

THE SALVATION ARMY AUSTRALIA

SUBMISSIONS IN RESPONSE TO

**THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO
CHILD SEXUAL ABUSE**

CONSULTATION PAPER: REDRESS AND CIVIL LITIGATION

9 MARCH 2015

Part I: Introduction and overview

1. The Salvation Army welcomes the opportunity to make submissions in response to the *Consultation Paper: Redress and Civil Litigation* issued by the Royal Commission into Institutional Responses to Child Sexual Abuse on 30 January 2015.
2. The following submissions are made on behalf of The Salvation Army's two Australian territories – Eastern Territory and Southern Territory, unless noted otherwise. The Salvation Army Australia Eastern Territory has participated in two case studies conducted by the Royal Commission in 2014 – Case Study 5 and Case Study 10.
3. The Salvation Army supports the work of the Royal Commission and recognises the importance of survivors having a range of avenues in which to seek redress. These submissions are informed by The Salvation Army's experience working with survivors over many years. The Salvation Army's approach to redress is motivated by assisting the survivors to find healing and justice for their trauma and loss. However, it accepts that its perspective is as an institution. The Salvation Army recognises and respects the fact that survivors and their support groups may have other views on concepts of redress. In this regard, The Salvation Army is committed to learning from those views in order to enhance a survivor focussed redress for child sexual abuse.
4. The Salvation Army recognises the importance of the Convention on the Rights of the Child in informing the matters to be considered and incorporated into any redress scheme in the area of child sexual abuse, or indeed child abuse of any nature. Whilst the survivors of historic child sexual abuse are now adults, their rights as children at the time of the abuse must be factored into the response provided by institutions and any proposed redress scheme at this and any future time. The Salvation Army adheres to the core principle of the Convention on the Rights of the Child that in actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
5. The following Part II of these submissions addresses the questions posed at the conclusion of each chapter of the Consultation Paper, where relevant to The Salvation Army. Part III of these submissions then raises some further matters relevant to The Salvation Army.

Part II: Questions raised in the Consultation Paper

Issues raised in Chapter 2: Structural Issues

6. Chapter Two of the Consultation Paper addresses structural issues and describes the present circumstances with respect to redress schemes and civil litigation.
7. The Salvation Army agrees with the Royal Commission that civil litigation is unlikely to be an effective way for all survivors to obtain redress that is *adequate* to address or alleviate the impact on the survivors of institutional child sexual abuse.¹ The Royal Commission reached this conclusion based on the accounts of the survivors and the experience and/or perception that the litigation (taking a case to court) does not:
 - achieve justice; or
 - provide appropriate acknowledgement and recognition of their experience, loss and the impact of abuse.
8. The Salvation Army agrees that the civil litigation system is not suited to achieving the survivors' sense of justice, particularly because important elements of justice include recognition by way of personal and public apologies, ongoing counselling, ongoing practical assistance and support.
9. The issues raised in Chapter Two highlight the importance of a redress scheme being flexible or capable to adapting to meet the needs of the survivor. In this respect, the civil litigation model is not suited because it is a one size fits all. The court rules and procedures set the structure and framework in which a dispute will be resolved. While mediation may be an adjunct to such a process, The Salvation Army acknowledges that the court 'system' is alien to the average person and particularly to the survivors. However, there may be some survivors who would prefer to use or at least have the option of civil litigation and any proposals for a redress scheme should not deny those survivors the option of civil litigation.

¹ Consultation Paper page 43

Whether the Royal Commission should recommend redress processes and outcomes for future institutional child sexual abuse.

Elements

10. The Salvation Army welcomes the Royal Commission recommending elements of a redress scheme for survivors of historic claims of child sexual abuse. It supports in full the broad elements of appropriate redress identified in Chapter 2.4 (pages 50 – 51):
- direct personal response;
 - counselling and psychological care; and
 - monetary payments.

Processes

11. With respect to the processes for providing redress, The Salvation Army acknowledges the importance of the Royal Commission identifying general principles to guide the provision of redress.² It supports the elements of a redress scheme:
- being survivor-focused;
 - adopting a ‘no wrong door’ approach for survivors in gaining access to redress; and
 - offering, assessing and providing redress with appropriate regard to what is known about the nature and impact of child sexual abuse and to the cultural needs of survivors.
12. The Salvation Army notes that these principles are expressed at a high level. Institutions would be assisted by the Royal Commission providing practical examples as to how those principles should apply.
13. Further, in considering the practical application of these principles, The Salvation Army encourages the Royal Commission to record and report on any positive experiences of survivors who have used the currently available processes for redress. While The Salvation Army accepts the Royal Commission is focused on the failures and shortcomings of institutions, not all experiences of survivors have been adverse. The Salvation Army is aware of some survivors reporting positive experiences and healing.

² Consultation Paper, Chapter 2.5, page 53

Their voices should also be heard and they should be invited to participate in the further development of the general principles for the provision of redress.

Outcomes

14. As to outcomes for future institutional child abuse, The Salvation Army accepts that the identification of the elements of the redress process will be important, but the outcomes are matters that may need to be addressed having regard to the particular interests and wishes of the survivors concerned.
15. In this respect The Salvation Army Australia Eastern Territory has commented in its submissions presented in Case Study 10, that there is a line to be drawn between methods for addressing past wrongs and the development of approaches in respect of the future. Into the future The Salvation Army would hope that all institutional responses are much more robust and attuned to the needs of survivors by reason of developments in policy, practices, training, monitoring and supervision of staff. These are matters that should be taken into account in the development of future processes and the shared responsibility between institutions, individuals and the community in responding to child sexual abuse.

