



Comments on the Salvation Army's (Southern Territory) response to redress and review of payments

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Introduction

Open Place welcomes the opportunity to address issues relating to the case study report in which the conduct of the Salvation Army (Southern) was considered.

Open Place is the Victorian Support Service for Forgotten Australians. It commenced service in January 2010 following significant lobbying and advocacy work from Forgotten Australians themselves. Open Place receives funding from the Victorian Department of Health and Human Services and the Commonwealth Department of Social Services. Open Place provides a range of services which includes records, family searching and family reunion, counselling, support and Royal Commission support. It provides an outreach service to regional and rural parts of Victoria. It is based in Richmond, an inner suburb of Melbourne, with a well used drop in and activities centre. It also services 13 social and support groups across Victoria.

Forgotten Australians are the survivors of institutional care, which was the standard form of out of home care in Australian for much of the twentieth century. The 2004 Inquiry of the Senate Community Affairs Reference Committee, *Forgotten Australians*, estimated that more than 500,000 children have experienced life in an orphanage, Home or other forms of out of home care in the last century in Australia.

The Senate Committee reported that they had:

“...received hundreds of graphic and disturbing accounts about the treatment and care experienced by children in out of home care....their stories outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault...neglect, humiliation and deprivation of food, education and healthcare.”

The Community Affairs Reference Committee: *Forgotten Australians* (2004), the follow up report *Lost Innocents and Forgotten Australians Revisited* (2009) and most recently the Final Report on Redress and Civil Litigation by the Royal Commission into Institutional Responses to Child Sexual Abuse recommended that the Commonwealth lead the development of consistent and ongoing redress schemes in all States. The two largest States, New South Wales and Victoria, still have no uniform and consistent redress scheme. Survivors are still required to seek redress via often adversarial litigation processes managed by private lawyers. These processes are time consuming, expensive (costs are taken from the settlement amount) and often re-traumatising. Despairingly many Forgotten Australians believe that the States and the institutions are simply waiting for them to die. Despite the recommendations of the Royal Commission's Final report into redress and Civil Litigation little in the behaviour of many institutions, in responding to allegations of past abuse, appears to have changed.

Many Forgotten Australians believe that the work and the moral authority of the Royal Commission's recommendations is the last opportunity for the conduct of institutions in relation to past claims of abuse to be radically reshaped.

Purpose

In October 2015 the Royal Commission into Institutional Responses to Child Sexual Abuse examined the response of the Salvation Army (Southern Territory) to allegations of child sexual abuse at four of the children's homes it operated. These included Bayswater Boys Home and Box Hill Boys Home, both located in Victoria (case study 33).

The Royal Commission has invited comments from those who have observed the response of the Salvation Army since its appearance at the Royal Commission.

The comments below provide a view of the implementation of the review of claims process that the Salvation Army, in evidence to the Royal Commission, committed to undertake.

A case study is used to illustrate the continuing problematic nature of institutionally based redress scheme that continue to be controlled by the institution and the State, against which the claim is being made, and that is serviced by the private legal system.

Review of claims

In evidence the Salvation Army undertook to review claims settled by the Salvation Army back until 1996. There are 422 of these claims. The focus of attention would be directed to those cases that were settled without legal representation and those cases in which, following settlement, new information has come to light.

The Royal Commission in its Case Study Report No. 33 has commented on the failings of the parameters of the review. The Royal Commission has concluded that: "The Salvation Army Southern's review of settled claims should focus on all claims settled at a time when TSAS relied on.... technical defences" (p.116).

Even if these failings, as identified by the Royal Commission, are set aside significant failures of implementation within this narrowly defined review have become apparent.

1. The review process was poorly advertised and communicated to potential claimants.

The Salvation Army web site contained a note that a review was being conducted. There was no detail offered other than what had been provided in evidence to the Royal Commission. It was stated that the review would be completed by the end of 2015. In May 2016 the Salvation Army issued a media release stating that the review had been completed and that, of 422 claims reviewed, 73 were being "topped" up. The media release was picked up by Forgotten Australians support and advocacy groups. Open Place alerted service users to the completion of the review via its Newsletter and web site.

The onus remained absolutely on each prospective claimant to become aware of the completion of the review and to initiate contact. Claimants wanting to know whether their claim had been reviewed and topped up were advised to contact the Salvation Army. A phone number was provided. It was reported to Open Place that the number initially provided was not connected. A call to the Salvation Army rectified this problem.

Callers were asked to provide their contact details. They were informed that they would be contacted by letter to inform them of the success or otherwise of the claim review.

2. The review process was conducted internally, without any independent oversight and the review decision making remains completely opaque.

No additional information has been provided about the review processes. All that the claimants have is the original parameters. Even this information has not been widely disseminated. Those who contacted the Salvation Army and in response have received a letter, stating the review of their claim has not been successful, are frustrated and angry but sadly not surprised. The secretive process as undertaken by the Salvation Army has the unfortunate effect of pitting claimant against claimant: how much is one worth, my abuse was worse than your abuse, aren't I worth that much too? Many are angry, for once again, exposing themselves to what is felt to be the decisions of a capricious and all powerful institution.

