

Closing statement on behalf of Cooper Legal — Faith-based witnesses

INTRODUCTION

1. Tēnā koutou katoa Madam Chair and Commissioners. Thank you for the opportunity to appear here today on behalf of the Cooper Legal witnesses who have provided written statements and given oral evidence during the Faith-based hearings.
2. We have listened to the evidence given by the Faith-based witnesses over the last two weeks. We have waited to hear whether the witnesses have acknowledged the issues raised by the survivors who provided evidence to the Royal Commission, including whether there will be change to redress processes, whether those administering the redress processes will “upskill” and whether Faith-based institutions generally accept the call from survivors for redress processes to be independent from them.
3. It makes sense to address these topics with reference to the individual Faith-based institutions that gave evidence during the past two weeks — namely, representatives of the Salvation Army, from the Anglican Church and, finally, the Catholic Church.

Salvation Army

4. Cooper Legal witnesses who gave evidence about their experiences in Salvation Army care and the subsequent redress processes have described abuse covering the full spectrum, including serious sexual assaults perpetrated by Salvation Army staff members and other residents with whom they were in care, physical assaults, and psychological abuse, including being made to feel worthless and ashamed. The Cooper Legal witnesses also explained the profound impact of their abuse on their entire lives and how the abuse still affects them to this day. This has been a common theme among all the survivors giving evidence before this Royal Commission.

5. Cooper Legal clients who engaged with the Salvation Army reasonably early in its process encountered considerable barriers to resolution. As acknowledged in the evidence of the Salvation Army witnesses, the Army engaged its lawyers to defend the claims. The Army relied on its legal defences, including the Limitation Act and the ACC bar to deny claimants any remedy, or at least limit the remedy that was being provided. Some Cooper Legal claimants were forced into a litigation process because of those barriers put up by the Salvation Army.
6. While many of those claimants were able to achieve a measure of resolution after a protracted process, some were without any remedy. Further, those who did eventually resolve their claims were essentially forced to take reasonably nominal compensation sums and then contribute part of their nominal payments to their legal aid.
7. At least one claimant, who gave evidence in the public hearing last year, had expressly asked for assistance after being released from prison. That was not provided. It has still not been offered by the Salvation Army, to this day.
8. More recent claimants have encountered a more conciliatory process. As Murray Houston acknowledged for the Salvation Army, the relationship between Cooper Legal and the Salvation Army has improved in recent years. This has led to a more streamlined and claimant-focused response by the Salvation Army, which has also been reasonably prompt.
9. More recent claimants have also seen a significant increase in the payments being made to them. This increase occurred around the same time the Royal Commission was established, and we acknowledge Mr Houston's evidence that the Royal Commission has caused him to re-evaluate the process, both now and in retrospect, and take immediate steps to improve it.
10. Nevertheless, more recent Cooper Legal claimants have raised concerns about the process. In particular, the meetings with Mr Houston need to be

more survivor-focused, and less intimidating for claimants. Claimants are also concerned that the Salvation Army is doing nothing to ensure that those who are identified as perpetrators of abuse are punished in some way. Some have really wanted ongoing support from the Salvation Army, on top of the payments they receive and the apology letters.

11. On behalf of Cooper Legal claimants, there are a number of comments to make about the evidence on behalf of the Salvation Army.
12. We acknowledge the progress made by the Salvation Army in its processes since they were established. The processes used by the Salvation Army in the 2000s were, in short, harmful. We acknowledge, and appreciate, Mr Houston's evidence that the Salvation Army has not always got it right.
13. However, even with the best intentions and the improvements made by Mr Houston to date, the Salvation Army process lacks the three key elements we say are necessary for a good process: independence; transparency; and accountability. Of course, this complaint applies to all of the Church Redress processes.
14. Even though Mr Houston is a 'lay' member of the Salvation Army, he is a long-term employee of the organisation he both represents and investigates. He can never truly be independent of the Salvation Army, which brings the integrity of the process into doubt.
15. The process is not transparent. It is entirely run by Mr Houston and there is no way for claimants (especially non-represented claimants) to know if they are being treated consistently with people who have had similar experiences. There is no publicly available information about the process for claimants to help them understand how and why the Salvation Army makes the decisions it does about their claims. In addition, as Mr Houston has said, there is no matrix or other guidance used by him to determine quantum – it is determined by him, with reference to a range of factors and his instinct and experience. That cannot be fair to survivors.