National scheme

16. The Royal Commission has stated that those non-government institutions that are expected to be subject to a number of claims for redress could be invited to participate with the relevant government or governments in developing an independent national redress scheme. The Royal Commission notes that the relevant government and non-government institutions that are initial participants in the scheme from the start could fund the administrative costs of the scheme.
17. The Salvation Army, in its response to the Royal Commission's Issues Paper 6 – Redress Schemes, noted the advantages of a national redress scheme would be consistency, transparency, accountability and funding of costs. On the matter of funding, The Salvation Army stated it would resist having to fund the operation of a Commonwealth agency if it had no authority or capacity to engage the personnel, determine structures or question the costs.
18. The financial contribution of an institution should be proportional to the quantum of financial payments made to survivors claiming in respect of the institution. Further, the funds contributed by government, private or charitable institutions should not be used

to fund the administration of a Commonwealth agency, as those funds would be better directed to the survivors themselves.

19. The disadvantages submitted at that time included the taking of a less holistic approach to each survivor and a corresponding focus on the provision of financial assistance, at the expense of individual redress by personal engagement. The Salvation Army stands by these submissions and notes the consequent importance of direct personal response in addressing the needs of survivors, as discussed by the Royal Commission in Chapter 4 of the Consultation Paper. It is not made clear in the Consultation Paper whether any proposed national redress scheme would be compulsory or 'opt in' and The Salvation Army would welcome the Royal Commission's recommendations on this point.
20. In principle, The Salvation Army supports a national scheme for redress which would shift the monetary assessment of claims from The Salvation Army to a national body (operated by the Commonwealth or the States), subject to the terms of reference of the national body, and the amount of the maximum payment.

Issues raised in Chapter 4: Direct personal response

21. Chapter Four of the Consultation Paper addresses the issues concerning direct personal response as a key element of achieving justice.
22. The Salvation Army supports the Royal Commission's observations about direct personal response and apologies. Its experience is also mixed and varied; each survivor's wish, or need, for direct response is varied; any apology is deeply personal.
23. The content of apologies must be driven by what the individual survivor desires to adequately address the wrong committed, their consequent suffering, and the impact on them and their lives. In the experience of The Salvation Army, the needs of survivors vary greatly.
24. The Salvation Army Australia Eastern Territory acknowledges JE's criticisms which are noted on page 82 of the Consultation Paper, and the inadequacy of the apologies offered to both JE and JF, as noted on pages 85 and 86. The Salvation Army Australia Eastern Territory refers to its submissions prepared for Case Study 10 that specifically address these matters.

The principles for an effective direct personal response and the interaction between a redress scheme and direct personal response.

25. On the principles for effective direct personal response, the Salvation Army notes the minimum three elements recommended by the Royal Commission as follows:

- Receiving an apology from the institution;
- The opportunity to meet with a senior institutional representative and receive an acknowledgement of the abuse and its impact on them; and
- Receiving an assurance or undertaking from the institution that it has taken, or will take, steps to protect against further abuse of children in that institution.

Apologies

26. In The Salvation Army's experience, there are three types of apologies sought by survivors and able to be provided as part of a redress scheme, each serving a different purpose:

- general apology, provided by the institution to survivors as a group;
- personal apology, provided in writing to a survivor by the institution; and
- verbal apology, provided to a survivor in the course of their meeting with a senior representative of the institution.

27. Not all survivors seek or find value in each type of apology, but it is important that all types of apology are made available as part of an effective redress scheme.

28. The Salvation Army suggests that there may be a further type of apology, namely an apology from the individual perpetrator of abuse or person who failed them at a critical time. For some survivors, receiving an apology from the person who perpetrated the sexual abuse may be the most significant step in the healing process. However, obtaining an apology from the individual who engaged in the alleged abuse or abuse may not be within the control of the institution if the perpetrator is no longer employed or engaged by the institution, is in detention, is deceased or denies perpetrating the abuse. In such circumstances, the process of obtaining such an apology, if requested by a survivor, must be well managed. The Royal Commission correctly observes that apologies must be genuine. Where a perpetrator refuses or is unwilling to make an apology, then a forced or coerced apology will be meaningless and may be insulting to

the survivor. The institution must have a process in place as part of a redress scheme to manage such a situation.

29. In the experience of The Salvation Army Australia Eastern Territory, some survivors have become preoccupied with obtaining an apology from the perpetrator or other key individual who failed to listen to them or act. The preoccupation may often be to the detriment of the survivor's wellbeing and may hinder the healing process. In The Salvation Army's experience there should be guidance as to how institutions assist survivors obtain such an apology and what to do if the apology is not forthcoming. The processes for obtaining a perpetrator apology must be accompanied by an effective program of counselling or psychological care.

Public Apologies

30. The Royal Commission noted that it is aware of a number of examples of public apologies issued by non-government institutions for abuse of children in their care. The Royal Commission made reference to the National Apology made by The Salvation Army in Canberra on 7 December 2010.
31. The Salvation Army took the step of making the National Apology in consultation with the Care Leavers Australia Network (CLAN). CLAN through Mr Jim Luthy wrote to the International leader of The Salvation Army at the time, General Shaw Clifton. General Clifton acknowledged Mr Luthy's role in initiating this process with him in his greeting read at the formal Apology gathering in Canberra.
32. The Salvation Army consulted with CLAN about the details of the National Apology function especially as to the place to give value and significance to this occasion for the Care Leavers. It was the desire of The Salvation Army that this occasion would be helpful, restorative and would facilitate a step forward in the healing process for care leavers. It was intended that the National Apology would sit alongside the pastoral process followed by The Salvation Army for Care Leavers and to acknowledge and validate their hurts and to communicate the deep sorrow of The Salvation Army.
33. It was The Salvation Army's wish that the occasion would be respectful, and that Care Leavers would feel valued, in everything that was done. It was held in Old Parliament House in the members' dining room. It was a fully catered sit down high tea and each person received a gift. The Salvation Army facilitated people coming from all around Australia by giving a travel subsidy. There were nearly 110 Care Leavers Present.

Many Care Leavers registered to receive an apology package if they were not able to be present on the day. There were 80 apology packs sent out following the event.

34. The Apology from the General was posted on the Salvos website and still is, along with the personal greeting from General Shaw Clifton who was unable to attend because of heart bypass surgery. The Apology was read by Commissioner Barry Swanson the 2nd in charge of the International Salvation Army.
35. In The Salvation Army's experience a public apology is an important part of any redress scheme. The Salvation Army has learned, particularly from the evidence of Mr Luthy in Case Study 10, that a public apology should be an opportunity for the institution to listen and collaborate with the survivors as to the content, nature, form and delivery of the apology. An institution must be guided by the wishes of the survivors. Any public apology should be delivered by the leader or leaders of the institution.

