



# The Salvation Army

Australia Southern Territorial Headquarters

17 September 2012

Family and Community Development Committee  
Parliament House  
Spring Street  
EAST MELBOURNE

Via email to: [fcfdc@parliament.vic.gov.au](mailto:fcfdc@parliament.vic.gov.au)

## **Inquiry Into The Handling of Child Abuse by Religious and Other Organisations**

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### **1 Introduction:**

The Salvation Army (TSA) welcomes the opportunity to make a submission to the Family and Community Development Committee Inquiry into the handling of child abuse by religious and other organisations.

From 1894 to the early 1980's TSA operated children's homes around Australia. TSA deeply regrets that not all children in its care received the love and protection they deserved. Some children experienced great fear living with rigid and harsh discipline. Some became victims of physical, emotional and/or sexual abuse. TSA has acknowledged its failure with those children. TSA has offered all persons who were hurt its unreserved apology.

TSA appreciate that the Government has recognised the seriousness and extent of child abuse and its impact on the health and wellbeing of victims. TSA commends the Government for the initiative taken in establishing the inquiry.

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### **2 Context:**

Claims relating to child abuse within Victoria against TSA have predominantly come from people who were placed into TSA's care by either the State (as wards of the state or as a result of a Court imposed custodial sentence) or by their parents as a private placement. These we describe as "Care Leaver" claims.

Such facilities were operated by TSA from the late 1890's into the 1980's and during that time tens of thousands of children passed through these homes and for most, we believe, it was as positive an experience as being placed in a home could be. However for those who were the victims of emotional, physical and/or sexual abuse, it was otherwise. This abuse was perpetrated by TSA clergy, employees, volunteers and on occasions other children.

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The fact that any abuse against children occurred is a source of shame for TSA and something for which we have unreservedly apologised. It has also lead us to put in place policy and procedure that will be outlined, to assist victims by acknowledging their pain, offer counselling and to pay compensation.

In Victoria the majority of care leaver claims are received through lawyers representing the complainants. Where complainants approach TSA without legal representation, they are encouraged to seek assistance from lawyers to assist with their claim. This is done to ensure the complainant is afforded independent legal advice. Should complainants not wish to engage their own lawyers, their claims are dealt with directly by lawyers representing The Salvation Army.

The “Non Care Leaver claims” are claims arising from abuse (sexual emotional and/or physical) within the church or religious context by TSA clergy or other church employees or volunteers.

While there are reported incidents of non carer claims, it has not been a significant issue in terms of the number of occurrences within the TSA. Incidents that have occurred within Victoria have been perpetrated by a small number of people, and most commonly by people working in the Church in a volunteer capacity (youth leaders, choir leaders etc.) The substantiated allegations known to TSA have been reported to or dealt with by the Police and in most cases the perpetrators have been convicted and punished by the criminal system. Victims who have made civil claims against TSA have been sympathetically dealt with. Compensation has been awarded, even in circumstances where the liability of TSA is an issue.

TSA has discussed and now addresses the Inquiry’s terms of reference, the submissions sought from religious organisations into the practices policies and protocols in religious organisations when responding to claims of abuse (section 11 and following of the submission guide).

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### **3 Response:**

#### **3.1 Current policies, protocols and frameworks**

(1) *What policies, protocols, framework and/or charters are currently in place in Victorian religious and secular non-government organisations to address child abuse within those organisations?*

TSA has policies in place to address child abuse within the organisation. Those policies have been developed and refined over a period of years putting into practice our experience and learning to ensure they meet current standards of policy and practice.

(2) *What is the nature of the policy? Is it pro-active/reactive?*

The policy which deals with care leaver claims is reactive responding to allegations, however we do have “Safe Church” policies referred to at 13 which are pro-active.

(3) *Is it publicly available (if so, how)?*

The details of the policy are not publicly displayed. However the public are invited and encouraged to report allegations of abuse. Details of how TSA can be contacted are available online at

<http://www.salvationarmy.org.au/contactus.html>

(4) *Is it time limited?*

No

### **3.2 Who is responsible for the policy?**

- (1) *Is the policy internal or external to the governing bodies of the religious or other organisation?*

The policy is internal to the organisation. However when complaints are received the investigation of the complaint is handled externally by law firms who are instructed to act “independently” in investigating each claim, and reaching a proper view as to liability and quantum of compensation.

- (2) *How are alleged and proven offenders dealt with?*

In all cases the victim will be encouraged to report the complaint to Police, who are the appropriate body to investigate these allegations. TSA’s policy is to assist and cooperate with the Police and Department of Public Prosecution in all criminal investigations.

Victims are also encouraged to report the abuse to the police by our legal representatives during civil settlement discussions.

In terms of TSA’s investigating civil claims, due to the historical nature of these complaints there is often difficulty in locating and seeking responses from alleged offenders. Due to the age of the victims at the time of the abuse, the perpetrators are sometimes unable to be identified. And in cases where the perpetrator was an employee or volunteer, we often do not know the current whereabouts of the perpetrator, or whether they are still alive.