16. There is no accountability in the process. It has been solely run by Mr Houston for nearly 20 years, without any oversight from any person or body outside of the Salvation Army, and with no ability for claimants to appeal to a third party if they disagree with the Salvation Army's assessment of their claim. We acknowledge that a claimant is always able to file court proceedings but this is a fraught process and should be the last resort.
17. The changes and improvements in the process since it began also means that claimants who approached the Salvation Army early on have likely been disadvantaged. We have been working with Mr Houston to revisit claims he declined during those early years, but with no contact with those individual clients for (sometimes) over a decade, most of them cannot be found. There has also been no work to assess payments to claimants from those early days to see if they need to be 'topped up', not only for parity reasons but because the earlier claimant group had to contribute to their legal aid debt.

Anglican Church

18. We next address evidence given to this Inquiry from those who have suffered abuse in the Anglican Church. We note, in that regard, that some witnesses who gave evidence in the public hearing are (or were) Cooper Legal clients. Robert Oakly and Maggie Wilkinson are two such witnesses.
19. As with our Salvation Army clients, those who have suffered abuse in the care of Anglican organisations make allegations covering many forms of abuse, ranging from serious sexual and physical assaults by clergy and other caregivers, through to emotional neglect and the cruelty Maggie Wilkinson suffered in having her baby taken from her.
20. The experience of Cooper Legal claimants has been that the Anglican Church, at least in terms of the Bishops, did not assume any real leadership of the various providers against whom claims were brought. This has meant claimants have been forced to identify the appropriate organisation against

whom their claim should be made, deal with that organisation's process (and often there have been no processes in place, which has made it very difficult for progress to be made) and, in some cases, deal with their lawyers, who have raised the inevitable legal hurdles for survivors, particularly the Limitation Act and the ACC bar.

21. While it is acknowledged that the Anglican Church structure is multi-layered and complex, this has been used as an excuse for the Anglican Church, particularly the Bishops, to provide those under their umbrella with no guidance, protocols, or policies about how to deal with claims of this nature.
22. It is important to acknowledge the role of the Royal Commission in prompting the Anglican Church — as represented by the Bishops and individual organisations — to review the way they approach claims brought by survivors and victims of abuse. Cooper Legal is certainly seeing the impact of that in the more recent claims brought by those who suffered harm while they were in the care of the Anglican Trust for Women and Children, which we talk more about below.
23. Ms Whiting and I were present when Archbishops Richardson and Tamihere gave several unequivocal apologies on behalf of the Anglican Church. It is evident from their evidence that the Bishops are now assuming leadership, although it is deeply disappointing to find out that these issues have been on their radar since the 1980s. As you are aware, Cooper Legal asked for the Bishops to take a leadership role in 2016 and when we met in 2017. While some work apparently started in the following year, listening to the evidence given last week, it is clear there is still a lot of work yet to be done.
24. In the meantime, survivors and victims wait. Some continue to suffer the effects of ad hoc and non-claimant-focused redress processes. Others die waiting.
25. To be blunt, while acknowledging that the Bishops have had many issues to grapple with, including Treaty issues, this claimant group has deserved

better treatment by the Anglican Church than they have received so far. As has been acknowledged by all those giving evidence, this claimant group is a particularly vulnerable one. The abuse they have suffered results in them having often life-long needs, which should be met. Many are alienated from their whānau and society. Māori and Pasifika are disproportionately represented in the claimant group. These factors, alone, should have prompted the Anglican Bishops to give this issue more priority than it has been, to date.