Personal apologies

36. The Salvation Army has endeavoured to provide personal apologies to survivors. As was made clear in the evidence presented in Case Study 10, there is no 'one size' or 'generic' form of apology.
37. The Salvation Army notes the Royal Commission's reference on page 85 of the Consultation Paper to the New South Wales Ombudsman's 'six R's' as fundamental elements of the content of an apology: recognition, responsibility, reasons, regret, redress and release. The Salvation Army supports four of the 'six R's' as fundamental elements of an apology: recognition, responsibility, regret and redress, however does not believe that 'reasons' and 'release' form an essential part of every apology provided in respect of child sexual abuse. These matters are particularly sensitive and are ideally addressed according to the wishes of each individual survivor, for the following reasons.
38. The Salvation Army submits that attempting to provide reasons to survivors for abuse they have suffered is not appropriate in the context of historical child sexual abuse. The Salvation Army supports the Royal Commission's position, on page 88 of the Consultation Paper, that reasons may be more accurate and appropriate where the apology relates to more recent events including, for example, an apology for initial failures in the institution's response to allegations of abuse.

39. The Salvation Army does not support the approach of institutions who request forgiveness, or a release from blame, from a survivor of child sexual abuse as an integral part of its apology to the survivor. The needs of the institution or the alleged perpetrator should not be a consideration in the provision of a survivor-focused apology. In the experience of The Salvation Army, a survivor will offer forgiveness, often in the context of a meeting with a senior representative of the institution, if they feel they are willing and able to do so. For those survivors, forgiveness may form an important part of their own needs, but for many survivors receiving a request for forgiveness may well be antithetical to their restorative journey.
40. The Salvation Army agrees that any redress scheme must ensure that proper training courses or modules are identified, and appropriate certification obtained, by all institutional staff involved in working with survivors of child sexual abuse. The Salvation Army recognises the importance of its leaders who participate in personal redress meetings to be properly trained. The Salvation Army has witnessed the great value of personal redress meetings for many survivors and the profound effect on survivors of being assured that the senior representative of the institution believes their story and is sincerely and genuinely regretful and apologetic for the failings of the institution.
41. The Salvation Army strongly supports the Royal Commission view that any redress scheme should not discourage direct personal engagement where it is within the capacity of the institution (page 93). To be effective, however, The Salvation Army agrees with the Royal Commission (page 91) that the location, attendants and factors such as the wearing of uniforms must be determined in consultation with the survivor or the survivor's representative.

Other forms of personal response

42. The Salvation Army notes that the Consultation Paper addresses other forms of personal response. The following submissions are not intended to be exhaustive of the range of measures that might be appropriate for survivors but makes the following observations about the matters identified in the Consultation Paper.
43. The Salvation Army is committed to offering to survivors a broad range of services in addition to ex-gratia payments and counselling arrangements.
44. The Salvation Army notes the Royal Commission's suggestion that a redress scheme should not preclude survivors approaching institutions for, for example, receiving

financial assistance to address urgent or particular needs (Page 93). The Salvation Army has been in the practice of extending needs-based welfare to those who require such assistance, both survivors and others, and does not propose to alter its current practice of making such assistance available on a needs basis.

45. The Salvation Army understands the rationale of the Royal Commission for supporting an institution providing to survivors an assurance about the steps taken by an institution, or steps an institution will be taking, to protect against further abuse. However, the steps taken by an institution may be wide and varied having regard to legal and regulatory obligations. In some cases of historic abuse, a children's home may have closed and there are no relevant practical measures to address the particular past circumstances. An assurance in such circumstances may be perceived as hollow and self-serving.
46. It has not been the practice of The Salvation Army to provide assurances of the kind described in the Consultation Paper in letters of apology. The Salvation Army has discussed this in restorative conferences where it is appropriate and sought by the survivor.
47. As to renaming buildings or facilities, The Salvation Army recognises the sensitivity of survivors to measures which may be perceived to honour or commemorate an alleged perpetrator or a perpetrator who has been convicted. This is one area where the institution should be able to exercise its discretion having regard to the nature and extent of the allegations, and whether there are findings of criminal or civil wrongdoing. The Salvation Army's view is that a redress scheme should not attempt or purport to make any findings that any alleged abuser was involved in any abuse. The scheme would simply assess the validity of a survivor's application by applying a standard of proof that is likely to be lower than the standard applied in civil litigation.
48. The Salvation Army supports and fully funds survivors' access to records. Upon receipt of a request from a survivor or their authorised representative, The Salvation Army will provide all records that can be located regarding the survivor and their time in the care of The Salvation Army. Sometimes these records are extensive and include photographs, school reports, medical records and family letters, but in other cases there are scant records available other than the log book entry of the survivor's arrival at the relevant Salvation Army home and the date on which they left Salvation Army care. Records are not provided automatically to survivors as the receipt of such

materials can be traumatic to some, and The Salvation Army responds to the wishes and requests of each individual survivor.

49. The Salvation Army provides family tracing and reunion processes for the survivors.
50. The Salvation Army has long supported reunions organised by survivors, both financially and by having Salvation Army representatives attend to engage with survivors and their families, and recognises the importance of memorials. The Salvation Army has sought to support the survivors' wishes with respect to reunions and acknowledges, as the Royal Commission has, FP's commitment to organising reunions which he discussed during Case Study 5 (see page 97 of the Consultation Paper).
51. The Salvation Army notes with some concern the Royal Commission's suggestion that a survivor should not be precluded from choosing to approach an institution directly, either themselves or through *an intermediary*. The Salvation Army's experience is that direct engagement with the survivor is usually most beneficial. Support persons play an important role in assisting the survivor by empowering the survivor to engage with the institution. The Salvation Army's experience of engagement through an intermediary has not at all times been ideal. If there is any lack of objectivity or professionalism on the part of the intermediary, it can create the risk of mixed messages, misunderstandings and an absence of effective engagement.

