Alliance for Forgotten Australians

Patron: Jack Thompson

Comments on response of Salvation Army (Southern) following appearance at Royal Commission public hearing

Introduction

The Alliance for the Forgotten Australians (AFA) is the national peak body which promotes the interests of the estimated 500,000 people who experienced institutional or other out-of-home care as children and young people. The work of the Royal Commission into Institutional Responses to Child Sexual Abuse provides an important opportunity (perhaps the last) for Forgotten Australians to finally receive justice.

AFA is pleased that the Royal Commission's deliberations have paid much attention to two significant issues:

- redress and compensation
- past and current management of historic claims of abuse.

This meets one of the fundamental needs of Forgotten Australians – to be seen and understood. Previous inquiries have ultimately focussed on recommendations for the future, and paid inadequate attention to correcting the impact of historical abuse; time and time again the needs of the Forgotten Australians have been ignored, disbelieved or left out. It is no accident that our members have adopted the title 'Forgotten'. Our members are ageing and time is running out to provide any justice for them. AFA is acutely aware of the anger and despair that will be felt by Forgotten Australians if the Commission's recommendations, particularly in relation to redress, are not properly introduced and implemented.

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

Purpose of submission

The submission provides:

- A view of the implementation of the ***review of claims*** process that the Salvation Army, in evidence to the Royal Commission, committed to undertake.
- An opportunity to canvas the inadequacy of the ***current processes that are in place for the handling of past allegations of abuse***; particular attention is paid to Victoria.

Background

In June 2015 the Royal Commission released its final report on Redress and Civil Litigation. It made a number of recommendations; of particular importance was the recommendation that the Federal Government lead the introduction of a national redress scheme and that, while the structure and processes for the scheme are being developed, the States, Territories and past care providers make interim arrangements in line with the recommendations of the Royal Commission.

Following the release of this Report the Royal Commission has held two public hearings into institutional out of home care abuse.

In August 2015 the Royal Commission held a public hearing into the Victorian State run children and youth facilities, Baltara, Turana and Winlaton. The survivors of these institutions received a fulsome apology from the Secretary of the Department and promises of responsiveness to past allegations of abuse. The Secretary held up the current Model Litigant Guidelines as the preferred process which would guide the State in its future dealings with those survivors who sought redress.

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 past child sexual abuse at four children's homes it operated. These included Bayswater Boys Home and Box Hill Boys Home, both located in Victoria. At the public hearing the Territorial Commander of the Salvation Army made a commitment to review all claims made against the Salvation Army since 1997 and to follow the recommendations of the Royal Commission's Final Report on Redress and Civil Litigation in to the management of claims of past abuse.

Salvation Army review of claims

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

There has been no attempt by the Salvation Army to widely disseminate the opening of the review process. The Salvation Army's web site contained a note that a review was being conducted. 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. As far as AFA can discern there was no other form of publicity.

The onus remains for 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.

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.

The review process was conducted internally, without any independent oversight and the review decision making remains completely opaque.
Since the original parameters were announced at the public hearing in October no additional information has been provided about the review processes. 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

The review process does not meet 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.

AFA believes that 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. This discussion continues below.

Current processes for the handling of past allegations of abuse
Currently in Victoria (as in other states) an individual wanting to make a complaint and a claim about past "out of home care" abuse must directly approach the past care institution and the State or Territory. There are a number of steps in this process:

1. Identifying how and who to contact at each agency,
2. Making a decision based on available information provided about how to proceed,

3. Embarking on the claim process itself. Lawyers are often involved in each of these steps.

AFA has some comments to make about each of these steps. There is no system for collecting any data or information about claims. Neither the State nor the agencies have committed themselves to publishing any information about claims and settlements. Necessarily then much of what AFA is reporting comes from anecdotal sources.

Information available to those seeking to make a complaint of past care abuse (step 1 &2)

AFA has done a scan of the information provided by past Victorian care providers on their web sites. How readily available is advice for those wanting to make a claim or a complaint about past abuse? Does this advice outline the processes the claimant will go through in making a complaint and seeking compensation?

The web sites of seven of the largest community service providers of past "out of home care" (all are current providers as well) were searched. The following is a summary of search activities:

One agency has no specific mention of how a past resident can register a complaint. A generic phone number and an email contact are provided for generic complaints, which appears to be aimed at current clients from a range of programs.

Five agencies acknowledge that complaints of past abuse are a reality. A phone number is provided. Two of the agencies nominate the agency position that will respond to the call. No details of how the agencies will handle the complaint are provided. There is some variation in how easily this information is reached; determined by number of clicks to the relevant site and the logic underlying this clicking navigation.

One of the above agencies has complaints of past abuse under the heading *Enquiries*.

Another of the above agencies refers all complaints of past abuse to the religious order that provided past care.

Only one agency has a clearly identified *Redress Policy* which provides details of the process and the steps required to have a claim addressed and settled. As far as AFA can determine this is the only agency that does not require a deed of release or confidentiality.