3. The review process fails the accountability and transparency test.

All that is known about the review is that 73 of 422 previous claimants have had their claims "topped" up. No other information is available; there are no details of by how much claims were "topped" up, what levels payment "topping" up reached and whether all "topped up" payments ensured a consistent payment amount. Most importantly there is no information about how many of the 422 have contacted the Salvation Army and how many of these were part of the "successful" 73. It is not clear what else, if anything, the Salvation Army is proposing to do to attempt further contact with claimants.

It is difficult not to see these 422 claimants (many of whom may well be dead) as pieces of a jigsaw puzzle being manipulated into a picture that will restore the tarnished reputation of the Salvation Army as a responsible carer for vulnerable adults and children.

The Salvation Army review of claims process sums up much that is wrong with our current institutional based processes of recognition of past wrongs and of processes of compensation and redress. Processes are not transparent, not accountable and are not independently conducted.

Open Place refers the Royal Commission to the submission from the Alliance for Forgotten Australians which provides a brief overview of current redress processes (interim) in Victoria.

Case study

This brief case study provides an example of the frustration of claimants and advocates with the workings of the present "interim" (for how long?) system of managing claims. Billy is 74 years old. He was a resident of Bayswater Boys Home for 10 years. He is partially deaf, has a speech impediment and limited literacy skills. He worked as a labourer much of his life and managed to provide the essentials to his family. He now has no contact with his immediate family.

Billy believes his life has been adversely affected by his childhood experiences; opportunities were denied for intimacy, relationships, social skills, family connectedness and education. Despite this Billy has survived. Billy wants his life to mean something;

some of this meaning, for Billy, will come from the Salvation Army recognizing that their “care” of him as a child has contributed to some of the struggles of his adulthood. So in December 2014 Billy embarked on a quest for redress. Billy has been supported by Open Place. Billy visited the Salvation Army. The advice was to seek legal advice. Billy’s legal advice was to seek a psychiatric report that may provide a causal connection between his childhood experiences and his diminished adult life experiences.

Billy is a poor narrator; there are gaps in his life story and inconsistencies of memory. His institutional and state records are sparse.

It is proper that the Salvation Army advised Billy to seek legal advice. No survivor today, with the history of agency obfuscation and deflection, would sensibly embark on a civil claim without separate legal advice and support. But this representation comes at a cost; of both time and money.

There are three or four legal firms that specialize in institutional abuse claims. These firms have considerable experience and know the civil claims territory. Their workload has grown massively since the Royal Commission began its work. Their work continues to grow. Claims are processed methodically but slowly, with the speed of progress relying heavily on the ability of the claimant to contribute to an internally consistent and coherent written statement.

Billy is still waiting for his written statement to be completed. Some of the delay is because of Billy’s presentation and his speech difficulties. With support Billy has attended many legal and medico-legal appointments. His psychiatric report has taken months to complete for similar reasons.

Meanwhile the Salvation Army can satisfactorily claim it has done all it can to expedite his claim; it has provided records (such as they are) and have advised about seeking legal advice. What more can they do? Billy’s lawyers are doing what they do; marshalling information and argument that can be used when there is a settlement conference. What else can be expected of them? The settlement conference looms with behind the doors discussions occurring and with the legal players strutting their stuff. All know by experience what will be accepted and what won’t. Meanwhile Billy rings Open Place weekly to find out what is happening. And Billy is getting older. And all parties know that Billy’s “case” and Billy himself would never stand the rigors of a court case.

Since the Royal Commission handed down its report on Redress and Civil Litigation there has been some change in some agencies approach to the management and settlement of claims. Some have introduced an independent arbiter to make recommendations about payment amounts and other needed redress responses. Many others remain entrenched in a legal process that requires the claimant, supported by a lawyer to leap through lengthy and often demeaning hoops. To our knowledge no agency is making public its settlement arrangements. Some still require a deed of confidentiality.

What is to be done?

In the interim, before a national/state redress led scheme is established, Open Place argues that Billy and many others would be better served by the creation of an independent body, funded by the agencies (a process that could be led by the peak body - in Victoria this is the Centre for Excellence - and the State government) that would be charged with the responsibility to review all settlements to ensure transparency and consistency and in some cases, where there appears to be significant drift of time some

active intervention. In Billy's case, for example which has gone on nearly two years, Billy or his advocate could appeal to the independent body for rapid expedition of his claim.

Matrixes relating to levels of abuse and payments that could be applied and used as benchmarks are readily available. Such a body could ensure that some level of transparency could be achieved by publishing settlement amounts (without identification of individual claimants) by agency, on an annual basis via an annual report.

This proposal still leaves the management of the claim sitting within the agency but, at least and in the interim before a national/state scheme is introduced, there is some external oversight and some potential capacity to move "cases" along.