In circumstances where identification is possible, and the perpetrators are alive and have the mental capacity to assist with a civil investigation, TSA consider it important that any allegations be put to the perpetrator for their response. Disciplinary procedures however cannot be applied by TSA against ex-employees or volunteers, regardless of the outcome of the investigation.

In cases where complaints are made against current serving TSA clergy, again the victim is encouraged to go to the police. In civil complaints the investigation of such matters are given the highest priority.

Applicable to both care leaver and non-care leaver complaints, the alleged offenders, if a current serving TSA clergy, may be suspended immediately with or without pay and benefits pending the outcome of any investigation. Suspension or termination will be considered on completion of an investigation. Where there is an admission of guilt, immediate termination may occur rather than suspension.

In circumstances where criminal charges are laid against the perpetrator, legal costs incurred by the perpetrator will not be paid by TSA. However should the perpetrator be found not guilty, or the charges dismissed, TSA will give consideration to assisting retired clergy or serving clergy with their legal costs.

### **3.3 Accountability Mechanisms**

- (1) *What accountability mechanisms apply to the organisation's policy? Is it open to outside scrutiny or review?*

TSA policy is under constant scrutiny both internally and by virtue of the involvement of external lawyers representing both TSA and the complainants.

- (2) *Is there an appeal process or dispute resolution process for victims or offenders?*

As the process is not internal with victims usually having access to independent legal advice an internal appeals process is not necessary.

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#### **4 Supports for victims**

- (1) *What supports are available to victims and other family members or significant others? Can victims seek independent support?*

Victims can have independent support and are always encouraged to obtain independent legal advice.

- (2) *What is the role of counsellors in religious and other organisations?*

Generally counselling is offered. Reasonable counselling is provided at TSA expense generally through external qualified providers. There have been occasions where internal trained counsellors have been used, however this only occurred with the victims consent.

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#### **5 Compensation and reparation**

- (1) *Do systems for addressing abuse within the organisation allow for monetary or other forms of compensation?*

Yes our policies provide for counselling and/or monetary compensation.

- (2) *How is the compensation system/ procedure run? Is it independent from the operations of the organisation? Is it overseen by a panel?*

The compensation paid is based on recommendations by our external legal advisors, through negotiation with the victim and their legal representative (if applicable). Experience has resulted in generally accepted internal opinion on damages which give consistency to settlements.

- (3) *Does the acceptance of one form of compensation prevent victims pursuing other forms of compensation?*

TSA's release prevents victims from pursuing further compensation from TSA relating to the incident which forms the basis of the complaint. The release does not usually prevent the victim from making a Victims of Crime Application, or to seek compensation from other bodies such as the State of Victoria or other organisations who may have been responsible for the victim's mistreatment.

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#### **6 The Committee is seeking copies of documents used by religious and other organisations in responding to child abuse.**

A copy of our standard release is attached.

## **7 What processes for internal investigation exist in religious and other organisations?**

- (1) *Have allegations of child abuse been reported to police when the organisation is made aware of them?*

Yes.

- (2) *What processes are in place for reporting cases of alleged child abuse to the police?*

TSA policy is to encourage and support the victim to make a report to the Police.

- (3) *In what circumstances, if any, would the alleged abuse not be reported?*

Where there was vehement opposition on the part of a victim. However this would still not prevent a TSA inquiry into the allegations nor would it prevent the discipline including termination of an alleged perpetrator.

With care leaver claims, the decision as to whether the abuse is reported to police is made by the victim. As stated above, TSA encourage care leavers to make police complaints.

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## **8 Religious laws and practice**

- (1) *In what ways are religious laws and procedures used to address abuse within the organisation?*

TSA as a "non-conforming" part of the protestant church does not have religious laws as understood in the Catholic or Anglican traditions. It does have Orders and Regulations and Policies which cover this behaviour as far as TSA clergy and full members are concerned. The import of both is to indicate zero tolerance on the part of both TSA clergy, employees and volunteers to abusive behaviour of any description.

- (2) *Have internal systems of investigation discouraged reporting of criminal acts to the police?*

Not in our opinion or experience.

- (3) *Have internal systems of redress discouraged or prevented civil legal action being taken by victims?*

No, our policies encourage external investigation and resolution.

- (4) *Under what circumstances is it appropriate for religious organisations to apply internal sanctions to offenders, such as expulsion or laicisation [defrocking]?*

Internal sanctions are always appropriate but never to the exclusion of legal sanctions where the law has been broken. An appropriate use of internal sanctions may be where proof beyond a reasonable doubt, as required by the criminal law is not possible but the civil burden of balance of probabilities can be met.

- (5) *Have the legal structures used by religious bodies to manage their affairs and their assets acted to discourage or prevent civil legal action being taken by victims against offenders?*

Our legal entity structure dates back to the early 20<sup>th</sup> Century and is often misunderstood. It is not our usual practice to take a defence based on technical issues around the correct legal entity or to plead as a defence an applicable statute of limitations.

