted and another agency started working with SA and has successfully assisted him with housing, access to relevant services and finalising a LCP that is more targeted and relevant to his needs.

After care support

It has been abundantly clear in the course of our work that there are limited resources to provide aftercare support for young people transitioning out of care and who have left care. The aftercare services that currently do exist assist young people to the extent that their resources allow, but they are significantly underfunded.

There are significant barriers experienced by care leavers who have turned eighteen to have a LCP developed (if they left care without a LCP) or to seek access to entitlements pursuant to an approved LCP. The experiences of some of our clients has been that the process is excessively administrative and assumes a high level of systems navigation, for which many care leavers do not have the skills or capacity. This often results in the young person not accessing any of the support or assistance to which they may be entitled.

Case study: NP

NP is an Aboriginal young woman who has an extensive history of trauma, including chronic neglect, domestic violence and substance abuse. NP was removed from her family at the age of four and has diagnoses of ADHD, ODD, anxiety, depression and PTSD.

NP was nineteen years old when her youth worker assisted her in trying to get information about her LCP and what support she could access. NP contacted her local FaCS office and was told that there was no open matter for her within that office. NP was advised that she would need to call the FaCS Helpline and make a request to reopen her matter, before her local FaCS office could discuss her LCP with her.

Without the assistance of NP's aftercare worker to navigate through the process, NP would have given up on trying to access her LCP.

Legal Aid NSW recommends the allocation of more resources to the aftercare sector to ensure that young care leavers have adequate support in the transition from care. Legal Aid NSW also believes that there is a clear need for specialist leaving care workers within FaCs and/or the designated agency. This would provide a centralised point of contact for a young person who has left care to seek sufficient information and assistance around their LCP and other entitlements.

Access to information

A young person leaving care has a statutory right to access their personal information pursuant to section 168 of the NSW Care Act. The designated agency that had supervisory responsibility for the young person is required to provide an appropriate person to support and assist the person seeking access to information at the time when access to the information occurs.

It is Legal Aid NSW's experience that where young people have sought access to their own files, there have been significant delays around the processing of these requests. While we note that FaCS has recently committed to provide these requests in a more timely manner,¹¹ this can be delayed where a large number of applications have been received.

Case Study: NP (continued from above)

After accessing her LCP, NP advised that she wanted to seek access to her files and care records. Legal Aid NSW assisted NP with her application and experienced significant delays in the processing of this application. An application was initially made in September 2014 for NP to access her records under the *Government Information (Public Access) Act 2009* (NSW) (GIPAA). In December 2014, NP's GIPAA application was refused on the basis that the request would constitute an unreasonable and substantial diversion of the agency's resources.

In January 2015, an application for NP was then made to the Care Leavers Records Access Unit in FaCS for access to her personal records. After repeated attempts to follow up the request, a complaint was lodged with the NSW Ombudsman's Office in May 2015 about the delay NP experienced in accessing her files. Following that complaint, NP's files were received in June 2015.

It took NP nine months to receive her care files. It is questionable whether a young care leaver without the assistance of a lawyer would have received their files in a timely manner or indeed at all.

¹¹ Currently listed as 8 weeks: <http://www.community.nsw.gov.au/parents,-carers-and-families/fostering,-guardianship-and-adoption/foster-care/were-you-in-out-of-home-care>

The timely access to a young person's file is an important part of the process of leaving care and a statutory right. It recognises the importance of a young person understanding their history and being able to access personal information about their care held by a government agency. It can be a powerful and important part of the healing process where a young person feels ready to view their own files. Excessive delays in the processing of such requests are unnecessary and lead to frustration with a system which many young people already resent.

Timely access to Victims' Support

The provision of appropriate and timely support to victims of violence is central to a therapeutic approach to young people in OoHC. A significant majority of young people who are placed in OoHC have been victims of violence, including family violence and sexual assault.

It is imperative that statutory agencies responsible for the care of children and young people have systematic processes in place to ensure that adequate support services are provided as part of a trauma informed practice. In addition, appropriate and timely identification of eligibility for victims' compensation and assistance in lodging these claims is crucial.

Legal Aid NSW recommends that there should be clear and uniform systems in place throughout the OoHC sector to ensure children and young people have timely access to victims' support. Legal Aid NSW is encouraged by the introduction of a FaCS policy around the auditing of a young person's file before they leave care in order to identify relevant legal claims, including eligibility to claim victim's compensation. However, it is Legal Aid NSW's experience that this process is not systematically applied throughout the residential OoHC sector. The audit process usually occurs close to the time when a young person leaves care, which leaves little opportunity to follow up or support the young person in a claim if this is required.

Legal Aid NSW has also experienced barriers in the support of victims once they have turned 18, with many care leavers either not having gone through the audit process or having little information about further support being available. Legal Aid NSW submits that all care leavers should be supported by FaCS in determining their eligibility for victims' compensation and in lodging relevant claims.

Recommendations

Legal Aid NSW recommends:

6. increasing the leaving care age from eighteen to twenty-one years.
7. that there should be greater accountability around the commencement and completion of leaving care planning, including:
 - a) the development of a uniform system across the residential OoHC sector for the leaving care planning process
 - b) monitoring of leaving care planning by the Office of the Children's Guardian
 - c) automatic notification of the NSW Ombudsman where a young person leaves care without a leaving care plan, and

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- d) reporting on leaving care outcomes achieved by residential OoHC services and the NSW Department of Family and Community Services (FaCS), including the participation of young people in the process, and the rates of culturally appropriate plans developed for Aboriginal children and young people.
 - 8. establishing a centralised and separate leaving care team within FaCS to advise on the development of leaving care plans and supporting young people after care.
 - 9. establishing separate case worker positions dedicated to supporting young people leaving care within each designated agency that has case management of young people in statutory OoHC.
 - 10. allocating more resources to the aftercare sector, including more Aboriginal specific organisations, taking into account the significant over-representation of Aboriginal children and young people in OoHC.
 - 11. establishing systematic reporting and monitoring arrangements for ensuring timely and efficient identification and processing of victims compensation matters.
 - 12. establishing accessible avenues for a child or young person in care to seek legal advice or make a complaint around issues that they are experiencing while in care.