Training

52. The Salvation Army acknowledges the importance of appropriate training and supervision of its staff working with survivors. It very much regrets that in the past, it may have not recognised that its systems for training, supervising and monitoring its staff may have failed some survivors.
53. However, The Salvation Army submits that training alone is not enough. It starts with the recruitment of persons with the relevant skills and experience to undertake such an important role. The Salvation Army Australia Eastern Territory responded to Case Study 5 and Case Study 10 by reviewing all of these matters. In August 2014 the Professional Standards Office of the Eastern Territory commenced an internal restructure with the objective of identifying how the Professional Standards Office (now the 'Centre for Restoration') could better achieve the outcomes of effective and efficient complaint management by empowering survivors to own their restorative journey, and providing pastoral care and support to survivors. The focus of the

Professional Standards Office was re-centred with the broad strategic objective of achieving restorative justice for survivors of abuse. An important part of the restructure was to ensure that all employee roles in the Professional Standards Office were structured so as to ensure all persons with whom survivors come into contact are adequately and appropriately trained to engage with survivors and to guide them in their restorative journey. Minimum qualification levels were set for both the Claims Reception and Engagement Co-Ordinator role (SCHADS Social Level 6) and the Client Support and Case Manager roles (SCHADS Social Level 5).

54. The Salvation Army is committed to ensuring that the process for accessing personal redress is well known and available publicly.
55. As to welcoming feedback, The Salvation Army notes that it should ensure that all survivors are offered the opportunity to provide written and /or verbal feedback to a person independent of the redress process so as to inform improvements that need to be made for more effective engagement with other survivors in the future.

Issues raised in Chapter 5: Counselling and psychological care

56. Chapter Five addresses counselling and psychological care of survivors.
57. The Salvation Army has read with great interest the Royal Commission's research and comments in relation to the principles for counselling and psychological care.
58. The Salvation Army's experience is that counselling and psychological care is a very important element of a redress scheme. For many survivors, the counselling is required before they commence a redress process rather than simply the outcome of a redress process, and many need to be supported in their journey through the redress process. The forms of counselling are wide and varied.

The principles for counselling and psychological care, existing services and service gaps and the principles for supporting counselling and psychological care through redress.

59. As to the suggestion that there be no fixed limit to the services provided to a survivor and the number of counselling sessions available, The Salvation Army accepts and acknowledges such approach. However, it does caution the need for the counselling to be effective rather than create a dependency relationship between the survivor and counsellor over a protracted period of time.

60. Likewise, if the institution takes on the responsibility for paying for the counselling services over a protracted period of time, then the redress model should build in some mechanism for review as to the effectiveness and efficiency of meeting the survivors' needs and whether or not ongoing payments, say direct disbursements or reimbursements of counselling fees, is appropriate.
61. The Salvation Army supports the Royal Commission's view that psychological care should be provided only by practitioners with the right capabilities to work with complex trauma clients.

The relative effectiveness and efficiency of the options in meeting survivors' needs.

62. The Royal Commission has stated that institutions would also need to ensure that a survivor's need for counselling and psychological care is assessed independently of the institution. The Salvation Army is concerned about this recommendation for two reasons. First, the concept of assessing a survivor's *need* for counselling / psychological care is new. The Salvation Army does not currently undertake such an assessment before agreeing to make provision for counselling. Secondly, the decision to undertake counselling and the form of counselling is a decision that the survivor should make, not the institution. The institution should not require the survivor to attend medical practitioners or psychologists for the purpose of them being assessed before counselling services or funding for such services is made available.
63. It is important, however, that counselling provided is reasonably necessary and conducted in such a manner as to avoid creating a relationship of dependency between the counsellor and the survivor. Ensuring the accountability of counselling providers is important. This may be achieved by way of a periodic assessment of the ongoing needs of a survivor, and the treatment being provided to them, by an objective, suitably qualified professional to ensure that relationships of dependency are not created.
64. If such a recommendation was made, then guidelines should be provided about the use and disclosure of health information having regard to the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth), *Health Records and Information Privacy Act 2002* (NSW) and the *Health Records Act 2001* (Vic).

Issues raised in Chapter 6: Monetary payments

65. Chapter 6 addresses monetary payments in the context of a payment being a tangible means of recognising a wrong suffered by a person.

The purpose of monetary payments

66. The Salvation Army acknowledges that the purpose of monetary payments is a critical part of the redress scheme. The purpose of monetary payments may be varied. In The Salvation Army Eastern Territory's scheme, the purpose of monetary payments is a recognition of past abuse and the payment is made by way of an ex-gratia sum. In this respect the ex-gratia payments made by the Eastern Territory do not represent monetary payments in the form of compensation by placing the survivor back in the position he or she would have been in had the abuse not occurred.
67. The importance of the distinction between compensation and ex-gratia needs to be clear in any relevant redress scheme.
68. The Salvation Army agrees that identifying and clearly stating the purpose of ex gratia payments in a redress scheme is important for the reasons outlined at page 133 of the Consultation Paper.

The assessment of monetary payments, including possible tables or matrices, factors and values

69. As was explained by the Eastern Territory in Case Study 10, The Salvation Army Australia Eastern Territory has used a matrix and has found that the use of the matrix is a valuable tool for the following reasons:
- transparency;
 - consistency;
 - eliminating arbitrariness;
 - fairness and parity in treating like with like; and
 - providing a mechanism for investigating relevant matters and then assessing that all relevant information has been collected.
70. Following the hearings in Case Study 5 and Case Study 10, The Salvation Army Australia Eastern Territory reviewed all available claims files concerning allegations of child sexual abuse made by care leavers of boys' and girls' homes operated by The Salvation Army, and also by non-care leavers. The review of the claims files revealed

that the matrix was a helpful tool for assessing the ex gratia payment for care leavers, subject to the following comments

71. However, the matrix alone is not sufficient. The use of the matrix requires the collection of relevant information for the purpose of determining whether a relevant event or incident occurred. The terms used in a matrix need to be clearly defined and understood by those persons applying the matrix. There must be best practice record keeping for the survivors' files in relation to the application of the matrix, the sums offered and the manner in which the institution and the survivor reach an agreement. The Salvation Army agrees with the Royal Commission's comments at page 150 of the Consultation Paper with respect to developing a table or matrix.
72. The Salvation Army Australia Eastern Territory's experience also suggests that the matrix should not be used as a blunt instrument and there must be a discretion to take into account unique or special features of any claim that arise.
73. The Salvation Army agrees that the elements of a matrix must include severity of abuse, severity of impact and distinctive institutional factors.

