



# **The Salvation Army**

## **Australia Southern Territory**

*Submissions made on behalf of*  
**The Salvation Army Australia Southern Territory**

*Response to the*

**Royal Commission into Institutional Responses to Child Sexual Abuse**

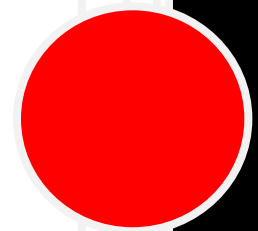
**Issues Paper 7 – Statutory victims of crime  
compensation schemes.**

*30 June 2014*

*For further contact:*

**Kelvin Alley (Major)**  
National Secretary  
The Salvation Army National Secretariat  
2 Brisbane Avenue  
Barton, ACT 2600

Phone: (02) 6273 3055  
Email: [kelvin.alley@ae.salvationarmy.org](mailto:kelvin.alley@ae.salvationarmy.org)



## About The Salvation Army

The Salvation Army is an international movement, recognised as part of the Christian church, and one of the world's largest Christian social welfare organisations. It has more than 1,680,000 members at work in 126 countries and is supported by the efforts of many thousands of employees and volunteers.

Operating in Australia since 1880, The Salvation Army is one of the largest national providers of welfare services, and is the largest provider of homelessness services in Australia. The Salvation Army has a significant history of working with and advocating for the rights and needs of disadvantaged people in our community. Consistent with our values of human dignity, justice, hope, compassion and community, The Salvation Army is committed to the promotion of social justice and the protection of the rights of disadvantaged and marginalised people.

The Salvation Army, with an annual operating budget of approximately \$700 million, provides over 1,000 social programs and activities through a network of social support services, community centres and churches across the country.

Key services provided by The Salvation Army Australia network include:

- Accommodation and homelessness services
- Aged care services
- Children and youth at risk programs
- Drug and alcohol support and treatment services
- Education, training and employment support services
- Family and domestic violence support and accommodation services
- Financial counselling and assistance
- Material aid and emergency relief
- Migrant and refugee services
- Out of home care services, and
- Personal counselling and support.

The Salvation Army Australia has an established reputation for providing these services across the spectrum of disadvantage - working with individuals and families impacted by poverty, deprived of opportunities and activities considered part of everyday Australian life. The Salvation Army works with individuals who, due to life experiences and events, have inadequate education and training, poor health, and a sense of powerlessness that compromises their capabilities and opportunities to participate in the community.

# **The Salvation Army Australia Southern Territory**

**Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse made on behalf of The Salvation Army Australia Southern Territory.**

## **Submissions in response to Issues Paper 7 – Statutory victims of crime compensation schemes**

These submissions are made on behalf of The Salvation Army Australia, Southern Territory (referred to as The Salvation Army AUS).

### **Introduction**

These submissions address the questions raised in Issues Paper 7 released by the Royal Commission on 29 May 2014. The issues identified by the Royal Commission concern the scope and operation of statutory victims of crime compensation schemes, as those schemes that relate to survivors of child sexual abuse.

Many of the issues that are raised for consideration in Issues Paper 7 were also dealt with by The Salvation Army in its submissions in response to Issues Paper 6. The Salvation Army AUS does not intend to traverse any matters otherwise covered by the previous Issues Paper and, therefore, this document should be read together with those submissions.

### **1. What are the advantages and disadvantages of statutory victims of crime compensation schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts?**

Each Australian jurisdiction has enacted legislation creating a compensation scheme, to varying degrees, for victims of crime. These schemes have a number of benefits, which are set out in greater detail below.

First, and at a fundamental level, victims of crime compensation schemes are a means by which the State or Territory can symbolically express the wider community's sympathy and condolence for, and recognition of, the victim's experiences with crime. While a personal apology from the responsible institution is of significant importance to a survivor, it is also important for society at

large to formally recognise that the survivor has been wronged. Indeed, while primary responsibility for child sexual abuse lies with the offender and any institution which fails its non-delegable duty of care, society itself is not devoid of responsibility and victims of crime compensation schemes are a tangible acknowledgment of this. A caring, modern and just society should provide assistance to victims of crime to support and rehabilitate them, to help them financially and to advance their welfare.

