

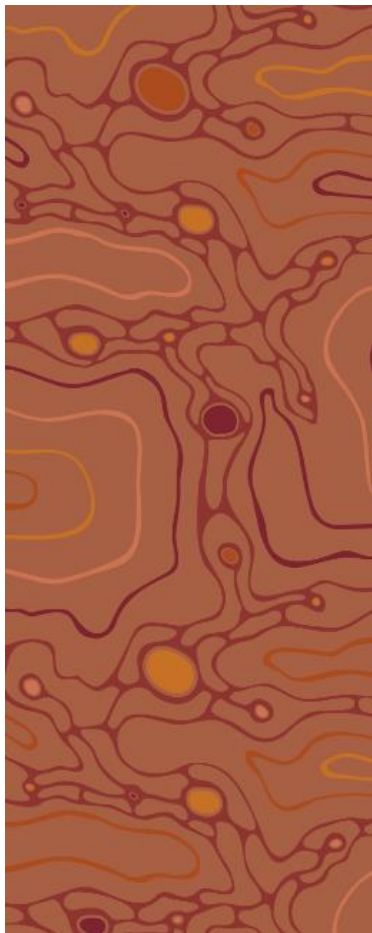


Government of **Western Australia**
Department of **Communities**

Criminal Injuries Compensation, National Redress Scheme & Young People

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Legal Support Officer
Legal Claims for Children in Care Legal and Business Services





Acknowledgement of Country

I respectfully acknowledge the Whadjuk people of the Noongar nation, who are the Traditional Custodians of the land on which we meet, and pay my respects to Elders past, present and emerging.

What we will cover

Introducing the Claims for Children in Care
Team

The Departments Obligations

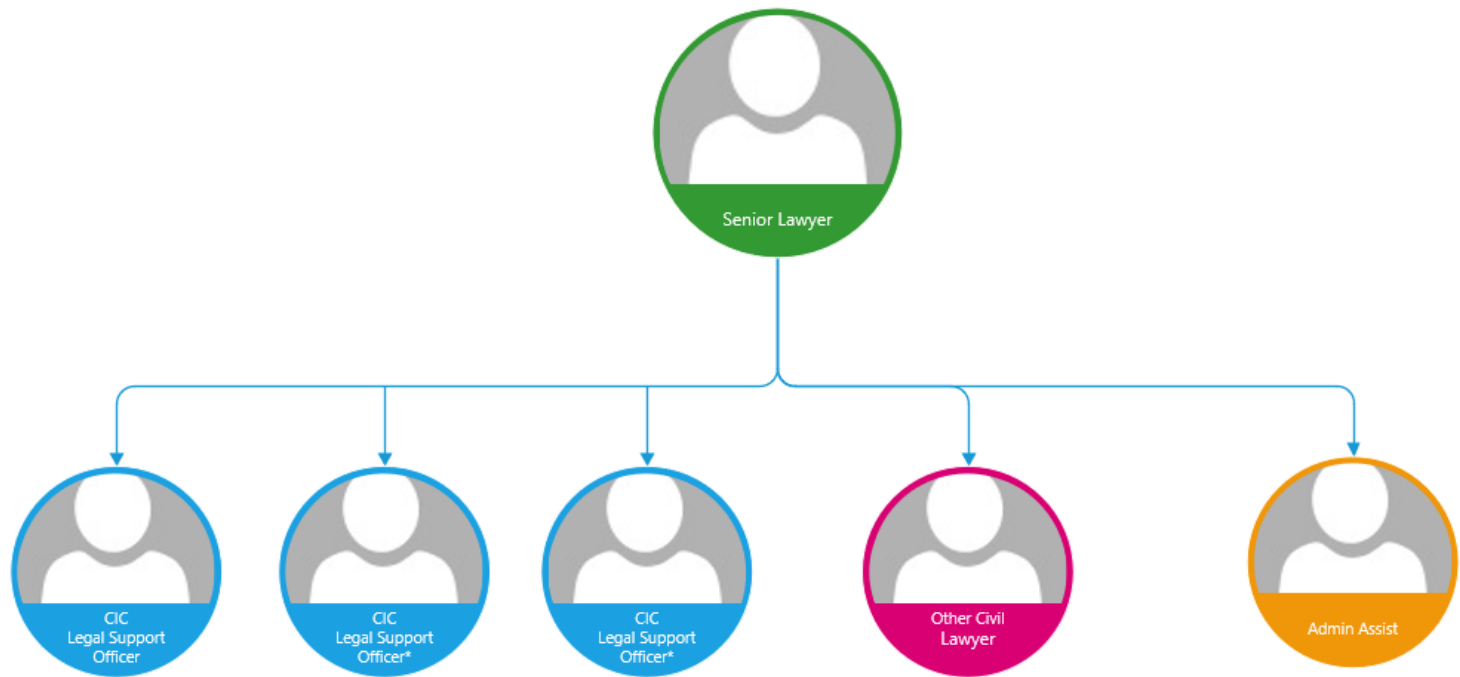
Introduction to Criminal Injuries
Compensation