The average and maximum monetary payments that should be available through redress

74. The Salvation Army accepts that the ex gratia payment should be adequate.
75. At page 134, the Royal Commission refers to the evidence of EG and his views on an ex gratia payment under the Queensland Redress Scheme. EG was a resident at Riverview Boys Home over various periods between about 1954 and 1966. EG said that he was not sexually abused when he was at Riverview but he suspected other boys were being sexually abused by Lieutenant Lawrence Wilson. In Case Study 5, Counsel Assisting's submissions did not seek any findings in relation to EG. However, The Salvation Army acknowledges that EG was physically abused at the different times he was resident at Riverview. EG accepted an ex gratia payment of \$60,000 in The Salvation Army Australia Eastern Territory's scheme in 2010.
76. The Salvation Army notes the Royal Commission's recommendations of a range between \$100,000 and \$200,000 and The Salvation Army Australia Eastern Territory indicated in the course of consultations with the Royal Commission that \$150,000 would be an appropriate maximum sum.

77. The Salvation Army supports the setting of a maximum sum as a means by which survivors may usefully assess the options open to them to pursue redress, and also as a means by which attention may be focused on all component elements of a redress scheme, not just the financial component.
78. As to the average payment, this of course will vary depending on the nature and extent of the institutional abuse, the age of the survivors and the factors that are taken into account in making the assessment. The Salvation Army notes the actuarial advice obtained by the Royal Commission.

Whether an option for payments by instalments would be taken up by many survivors and whether the option for instalments should be offered by a redress scheme

79. The Salvation Army supports the option of instalments but notes that it is a matter for the survivor to indicate whether or not instalments should be available and whether or not that is the preferred way in which the survivor might receive the payments.
80. It should be noted that in providing instalment payments to survivors a redress scheme will incur much greater administrative costs.
81. We also note that if the survivor's estate is managed by the Public Trustee or a Guardian, then any question of instalments should be informed by the relevant Trustee or Guardian.

The treatment of past monetary payments under a new redress scheme

82. The Royal Commission has noted that funding also needs to take account of amounts already spent on providing redress, to the extent that these would reduce funding requirements under a new scheme.
83. The Salvation Army submits that the past monetary payments made to survivors in the nature of ex-gratia payments or in settlement of litigated proceedings should be taken into account in any new redress scheme to avoid any 'double dipping'. However, there will need to be very clear guidance to survivors and institutions as to what payments will be taken into account and how those payments will be taken into account. For

example, the costs of counselling services or other forms of assistance may be difficult to quantify if the survivor has had a long association with the institution.

Issues raised in Chapter 7: Redress scheme processes

84. Chapter Seven addresses the redress scheme processes in more detail.

Eligibility for redress, including the connection required between the institution and the abuse and the types of abuse that should be included.

85. The Salvation Army agrees that an effective redress scheme must clearly define eligibility for the purposes of a particular scheme. The key issue appears to be the connection required between the institution and the abuse. If the redress scheme is intended to provide redress for the failings of an institution then there must be a relevant connection to the institution.

86. The institution's approach to when and in what circumstances it is vicariously liable for an individual's misconduct or criminal conduct or whether the institution bears accessory liability (because it aided, induced or permitted the misconduct) is likely to determine the degree of connection required.

87. The Salvation Army agrees that eligibility may be based on a connection with the institution and this may arise because:

- a. the abuse happened on premises of an institution, where activities of an institution took place;
- b. in connection with the activities of an institution, in circumstances where the institution is, or should be treated as being, responsible for the contact in which the abuse was committed between the abuser and the survivor;
- c. it was engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of abuse or the circumstances or conditions giving rise to that risk.

88. The Salvation Army does not agree with the Royal Commission's suggestion that a person is eligible for redress from the institution where the abuse happens in any other circumstances. The proposed criteria of whether the institution *should be* treated as responsible for the adult abuser having contact with the applicant is vague and uncertain.

Duration of a redress scheme

89. The Salvation Army's scheme is open ended and it does not intend to alter its approach by introducing a fixed closing date.

Promoting the availability of the scheme

90. The Salvation Army agrees that a key feature of an effective redress scheme is a comprehensive communication strategy. The availability of the scheme should be widely publicised and promoted. The Salvation Army acknowledges that reaching relevant groups and individuals can be difficult. It notes the very important role of advocacy and support groups such as CLAN and Micah Projects in reaching and assisting survivors.

Application processes

91. The Salvation Army firmly believes that the 'application' process should be simple and straightforward. A survivor should not be required to complete 'paper work' and should be assisted by the institution in providing relevant information in any appropriate form. While the practices have focused on written statements, The Salvation Army accepts that there is a wide variety of ways in which a survivor may convey their experiences – for example, a video recording or tape recording. The application process is part of the healing journey for a survivor and so it should not be focused on administrative requirements or box ticking. In September 2014 the Professional Standards Office (now 'Centre for Restoration') of The Salvation Army Australia Eastern Territory introduced the Restoration Journey Guide and Care Leavers Information Sheet (**Annexure 1**). These documents were provided to all current claimants and survivor support groups at the time of release, and are now provided to all claimants when they first approach the Eastern Territory.

Institutional involvement

92. The question of institutional involvement and independent decision making is an important matter raised by the Royal Commission. From The Salvation Army's perspective, the decision making should be transparent, principled and fair. It does not agree that the decision making needs to be wholly separate or removed from the institution if the redress scheme is operated by the institution.