Secondly, many survivors are not, for a variety of reasons, able to recover adequate compensation for the abuse that they have suffered from either the offender or the institution. It is therefore appropriate in those circumstances for the State to provide some level of compensation to ensure survivors are given financial assistance for the expenses likely to be incurred as a result of the crime.

Thirdly, and usually as a result of being a minor at the relevant time, child sexual abuse survivors are often not able to identify the relevant perpetrator. This can create significant difficulties when the survivor subsequently seeks to obtain redress from either the perpetrator or the relevant institution. This may be despite the survivor being able to establish that they have, nevertheless, been a victim of child sexual abuse. Relevantly, statutory victims of crime compensation schemes give priority to the injuries suffered by the survivor. Provided the survivor can establish that they were the victim of a crime, they will ordinarily be eligible for compensation. Accordingly, such schemes can effectively overcome deficiencies in the civil litigation system where the defendant is required to be identified and be proven to be liable for compensation.

Finally, many survivors may not wish to engage directly with an offender or relevant institution to obtain redress. A statutory victim of crime compensation scheme can provide a more informal means for a survivor to obtain redress without having to endure the stress and anxiety that is understandably associated with dealing directly with those who are responsible for the commission of the crime.

While there are numerous advantages to statutory victims of crime compensation schemes, there are nevertheless some disadvantages. In particular, due to the limited resources of the relevant State or Territory, compensation schemes are unlikely to be able to provide the level of compensation which a survivor may otherwise be entitled to receive at common law. Further,

due to each State and Territory having a different compensation scheme, inequity in compensation can result from jurisdiction to jurisdiction. This could have the unintended effect of causing further trauma to a survivor. This would be best remedied by ensuring each jurisdiction adopts model legislation to ensure consistency in outcomes.

**2. What features are important for making statutory victims of crime compensation schemes effective for claimants?**

In order to make a redress scheme effective for survivors, a scheme must operate in a relatively simple, transparent and non-legalistic manner. Further, the existence of the scheme, and the way in which a survivor may opt to utilise the scheme, must be readily apparent, or made known to a survivor who may wish to apply for compensation.

For survivors, an effective scheme will be one that has the following features:

- is consistent with schemes in each other jurisdiction (this would require each jurisdiction to adopt model legislation);
- endeavours to compensate a survivor for the losses incurred as a direct result of the crime committed;
- provides for an annual adjustment of the maximum compensation available;
- provides for time limits to be extended in appropriate circumstances;
- should not impede a survivor's right to seek compensation at common law (although any compensation obtained should be taken into account in any subsequent award of damages by a court); and
- for survivors of child sexual abuse in particular, provides redress in forms other than simple financial compensation. In particular, appropriate counselling should be subsidised (this could be achieved, for instance, through Medicare).

**3. Are there elements of statutory victims of crime compensation schemes, as they currently operate, that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts?**

The Salvation Army AUS's response to this issue is provided by reference to each sub-issue set-out below.

**(a) Some schemes have time limits and discretionary provisions to extend the time limits to make claims**

Although survivors should be encouraged to make any application for compensation as soon as is practicable, survivors of child sexual abuse stand in a special category. That is, as most survivors were children at the time the offence was committed, they should not be unfairly prejudiced due to any delay in making an application for compensation. In this regard, The Salvation Army AUS repeats its comments made in response to Issues Paper 5 regarding time limits imposed in the civil litigation system. That is:

- I. there should be a special time limit for survivors of child sexual abuse;
- II. there should be a general discretion to extend the time limit;
- III. 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.

The above comments are of equal application to statutory victims of crime compensation schemes.

**(b) All schemes have caps on payments**

Any cap that is placed on funds that are otherwise made available for survivors will inevitably result in some survivors not receiving the level of compensation that would otherwise be available at common law. However, The Salvation Army AUS understands that statutory victims of crime compensation schemes are not intended to be a substitute for common law damages, but are designed to ensure that victims of crime receive some form of redress in circumstances where compensation cannot be or is not obtained from the offender or the relevant institution. Any cap on payments should therefore be seen in this context.