National Redress Scheme Claims

Abuse in Care

Where can you Get Help

Legal Claims for Children in Care Team



Department Obligations - legal rights of children in care

Bennett Duty

- *“The Department of Communities has a duty (known as the Bennett Duty following a 1992 High Court case) to children in its care to take reasonable steps to avoid their suffering, loss and damage in consequence of a legal right, typically an entitlement to damages or compensation, not being pursued on their behalf.”*
- *“If there is a conflict or potential conflict with the Department (e.g. potential claim against the State for loss or injuries suffered in care), a child or young person is referred for independent legal advice.”*

Department Obligations - legal rights of children in care

Legislative

- The Department has a legislative responsibility to provide leaving care services to young people up to the age of 25 years, who qualify for services under s.96 of the Children and Community Services Act 2004.
- A young person qualifies for assistance if:
 - the person has left the CEO's care
 - the person is under 25 years of age, and
 - at any time after reaching 15 years of age the person:
 - was the subject of a protection order (time-limited) or a protection order (until 18)
 - was the subject of a negotiated placement agreement in force for a continuous period of at least six months, or
 - was provided with a placement service under s.32(1)(a) of the Act for a continuous period of at least six months.

An Introduction to CIC Claims

The *Criminal Injuries Compensation Act 2003* (WA) provides that CIC claims may be payable for harm or loss suffered as a result of an offence committed against a person.

A young person may be eligible for a CIC claim as:

- A primary victim to an offence; or/and
- A secondary victim (mental and nervous shock injuries only).

CIC Claims can be made for:

Proven Offences

- Claims can be made for proved offences (s.12 CIC Act)
- Where an offender has been convicted

Alleged Offences

- Claims can be made for alleged offences (ss.13-17 CIC Act)
- Importantly, an offender does not need to be charged with an offence in order for an award to be made. This means that allegations of abuse against a person can be claimable offences, even if no person was charged or identified

Compensation is available for –

- Pain and suffering – physical and psychological injury
- Loss of enjoyment of life
- Loss of earnings

Important to note that not all critical incidents will result in potential CIC claims