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We also would not use what is nearly always a superior financial position, to delay a civil action. However the limitations period may be used where we believe we are substantially disadvantaged by the passing of time.

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## 9 Mandatory reporting

- (1) *To what extent should the reporting of suspicions of abuse be circumscribed by laws, customs and ethical codes of religions? (For example, should the sacrament of the Catholic confessional remain sacrosanct in these circumstances?) What consequences may flow from the extension of mandatory reporting to ministers of religion?*

The mandatory reporting of the suspicion child abuse should be circumscribed by Church law and policy. However, in saying this TSA acknowledges the sacrament of the confessional exemption does not apply to its clergy and does not reflect its internal position. TSA clergy are already instructed to report suspected child abuse. We know other churches would have strong views about the sacrosanct status of the confessional which we are not seeking to undermine.

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## 10 Working with children checks

- (1) *What procedures do religious and other organisations have in place to ensure the suitability of employing people in the organisation who work with children?*

TSA requires that every employee and volunteer who works with children and all TSA clergy (whether or not they work with children) have police checks and a Working with Children clearance.

- (2) *Are these in addition to those required to be undertaken by state law?*

For TSA clergy this in addition to State law which only requires the Working with Children check in situations where the person works with children

- (3) *How is the Working with Children Act 2005 applied in the context of ministers of religion?*

All TSA clergy must hold a valid working with children check. All people offering themselves for training as Officers must produce a clear Working with Children check before they will be accepted.

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## 11 Potential new laws

- (1) *Are new laws required to more effectively address the institutional abuse of children?*

New laws to widen the category of people required to mandatory report are needed. The Inquiry may also throw new light on other areas of law reform.

- (2) *Should officials in religious and other organisations be held criminally responsible for the actions of offenders of child abuse in their employ or for whom they have responsibility?*

No with one exception as outlined in (3)

(3) *Under what circumstances should this apply?*

It should apply only where it can be shown that all reasonable steps to reduce this liability have not been taken. 'All reasonable steps' need not be defined but rather is worked out on a case-by-case basis. It would mean those in charge must actively implement precautionary measures to minimise the risk of abuse occurring.

(4) *Are there formal or informal practices or guidelines for the personnel accused, suspected or convicted of criminal or other abuse?*

TSA practice is to recommend they get legal assistance. The legal costs are not paid for by TSA except in the event that at trial the charge is not proven. An application for assistance with legal costs will at this time be considered.

(5) *How should cases be dealt with when there is suspected abuse but insufficient evidence?*

These cases should be treated by the law in no different manner than any other criminal behaviour. Internally disciplinary action might treat the matter on a civil burden of proof and if proved on a balance of probabilities disciplinary action taken. Where there is no admission and no cogent evidence no action should be taken.

(6) *How do religious and other organisations protect victims when alleged offenders have not been charged or convicted of a criminal offence?*

In our experience this has not been a problem because of the time gap between the event and allegation.

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## **12 Data, privacy and public interest**

(1) *Does the organisation maintain comprehensive records data on the incidence and prevalence of abuse against children in the organisation? If so, are such records publicly available?*

While we keep good and full records of reported instances of child abuse claims we do not maintain a database as described.

(2) *Do organisations share information regarding proven or suspected cases of abuse to other agencies even in cases where it is not compelled to do so (for example, schools, Department of Human Services)? What confidentiality/privacy considerations flow from this?*

We have shared some limited information between separate but internal services. However we have not yet shared with other external agencies. Any sharing would need to take into account confidentiality and privacy, but could be possible where it is reasonably necessary to prevent a criminal offence or to lessen or prevent a serious and imminent threat to health and safety.

(3) *Do religious organisations inform the laity and other members of the religious or wider community about abuses committed by its members? Should it do so?*

Refer to and repeat the answer above and add this has not been done in any public sense. Whether it was done would depend on many factors including any relevant court orders about disclosure and the wishes of the victim

- (4) *How can the wider community be informed about child abuse/child protection issues or suspicions?*

The wider community should be educated about child abuse issues and it should be something around which discussion is encouraged.

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## 13 Prevention

- (1) *Are there education or prevention programs/policies with regard to the abuse of children and other vulnerable people in religious and other organisations?*

There are a variety of programs available. The program currently used within TSA youth and children's ministries is "Child Safe" produced by Scripture Union.

Given the differences in State based legislation within which we operate, other training can be required. For example mandatory reporting training in South Australia.

- (2) *What type of programs? Are they one-off or ongoing?*

Currently we require that all staff including Officers working with children, are trained and the training is renewed every three years.

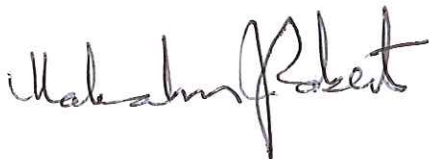
- (3) *Who is responsible for developing the programs?*

Child Safe was developed by Scripture Union used by TSA under agreement.

- (4) *Are these programs internally/ externally run? Or both?*

Both, however generally it is internal under a "train the trainer" arrangement. Specific training is delivered by external providers.

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