



# NSW DEPARTMENT OF COMMUNITY SERVICES

**Head Office** 4-6 Cavill Avenue, Ashfield NSW 2131 • Locked Bag 4028, Ashfield 2131  
DX 21212 Ashfield • Tel (02) 9716 2222 • Fax (02) 9716 2999



CFW 09/114060

29 MAY 2009

Senator Claire Moore  
Chair  
Senate Community Affairs Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator Moore

Thank you for giving the NSW Department of Community Services the opportunity to present to the Senate Community Affairs Reference Committee at the Public Hearing held in Sydney on 7 April 2009 for the *Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports*.

Ms Linda Mallett, A/Divisional Director, Policy and Planning, agreed to provide further information on several matters that were raised by Committee members. The attached supplementary submission addresses these matters.

Yours sincerely

Jennifer Mason  
**Director-General**

Encl.

**SENATE COMMUNITY AFFAIRS REFERENCE COMMITTEE**

**INQUIRY INTO THE IMPLEMENTATION OF THE RECOMMENDATIONS  
OF THE LOST INNOCENTS AND FORGOTTEN AUSTRALIANS REPORTS**

**SUPPLEMENTARY SUBMISSION**

**Department of Community Services**

**1. SENATOR FIFIELD: ....You mention that NSW assesses claims on a case-by-case basis. Are you able to give an indication as to how many claims have been made and how many have been settled in favour of the claimant? (CA 72)**

For the five years from 2003 to 2008, the Department received 119 claims for compensation from care leavers. Of those 119 claims, 23 were settled, by agreement, in a manner beneficial to the claimant.

**2. CHAIR: Is there a confidentiality clause in any settlements that are made? Is there a policy that there is a confidentiality clause involved? (CA 72)**

It is Departmental policy, which is reflected in the precedents contained in the Legal Services Manual, that all Deeds of Release and Terms of Settlement contain a confidentiality clause. The clause regarding confidentiality used in Deeds of Release and Terms of Settlement is:

"The Releasor agrees not to reveal the terms of this settlement, or discuss the events as set out in the introduction, with anyone except where disclosure can be lawfully required or for the purpose of obtaining professional advice".

**3. Clarification of care leavers access to records and fees (CA 73)**

Care leavers do not need to apply under the *Freedom of Information (FOI) Act* for access to records about their time in care. Under section 168 of the *Children and Young Persons (Care and Protection) Act 1998*, the Department provides access free of charge for care leavers to the personal information relating directly to themselves contained in Department of Community Services records.

Access for care leavers who were in care in NSW but now live interstate is arranged by the Department's Records Access Branch. These interstate applications are processed as section 168 applications and, as such, are free of charge.

However, some care leavers may choose to make a FOI request in preference to a section 168 request. Possible reasons include the FOI request



will be dealt with within a specified statutory timeframe and there are clearer rights of appeal available within the *Freedom of Information Act 1989*. An application fee of \$30 (\$15 concession) is charged for these requests, which covers 20 hours of processing time.

Care leavers seeking access to records about other people, including deceased members of their family, must apply under the *Freedom of Information Act* rather than section 168 of the *Children and Young Persons (Care and Protection) Act 1998*. As noted above, FOI applications incur an application fee of \$30 (\$15 concession), which covers 20 hours of processing time.

**4. SENATOR FIFIELD: Are there any other organisations [other than the Salvation Army Special Search Service] which receive funding specifically for a special search service? (CA 75)**

The Salvation Army has provided a family search service in NSW since the 1920s and as such has specialist expertise in assisting people with family tracing. The full resources and networks of the Salvation Army are available to conduct searches both nationally and internationally.

The Special Search Service is funded to assist people over the age of 18 years who were separated from their child or birth family through a NSW government process. This could include adoption, being made a ward of the State or being placed in foster care or a children's home or under other residential care arrangements. The Special Search Service provides a confidential and professional service including information and referral, search and mediation, assistance in making contact and short term telephone counselling for clients.

Clients do not necessarily have to deal directly with the Special Search Service. The After Care Resource Centre, a care leaver service funded by the Department and operated by Relationships Australia, has assisted clients by dealing with the Special Search Service on a client's behalf.

The Department also funds Link-Up Aboriginal Corporation to provide support to Aboriginal people who were separated from their families when they were children to reconnect to family and kin.

**5. Further information on the Department's procedures when care leavers seek access to personal records (CA 80)**

If the care leaver lives in NSW, his or her local Community Service Centre (CSC) is responsible for responding to a request to access records which contain personal information relating directly to them.