Common Claims for Young People

Young People often have multiple CIC claims available to them, including

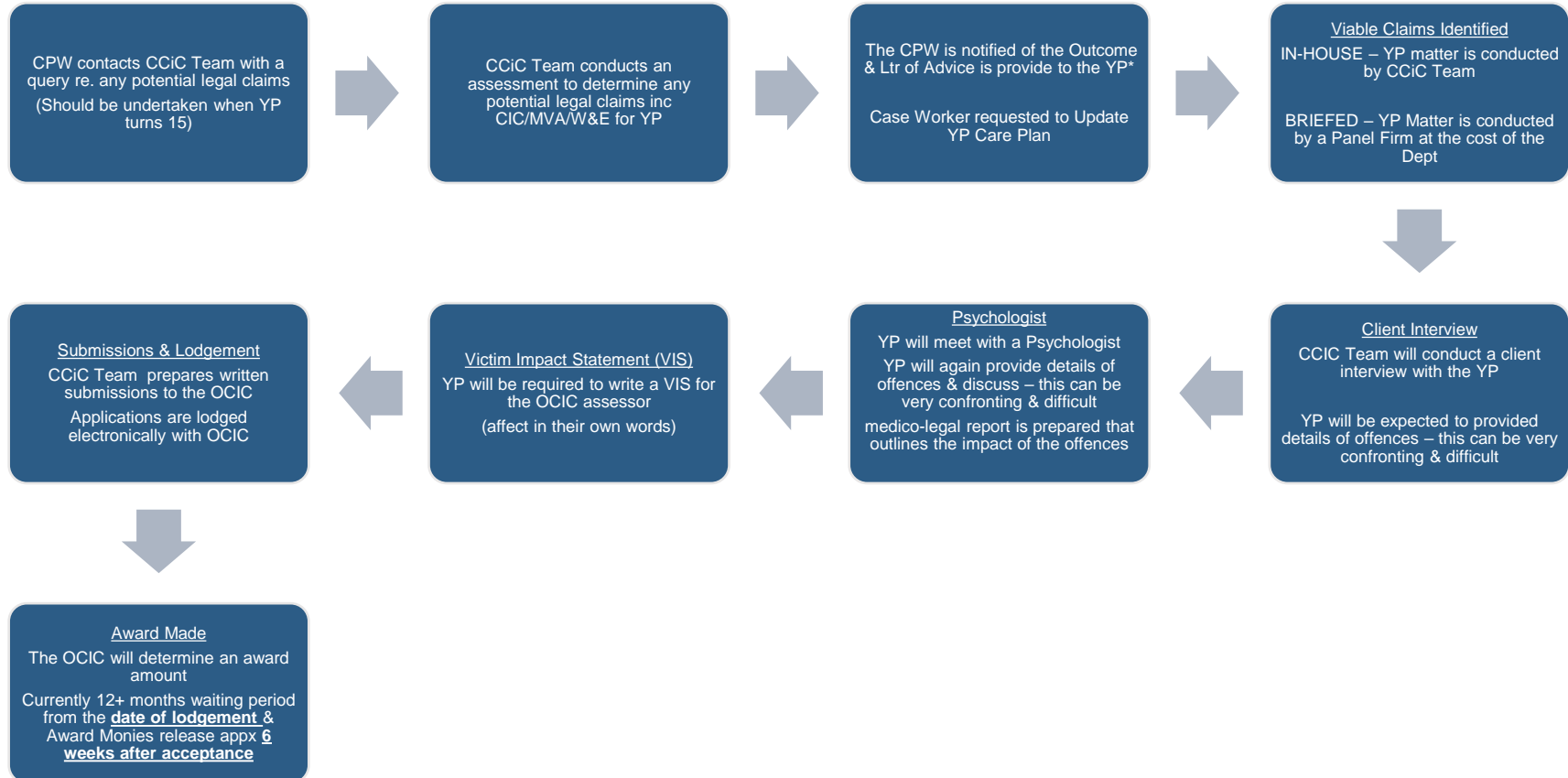
- Neglect* (eg. medical; school non-attendance; failure to provide food, water, clothing) s.101(1)(a)(v) *Children and Community Services Act 2004*
- Shaken baby syndrome
- Physical assaults – *Criminal Code Act 1913*
- Sexual assaults – *Criminal Code Act 1913*
- Deprivation of liberty – *Criminal Code Act 1913*
- Dog attacks – Dog Act
- Pregnancy resulting from an offence - *Criminal Code Act 1913*
- Witnessing family violence – s.101(1)(a)(iii) CCSA – emotional abuse
- Murder of a parent (secondary victim)