Although caps on payments may limit the compensation a survivor may receive, inequity between jurisdictions could be avoided by ensuring that each State and Territory adopts model legislation to ensure consistency in outcomes.

**(c) Some schemes have lower caps on payments for offences committed earlier in time and one scheme does not apply to offences committed before 1971**

The Salvation Army AUS considers that any inequity between statutory victims of crime compensation schemes, or any inequity within a scheme, can have the potential effect of causing further trauma to a survivor. To ensure fairness and consistency across and within schemes, each survivor should be treated equally regardless of their circumstances.

**(d) Some schemes require that the act of violence or offence be reported to the police, or require an explanation if not reported to police**

Many survivors of child sexual abuse do not report the crime to police, or do not report the crime until many years after the offence occurred. This is due to a multitude of factors, including the age of the survivor at the time the offence occurred, and the stress and anxiety associated with discussing past abuse. In The Salvation Army AUS's view, the circumstances of survivors of child sexual abuse should ordinarily provide a reasonable 'explanation' for any delay or failure in reporting a matter to police and, in this way, should not operate as an impediment to such survivors. For the avoidance of doubt however, The Salvation Army AUS would support survivors of child sexual abuse being specifically excluded from the requirement to report acts of violence to police.

**(e) Most schemes require repayment of victims' compensation if the recipient later receives compensation from another source**

The Salvation Army AUS understands that statutory victims of crime compensation schemes are not intended to be a substitute for common law damages, but are designed to ensure that victims of crime receive some form of redress in circumstances where compensation cannot be or is not obtained from the offender or the relevant institution directly. However, in circumstances where the offender or relevant institution has made a payment to the survivor (whether by way of settlement or damages), The Salvation Army AUS considers it appropriate that a portion of any money paid under a compensation scheme be returned to the pool of dedicated funds for other survivors who may wish to apply for compensation. In this way, the compensation scheme will operate to ensure that those survivors who are most disadvantaged (for instance, because of an inability to obtain redress from the offender or relevant institution directly) are not unduly limited in the compensation that is available to them. Accordingly, any requirement to repay money should not be seen as a difficulty for claimants, but as a means by

which it is ensured that all survivors and victims of crime have access to sufficient compensation.

**4. What changes should be made to address the elements of statutory victims of crime compensation schemes that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts?**

Having regard to the comments made in this submission, The Salvation Army AUS would support the following changes being made to the various statutory victims of crime compensation schemes:

- schemes should be consistent across each jurisdiction. Any differences between schemes should therefore be eliminated;
- each scheme should provide for an annual adjustment of the maximum compensation available;
- there should be special time limits for survivors of child sexual abuse; and
- survivors of child sexual abuse should not be under any positive obligation to report a crime to police, or to report the crime within a certain period.

**5. What forms of redress, including services and payments, should be offered through statutory victims of crime compensation schemes?**

**6. To what extent, if any, should those who suffer child sexual abuse in institutional contexts be eligible for additional or different compensation and services, compared to victims of other crimes? Why?**

The submission that follows is provided in response to questions 5 and 6 together.

All victims of crime should have access to compensation schemes, and be duly recognised, regardless of the nature of the crime committed. However, depending on the type of crime perpetrated, an affected person may have different needs. In The Salvation Army AUS's experience, survivors of child sexual abuse require more than financial compensation to assist with rehabilitation. In particular, counselling can be an effective form of redress for many survivors and The Salvation Army AUS would support this form of redress being made available in any revised statutory victims compensation scheme.



**7. Are the levels of verification or proof required under statutory victims of crime compensation schemes appropriate for claims by those who suffer child sexual abuse in institutional contexts?**

Survivors of child sexual abuse often face special difficulties when required to prove allegations of abuse. That is because such allegations are often of a historical nature, in circumstances where many witnesses or documentation are no longer available. In light of these difficulties, The Salvation Army AUS considers that the standard of proof that should be applied to any application for compensation is on the 'balance of probabilities'.

---

**Dated: 30 June 2014**