The appropriate standard of proof

93. The Royal Commission has posed possible reform of the standard of proof, and The Salvation Army notes the suggestions made at pages 170 – 171 of the Consultation Paper.
94. The appropriate standard of proof will obviously vary depending on the amount of payment that is sought. However The Salvation Army considers that there should be a very low standard of proof, a plausibility test indeed if the redress scheme is to also focus on healing and restoration for the survivor.

Whether or not deeds of release should be required.

95. The Salvation Army supports the use of a deed of release. It creates certainty and brings finality to a process. In this respect the deed of release provides a symbolic basis for the survivor and the institution to have concluded that part of the redress scheme. The issue is not really whether there should or should not be a deed of release but rather the terms of that deed of release and if there is any appropriate carve out in the deed of release for the survivor to take any other action, for example civil action for a particular type of compensation as opposed to ex-gratia payments. There may also be consideration as to whether or not clauses should be included in the deed of release in relation to confidentiality or non-disparagement.
96. The Salvation Army supports the use of a deed of release that is final and does not provide for any carve outs to permit further alternative action by the survivor, nor the ability for a court to set the deed aside.

97. Further, The Salvation Army's view is that confidentiality is an important matter, particularly if it is sought by the survivor in any respect, and also in respect of the quantum of any ex-gratia payments.
98. Despite The Salvation Army's position regarding the need for a deed of release, The Salvation Army has a history of exercising compassion and supporting survivors notwithstanding the existence of a deed. The Salvation Army are able to continue to assist survivors in a number of ways following resolution of their claim.

Issues raised in Chapter 8: Funding redress

99. Chapter Eight addresses funding redress. The Royal Commission's research is informed by the actuarial advice and The Salvation Army does not propose to comment on the actuarial advice.

The modelling of required funding and the possible approaches to funding redress.

100. As to funding of redress, The Salvation Army accepts that it is primarily responsible for funding the redress scheme in respect of the claims made against it (as it always has) and the monetary payments available under its scheme/s.
101. The Salvation Army supports a redress scheme where the Commonwealth or State governments act as the funder of last resort.

Issues raised in Chapter 9: Interim arrangements

102. Chapter Nine addresses interim arrangements. The Salvation Army notes the Royal Commission's rationale for recommending interim arrangements pending final recommendations on redress and civil litigation.
103. The Salvation Army is not supportive of interim arrangements if it is going to involve confusion or uncertainty for the survivors. It would prefer that it continue its own arrangements until a final resolution is concluded, particularly if any redress scheme is to be operated by the Commonwealth or State governments external and independent of the institutions.

Issues raised in Chapter 10: Civil litigation

104. Chapter Ten addresses civil litigation and the availability of civil litigation as an alternative to a redress scheme. The context of this chapter is to address the deficiencies in the manner in which civil litigation operates to provide redress and appears to be heavily influenced by the apparent failure of civil litigation to provide appropriate redress.
105. As noted in paragraph 9 above, there may be some survivors who would prefer to use or at least have the option of civil litigation and any proposals for a redress scheme should not deny those survivors the option of civil litigation.
106. The Salvation Army Australia Eastern Territory can, from its experiences with survivors who have participated in its internal redress process and those who chose to pursue civil litigation, make the following observations:
- by far the majority of survivors who have made a claim against The Salvation Army have elected to participate in its restorative justice process rather than to pursue civil litigation. To date, only 6 survivors have commenced court proceedings against The Salvation Army Australia Eastern Territory since 1997;
 - every one of the court proceedings commenced by survivors have been settled with The Salvation Army; and
 - the apparent motivation of those survivors who pursued civil litigation was to achieve a higher financial outcome; common law damages as opposed to the ex-gratia amounts offered as part of the redress process, or as a concurrent feature to criminal proceedings against the alleged perpetrator.
107. Major Peter Farthing, in his evidence to Case Study 10, noted the reasons why The Salvation Army Australia Eastern Territory moved away from its reliance upon civil litigation:

From 2004 onwards, we fully embraced a restorative justice approach. We understood that to be an alternative to punitive justice or litigation. In the

place of legal processes and an adversarial attitude, it emphasises the restoration of relationships.

On the part of the wrongdoer, restorative justice calls for honest admission of wrongs, apology, a willingness to personally engage, and a preparedness to make restitution. On the part of the wronged person, it asks for a willingness to engage personally, to receive the apology, and to reach an agreement.

In recent times I gave this process the name People First, because the intent was to put the survivor first, not the interests of The Salvation Army.³

The options for reforming limitation periods and whether any changes should apply retrospectively.

108. With respect to any form of limitation periods, The Salvation Army notes that this is essentially a matter for state governments and it would support any appropriate changes.
109. The Salvation Army repeats its submissions in response to Issues Paper 5. Its policy is now generally not to seek to rely on limitation periods in circumstances where allegations of child sexual abuse are made against an entity within its structure. This reflects The Salvation Army's view that moral responsibility can extend beyond legal responsibility. That being said, however, any significant prejudice occasioned by the late commencement of proceedings needs to be carefully considered in any particular case before a decision can be made.
110. Nevertheless, where proceedings are issued in a court, legislative limitation periods can have an important role to play in ensuring that a fair trial is held. The Salvation Army considers that courts should have wide discretions to allow or disallow reliance on limitation periods having regard to all relevant circumstances. The Salvation Army agrees with the thrust of the recommendations of the Law Council of Australia (LCA) in its position paper dated June 2011, regarding the proposed development of a federal model limitation regime. Of the LCA's various recommendations, The Salvation Army supports the following particular recommendations in respect of survivors of child sexual abuse:
- that there should be a special limitation period for child sexual abuse survivors;
 - that there should be a general discretion to extend the limitation period;
 - that time should not commence running against a minor or those under a disability until they reach 18 years of age or cease to be under a disability; and

³ Sixth Statement of Major Peter Farthing, 14 March 2014, paragraphs [99] – [102].

- that the test for discoverability should incorporate a subjective element that takes into account the personal antecedents of the survivor.