Common Roadblocks to CIC Faced by Young People

A number of factors can impact a Young Persons ability to make a CIC Claim, including

- Disclosures, if any, made by the Young Person
- Actual harm suffered that can be linked to the offence
- Co-operation with Police in their investigations – *Criminal Injuries Compensation Act 2003 s.38*
- The Outcome of any criminal proceedings – *Criminal Injuries Compensation Act 2003 s.13*
- Engaging in criminal conduct - *Criminal Injuries Compensation Act 2003 s.39*
- Contributing behaviour of the Young Person - *Criminal Injuries Compensation Act 2003 s.41*
- Relationship with the perpetrators – *Criminal Injuries Compensation Act 2003 s.36*

Claims for Children in Care Team - CIC Process



National Redress Scheme Claims (NRS) – Key Points

- Established as Commonwealth government response to Royal Commission into Institutional Responses to Child Sexual Abuse.
- Legislation
 - *National Redress Scheme for Institutional Sexual Abuse Act 2018* (Cth)
 - *National Redress Scheme for Institutional Sexual Abuse (Commonwealth Powers) Act 2018* (WA)
- Any **in-care** sexual abuse **incidents prior to 1 July 2018** may give rise to a NRS claim.
- The NRS will run from 1 July 2018 until 30 June 2027.
- Who is eligible under the NRS?
 - To be eligible for under the NRS a young person must be:
 - Born before 30 June 2010;
 - Experienced institutional sexual abuse before 1 July 2018; and
 - Be an Australian citizen or permanent resident.

Note that child-on-child sexual abuse may also give rise to a NRS claim. The abuse must be penetrative or contact abuse.

National Redress Scheme (NRS)

- Child sexual abuse occurs when someone involves a person under the age of 18 in sexual activities that they do not understand, or that are against community standards.
- Effect of the NRS on children currently in the care of the CEO
 - Children in the care of the CEO who have suffered **in-care child sexual abuse** may have potential NRS claims against the Department where there has been NO negligence on the part of the Department
 - E.g. child in care is sexually assaulted on a camp organised by the Department.
- Effect of the NRS on Criminal Injuries Compensation claims
 - CIC is a compensation scheme of last resort.
 - Under the *Criminal Injuries Compensation Act 2003* (WA) applicants will need to consider if they have reasonable grounds to enforce other remedies, such as the NRS.
 - LBS assessments of legal claims for children in care now include any potential NRS claims.
 - Where a potential NRS claim is identified by LBS, the legal matter will be briefed to a private law firm on the Department's panel.

Abuse in Care - General Information

- Involves allegations that the Department of Communities has breached its duty of care to a young person who was in the care of the Department. These allegations range in type and severity, and can include allegations of physical, sexual, and/or emotional abuse, educational neglect, inappropriate placements and substandard placements.
- Allegations of Abuse in Care can be raised about:
 - an approved carer;
 - a Department employee;
 - a Community Sector Organisation employee providing care to a child; or
 - a relative (s.3 *Children and Community Services Act 2004*).
- The Director of Standards and Integrity considers the possible AIC claims in that document. A decision is made whether the young person will be referred to a panel lawyer to obtain independent legal advice (ILA) for any potential common law claims against the Department.

Not all allegations of abuse in care will result in referrals for ILA, as there is no evidence of Departmental negligence

- 'Bad Care Experience Vs Actual Abuse' – The Language Matter

Where Can I Get Help?

- Young People or Support Workers are strongly encouraged to contact The Department of Communities in relation to any potential legal claims via:
 - Their Local District Field Office; or
 - Directly to Legal and Business Services on legal@communities.wa.gov.au

It is important to remember that the claims for children in care team is separate from District Staff

- Further information regarding criminal injuries compensation is available on the Office of Criminal Injuries Compensation website: <https://cict.justice.wa.gov.au/>
- Further information regarding the national redress scheme is available from the Knowmore website: <https://knowmore.org.au/for-survivors/>