AFA understands that in practice all CSOs strongly recommend that claimants seek legal advice from a lawyer generally before embarking on a civil claim. There are 3-4 legal firms in Victoria who undertake most of this work. Their workloads have increased significantly since the Royal Commission commenced; this contributes, in part, to the lengthy delays claimants are continuing to experiencing

The litigant claim process (step 3)

The Victorian Government has developed some model litigant guidelines and principles:

> *In essence, being a model litigant requires that the State and its agencies, as parties to litigation, act with* ***complete propriety, fairly*** *and in accordance with the* ***highest professional standards***.

These are high sounding phrases full of good intentions. However, it is the contention of the Alliance for Forgotten Australians, based on a large number of anecdotal reports from survivors that little has changed. The promises of behaviour and non-adversarial proceedings contained in Victoria's model litigant guidelines are consistent with the findings from a number detailed and well publicised reports. Some of these reports include the *Senate Report* (2004), *Betrayal of Trust* (2013) and the Royal Commission's *Final Report on Redress and Civil Litigation* (2015). All of these reports recommended that dealings with survivors of institutional abuse must be non-adversarial, non-legalistic, non-traumatising, transparent and fair.

All these reports contained overwhelming evidence that lack of a fair and transparent process for redress causes further harm. It is now twelve years after the Senate Report; none of these recommendations appear to have any impact on the behaviour of the majority of individual past/current care agencies or their state/territory governments.

Despite the *Model Litigant Guidelines,* survivors in Victoria continue to undergo a civil litigation process that is long, slow and adversarial. It requires the graphic retelling of trauma and reaches a conclusion in a 'settlement conference' that is an anathema to the restorative intent of Senates (and others) findings.

The civil litigation settlement process for Forgotten Australians in Victoria is, for the most part, conducted behind closed doors. What is said and done to defend the claim is confidential; what goes on in the room stays in the room. The lawyers conduct a 'horse trade' where they to and fro until a standoff is reached. Meanwhile the litigant sits in another room with their lawyer reporting in from time to time on progress.

This is a gruelling, grinding arm wrestle. It goes on and on, sometimes for many hours, until either the litigant can take no more or their lawyer says "they won't go any better". This is how a 'settlement' occurs. Litigants collapse, cry, rage and (mostly) accept what they get offered. One survivor litigant described his experience of this as déjà vu; he'd been through it all before as a powerless child in the hands of a careless institution.

AFA is aware of countless examples of current settlement conferences that fail to meet model litigant standards; two will suffice to reinforce the above point. Names and details have been altered so as to protect the identity of the individuals involved

Case study 1

Chris is a 38 year old man who spent 8 years in a variety of out of home care placements. Chris was under the guardianship of the State of Victoria. Chris has had a mental illness since his late adolescence and has never worked. He has no contact with his natural family.

When he was seven he was sexually abused by an older foster child in a foster care placement. When he complained about the abuse he was referred to a children's mental health service for "assessment and treatment". The service reported that no damage had been done and he was returned to placement where the abuse continued. The abuse continued for some months, until the perpetrator was observed abusing Chris at a swimming pool. The incident was reported to the police.

Both the State (the guardian) and the CSO (the "care" agency) denied culpability on the grounds that advice had been received from a mental health service that it was safe to return Chris to the placement.

A paltry amount was offered as a measure of good will. It was only after a formal complaint was made to the agency by an advocacy service that the amount of compensation was reviewed. The payment was increased.

The process was demoralising for Chris. In good faith and believing that he would be listened to he entered into the system that is described as behaving like a model litigant. Chris as a child was not listened to and heard; neither was he as an adult. Chris did not have an opportunity to put his case himself to those who held his care in trust when he was a child. Chris has still not received an apology from the care providing agency.

Case study 2

Max is a 62 year old man who spent 15 years in "care". Max was physical and sexually abused during his time in 'care". Max has suffered chronic ill health all his life; contributed to in part by his childhood experiences and self-destructive behaviours in his late teens and early adulthood.. Max spent the last fifteen years of his life in a loving and supportive relationship. Max was an avid reader and deeply regretted his lack of education. Max died six months ago

As in case study 1 the settlement process involved protracted bargaining about how much of Max's chronic illness was due to his childhood experiences or his own behaviours. The culpability of the abuse was not questioned. It was whether this abuse should be held responsible for an adult life stricken with chronic illness. As the hours of the settlement conference went by Max became increasingly distressed and angry. He once again felt that he was an object, a being to be bargained and bartered

over. Finally Max had had enough. He demanded that his lawyer allow him to address the settlement conference. He did. The results were astounding. The matter settled. And Max felt that at the least he had been heard.

Conclusion

There is much wrong with the civil litigation processes. The above examples are, in our experience, not unusual. The solution is simple.

Take the process away from those who perpetrated the abuse.

It is paradoxical that the Victorian Attorney General is defending the claims against the State made by former wards, while at the same time being charged with delivering justice to Victorians via State redress scheme. Again paradoxically, past providers of 'care' are defending and making excuses for their culpability for the harm that happened to children in their charge in the past, while asserting that children currently in their care are safe. The lessons to be learnt from past failings, failings that created so much harm at such a high personal and social cost, raise significant conflict of interest issues.

In the interim (while waiting for a redress scheme and an independent structure and process to be developed) the State could appoint an independent watchdog to review all settlements and claim processes undertaken by the State and the CSOs. Settlement processes would remain within the province of the CSOs and the State but their findings would be capable of review.

Yours sincerely

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