The guideline *DoCS Files – Access to Records by OOHC Leavers* outlines the procedures for the Department's caseworkers to follow when a care leaver

seeks access to their records. Applications to access records will be allocated to a Senior Caseworker or experienced intake officer who is responsible for obtaining the files and organising an appointment at a CSC convenient for the person to attend. When a care leaver attends to access their records, the caseworker is expected to warn the care leaver if the records contain anything which might upset them. The caseworker will also sit with the care leaver while he or she reads the file and answer questions and provide support if needed. If there are a significant number of records or if the care leaver is very upset and cannot continue, another appointment may be set.

For care leavers who live interstate, the Records Access Branch at the Department's Head Office processes the request to access records. The records are sent to the care leaver with written advice that the content and language used may be upsetting and that the care leaver may wish to consider having a support person when viewing the records.

**6. SENATOR FIFIELD Can you update the committee as to what the current status is in relation to organ donation for kids in state care? I understand, again from our witness this morning, that the *Human Tissue Amendment (Children in Care of State) Bill 2008* is still before the Parliament. What changes does this bill propose to make? (CA 81)**

**SENATOR FIFIELD Are you able to take that on notice and provide the committee with what the safeguards are and what the various steps are? (CA 82)**

Part 4 of the *Human Tissue Act 1983* currently allows for a child's organs to be donated in circumstances where the child has not during his or her lifetime expressed an objection to donation and the child's senior available next of kin gives consent.

On 11 February 2007, the former Minister for Community Services, the Hon Reba Meagher MP, established a NSW Government Taskforce to recommend changes to laws governing organ donation for children and young persons in the care of the State of NSW. As the law stood, no person was permitted to authorise the removal of tissues or organs from a deceased child or young person who is in the care of the State.

The Minister's decision to establish the Taskforce was in response to concern over an unsuccessful attempt by a family to donate their child's organs. At the time of death, this child was under the parental responsibility of the Minister. As a result, section 34A of the *Human Tissue Act 1983* precluded organ and tissue donation, even with the consent of the birth and foster parents.

Following deliberations, the Taskforce made its recommendations in the *Organ and Tissue Donation by Children and Young People in the Care of the State of NSW - Final Report* which was endorsed by the (then) Ministers for Health and Community Services in November 2007.



Amendments to section 34A of the *Human Tissue Act* were made by the *Human Tissue Amendment (Children in Care of the State) Act 2008* and commenced on 13 February 2009. The amendments allow for the organs of children who are in the care of the State to be donated for transplantation into the body of another person in a manner similar to that applying to all other children. The amendments allow the organs of a child in the care of the State to be donated if the child has not during his or her lifetime expressed an objection to donation and the principal care officer for the child gives his or her consent.

The principal care officer is the Chief Executive Officer or Executive Officer of the designated agency that has the supervisory responsibility for the child or young person in the care of the State under the *Children and Young Persons (Care and Protection) Act 1998* at the time of the child or young person's death. Designated agencies include the Department of Community Services or non-government organisations that are accredited to provide out-of-home care services for children and young people in the statutory care of the State.

The role of the principal care officer under the legislation is to seek the consent of relevant persons prior to the removal of tissue from a child who was in the care of the State when he or she died. This consent can only be provided with the agreement of all identified relevant interested parties. This may include birth parents, grandparents, foster parents, siblings and other next to kin or any other persons considered to be a relevant decision maker by the principal care officer.

The NSW Children's Guardian is currently drafting procedural and monitoring Guidelines for principal care officers to consider when exercising his/her functions under the *Human Tissue Amendment (Children in Care of the State) Act 2008* in relation to the removal of tissue from child in care, following death. The Children's Guardian is consulting with key designated agencies, the Red Cross, Department of Health and Department of Community Services in the development and workability of these Guidelines.

Hospitals that are involved in organ donations appoint a designated officer who must authorise the removal of any organs or tissues from the body of a dead person. The *Human Tissue Act* maintains the role of the designated officer in this matter. In effect the designated officer is an independent authority who ensures that all the legal and procedural requirements have been complied with.

Lastly, any death of a child in the care of the State must also be referred to the Coroner. The Coroner has the jurisdiction to hold an inquest and to order that a post-mortem examination is conducted. Section 25 of the *Human Tissue Act* provides that in such circumstances no tissue may be removed from a body unless the Coroner has given consent.

**7. CHAIR Has your department received any formal complaints from care leavers about the form of the apology? Is there anything on record? (CA 84)**

The Department has examined Ministerial correspondence received since 2005 from or on behalf of people who as children were in institutional care. There are a small number of formal complaints about the NSW apology, in particular the lack of publicity that an apology was to take place (2) and that the apology was not sufficient and compensation should be considered (1).

Departmental officers have also informally been made aware of concerns about the NSW Government's apology in discussions with the Care Leavers Australia Network, the Alliance for Forgotten Australians and the Association of Child Welfare Agencies.