111. Other than the need to make express provision for the above matters, The Salvation Army considers that the following considerations, which are provided for in varying forms in the State and Territory statutes of limitations, remain important:

- the likely prejudice to the defendant;
- whether a fair trial is still possible given the passage and extent of time;
- the nature and extent of the plaintiff's loss;
- the explanation for the delay in commencement of proceedings; and
- the nature of the defendant's conduct.

The options for reforming the duty of institutions and whether any changes should apply retrospectively.

112. The Salvation Army would not oppose any retrospective operation in relation to the limitation periods as it would create certainty for both the institution and the survivor and eliminate unnecessary legal argument as to extension of limitation periods in the event there wasn't a retrospective limitation.

How to address difficulties in identifying a proper defendant in faith-based institutions with statutory property trusts.

113. The Salvation Army has acknowledged that it would always make one of its statutory Property Trusts available as the Defendant in any relevant claim. With respect to other institutions, The Salvation Army does not propose to comment on the question as we note that there are some complex legal issues that might arise for each of the relevant organisations.

Whether governments and non-government institutions should adopt principles for how they will handle civil litigation in relation to child sexual abuse claims.

114. The Salvation Army notes the standards referred to by way of model litigant policies in the Consultation Paper. There will be a limit to how far the Royal Commission and the institutions adopting any recommendations from the Royal Commission, can go on the question of handling of civil litigation. Any recommendations would necessarily need to be consistent with the recognition and respect for the proper exercise of judicial power

and the role that the Courts have over the manner in which the civil litigation is conducted.

115. As to the engagement between the parties, the model litigant policies would obviously be of great assistance but it would be critical that the lawyers who represent the claimants also adhere to very strict principles in relation to the conduct of litigation and particularly the cost arrangements with the survivors.

116. In that respect, the Salvation Army supports a cost capping regime in relation to the costs that might be incurred by lawyers engaged in handling civil litigation claims on behalf of survivors.

Whether any changes may have adverse effects on insurance availability or coverage for institutions, including specific details of the adverse effects and the reasons for them.

117. The Salvation Army recognises the importance of the insurers and that the involvement of the insurers may have a particularly important role in relation to the conduct of litigation and the payments that may be made.

Part III: Matters relevant to The Salvation Army

118. The Salvation Army refers to pages 18, 140 – 141 and 263 of the Consultation Paper which states:

... according to data summonsed by the Royal Commission, The Salvation Army Eastern Territory made 478 known payments between 1 January 1995 and 30 June 2014, with an average payment of \$49,100

119. The Salvation Army refers to its recent correspondence with the Royal Commission with respect to this statement. The Salvation Army Australia Eastern Territory provided information to the Royal Commission confirming that, as at 25 September 2014, it had made payments to 196 survivors. The average payment was \$39,959.00. The figures cited in the Consultation Paper released on 30 January 2015 appear to combine the payments made by both the Eastern and Southern Territories.

120. The Salvation Army refers to pages 50, 142 – 143, 245 – 246 of the Consultation Paper which states:

The Salvation Army Eastern Territory scheme applies only to 'sexual misconduct', although it then allows for assessment of other matters, including physical assault and emotional abuse, in assessing monetary payments.

121. This is not correct. It appears that the Royal Commission is referring to The Salvation Army Australia Eastern Territory's *Procedures for complaints of sexual and other abuse against Salvationists and workers 1996* and has assumed that the procedures apply only to 'sexual misconduct'. This is not the policy or practice. The Salvation Army has always taken into account and assessed claims raising physical abuse, isolation, neglect and profound impact, both in addition to and in the absence of sexual misconduct. Its process has not been restricted only to sexual misconduct. The matters set out at pages 142 – 143 of the Consultation Paper illustrate the range of factors taken into account.
122. The Salvation Army Australia Eastern Territory notes the Royal Commission's inclusion in Appendix A (pages 245-246) of the Consultation Paper of its current redress scheme, as presented in evidence and submissions in Case Study 5 and Case Study 10. It is important to note that a number of positive modifications have been made to the redress process followed by The Salvation Army Australia Eastern Territory since the conclusion of hearings in Case Studies 5 and 10, and that the *Procedures for Complaints of Sexual and Other Abuse against Salvationists and Workers 1996* no longer governs the redress process. Positive improvements include:
- Introduction in September 2014 of the Restoration Journey Guide and Care Leavers Information Sheet. These documents were provided to all current claimants and survivor support groups at the time of release, and are now provided to all claimants when they first approach the Eastern Territory.
 - The Eastern Territory will now pay the legal costs of review and advice in respect of any Deed of Release a survivor is requested to sign.
 - The provision of counselling is no longer restricted to the sum of \$5,000.
 - The Eastern Territory will pay, in addition to any ex-gratia payment made to a survivor, all outstanding sums owed by that survivor to Medicare by reason of past associated medical expenses.

123. On 23 February 2015, and following an internal restructure in 2014 the details of which are set out above in paragraph 53 above, the Professional Standards Office of the Eastern Territory officially changed its name to the 'Centre for Restoration'. This change responded to feedback that the name 'Professional Standards Office' was not reflective of the work being done with survivors of abuse. This change is being notified to all current claimants and survivor support groups.

Final comments

127. The Salvation Army, both in Australia and internationally, is committed to acknowledging the experiences of survivors of child sexual abuse and providing appropriate redress to those survivors. The Salvation Army is grateful for the insights provided by the Royal Commission; it has listened, studied and learned from the evidence given to the Royal Commission, and the comments of the Commissioners, the survivors and their support groups.

128. As a result, The Salvation Army has sought to refine its approach to addressing the needs of survivors proactively. The Salvation Army Australia Eastern Territory has outlined in these submissions the changes it has put in place since the conclusion of hearings in Case Study 5 and Case Study 10, and The Salvation Army International has formed a national Australian body to oversee the development of unified best practice in this area, the 'National Professional Standards Council'.

Lodged on 9 March 2015 for

The Salvation Army Australia Eastern Territory and

The Salvation Army Australia Southern Territory

ANNEXURE 1

The Salvation Army Australia Eastern Territory Restoration Journey Guide and Care Leavers Information Sheet

RESTORATION JOURNEY

A simple guide to the process



1 Contact us

If you were abused while in Salvation Army care and wish to make a complaint and/or seek support then either call, email or write to us.

Phone (02) 9266 9781
(Mon-Fri between 8.00am and 4.00pm)

Email psa@ae.salvationarmy.org

Mail The Salvation Army
Professional Standards Office
PO Box A435
Sydney South NSW 1235



4 Claims Committee

Your case will then be considered by a Committee made up of caring and experienced people who work for The Salvation Army or are Officers of the Army.

The Committee may respond in a number of ways, including the offer of counselling, assistance unique to your circumstances or redress options.



2 Share your experience

One of our trained support team will listen to you with respect and compassion. They will then guide you through the next steps in our process.

A key component of the process is for an impact statement to be submitted. We know this can be difficult for some people, and we try to help in those circumstances by arranging for you to share your experience in a way that is most comfortable to you.



5 Ongoing support

Our team will continue to work with you to achieve your care plan goals.

The Salvation Army will continue to provide access to counselling and/or psychological support to you.



3 Develop a care plan

Once an impact statement has been received, our team will work with you to develop a personalised care plan. This may include:

- counselling and support
- a formal apology
- meeting with a representative of The Salvation Army
- seeking redress
- reporting to the police or
- seeking legal advice.





PROFESSIONAL STANDARDS OFFICE

Care Leavers Information Sheet

Who are we?

The Professional Standards Office exists to help people who wish to bring a grievance against The Salvation Army—Australia Eastern Territory for abuse suffered in the past.

Our team are here to provide you with support and can guide you through the Personal Injuries Complaints Committee process.

To do this we have developed the CARE approach (described overleaf). At its heart this approach recognises that the individual is at the centre of our services and we encourage and support an individual's involvement in developing their own personal care plan.

Who can we help?

We provide support and action for any person who has been the victim of abuse while in Salvation Army care.

When responding to complaints or allegations we operate on the basis that all persons are entitled to:

- be treated with dignity and respect
- privacy and confidentiality
- due process and
- efficient, prompt and timely service.

Your privacy and confidentiality

None of your personal information, or any information that identifies you, will be passed on to any other party unless you ask us to or unless we are compelled or authorised by law to do so.

For more information

We encourage you to contact the Professional Standards Office to discuss how we may be able to assist you.

For more information, please refer to our services described overleaf or contact us on:

+61 2 9266 9781 or pso@aue.salvationarmy.org

If you require immediate emotional support you can call the Salvo Care Line on 1300 36 36 22.

How can we help?

Connection

We recognise that **connection** with others plays a vital role in the healing and restoration process.

Historical records

We can request a search for your personal records through the Historical Records unit of The Salvation Army.

If you were a resident of a Salvation Army Home in Queensland you can also apply to the Child Safety Services for a copy of your admission details.

Support groups

We can help you connect with a number of support groups that exist specifically for the support and welfare of adult survivors of child abuse.

Reunions

There are annual reunions for former residents of some Homes. You can obtain further details by contacting the Professional Standards Office.

Family tracing

We can help connect you to The Salvation Army Family Tracing Service who work nationally and internationally to re-unite family members who have become separated.

Corps services

If you would like to attend a Corps service, we can help connect you with your local Corps leader.

Advocacy

We can support you in making a police report or to seek independent legal advice.

Police reporting

It is your choice whether you report a crime to police or not. Some people choose not to report or may not report straight away for reasons important to them.

If The Salvation Army believes that a criminal offense has been committed it may have a mandatory reporting obligation to the police.

There are several actions a victim of crime can take and these include:

- Engaging police and having the matter formally investigated.
- Completing the alternative reporting option. It is important to note that this option is not a formal complaint for police to initiate a criminal investigation.

You should consider the following when deciding whether to report a crime:

- The police can only take action against an alleged offender if a report is made.
- If time has passed, including months or years, you can still report the crime to the police.

Independent legal advice

We can assist you in obtaining independent legal advice.

Alternatively, knowmore.org.au is a free, confidential advice service for people considering sharing their story or providing information to the Royal Commission into Institutional Response to Child Sexual Abuse.

Restoration

We share with you the responsibility for your restoration journey and will work with you to achieve your care needs.

Share your experience

If you're ready to share your experience, we're ready to listen. The first step is to contact us and share your experience. You can call, write or email.

Your enquiry will be recorded and passed to one of our team who will then invite you to share your experience in a way that is most comfortable for you.

Impact statement

We encourage you to share your experience with us through a written statement. We can provide you with guidance as to how you might set out your experience.

Interview

Alternatively, a member of our team will contact you to arrange an appointment where you will be able to discuss your experience with one of our trained team.

Counselling and support

Once a statement has been submitted one of our team will work with you to develop a personalised care plan.

Your case will then be considered by the Personal Injuries and Compensation Committee who offer additional support services and redress options. The Committee will also provide access to counselling and/or psychological support to you.

Education

We recognise that continuing to educate Salvation Army personnel is critical to ensuring similar events never happen again.

Training

Since the 1990s all volunteers and Salvation Army personnel involved in working with children are required to attend Safe Salvos training (formerly Caring 4 Kids).

Support Services

Where we are unable to provide a direct service, you may wish to access support from external sources.

There are several agencies that provide support to survivors of abuse. The following services may be able to provide information or help.

1800 Respect
1800 737 732
www.1800respect.org.au

Adults Surviving Child Abuse
1300 657 380
www.asca.org.au

Bravehearts
1800 272 831
www.bravehearts.org.au

Care Leavers Australia Network
1800 008 774
www.clan.org.au

Historical Abuse Network
(07) 3055 8500
www.lotusplace.org.au

Knowmore
1800 605 762
www.knowmore.org.au

Lifeline
13 11 14
www.lifeline.org.au

Micah Projects
(07) 3029 7000
www.micahprojects.org.au

Relationships Australia
1800 025 441
www.relationships.org.au