26. We have referred above to the Anglican Trust for Women and Children (often known as the ATWC), which was, for a long time, one of the most intransigent organisations, through its lawyers, to deal with. In mid-2020, the ATWC introduced a drastically different process, run primarily by Mark Wells, a former social worker. Mr Wells has met with several claimants and has treated them with courtesy and respect and shown a willingness to engage in a survivor-focused process. Notably:
 - a. The key steps in the process are in a publicly available document, giving transparency to the process;
 - b. The ATWC through Mr Wells engaged with us about appropriate compensation levels, modelled on other organisations;
 - c. The ATWC alters its process to suit the needs of survivors, when it is needed;
 - d. The process is timely;
 - e. The apologies are tendered in a way elected by the client – in writing, in person or both;
 - f. The ATWC has researched options for ongoing counselling, often providing several options for a claimant to choose what they are comfortable with;
 - g. The settlement documentation drafted by the ATWC is simple, clear and provides for compensation levels to be revisited if the Royal Commission makes recommendations that support a top-up of compensation.

27. In addition, the ATWC has agreed to revisit claims that were not previously settled. This willingness to apply its new, more pastoral process to older claims is commendable.
28. The ATWC approach has been the best approach from an Anglican organisation in recent times. We would like to see other parts of the Anglican Church model processes on it. However, even this process lacks the external oversight and accountability we say makes a good process, and although Mr Wells is new to the organisation, he is still contracted to it and therefore is not truly independent of the organisation.

Catholic Church

29. The final comments relate to the evidence given on behalf of the Catholic Church witnesses.
30. As the Commission is aware, Cooper Legal has provided witness statements on behalf of seven clients who suffered abuse at the hands of Catholic clergy. The most recent evidence was submitted to the Commission earlier this year, to draw the Commission's attention to the very recent experiences of Cooper Legal clients of the *A Path to Healing* process, or NOPS process. In addition, Cooper Legal provided a separate witness statement which summarised the recent experiences of Cooper Legal claimants and our concerns about the NOPS process.
31. The concerns raised by Cooper Legal and our witnesses are not unique. They have been referred to in the opening given by Liz Tonks, Murray Healey and by myself and Dr Christopher Longhurst on behalf of SNAP.
32. Survivors and advocates who listened to the evidence last week would have been perplexed and angered - because the way in which the NOPS process was presented to the Commission is a very far cry from the reality experienced and continuing to be experienced by survivors. Cooper Legal claimants, many of whom are still working through the NOPS process have

referred to it as *'The Trial to Suicide'*, *'A Path to More Trauma'* and *'A Path to Stress'*.

33. Contrary to the evidence given by Virginia Noonan, they have not been offered support in the form of counselling through the process (indeed no Cooper Legal claimants ever have been), they have been asked to tell their stories more than once and they have certainly felt as if they have been the ones 'on trial' through facing multiple requests for information, including being asked for their criminal history. Some found the meetings with the Investigators brutal, intimidating and re-traumatising, especially because most are former police officers and many Cooper Legal clients have had a poor history of interacting with the police.
34. One of the big themes from Cooper Legal claimants is the obvious lack of trauma-informed understanding reflected in the NOPS process. This includes the fact that survivors disclose abuse on an incremental basis, and that they face particular barriers disclosing abuse to family members and others — particularly where the perpetrator was in a position of power, as are priests and nuns.
35. There is little to no transparency in the NOPS process. Claimants are not provided with the investigators' reports as a matter of routine. Further, when they are provided, the reports are heavily redacted and much crucial information is completely blacked out. This was illustrated when Mary Marshall gave her evidence last year. Claimants and their lawyers never see the report going from the Committee. This is even where the Committee reaches a different outcome from that of the investigator. The lack of transparency in the process is deeply concerning and fosters the view held by survivors and their advocates that the NOPS process is mired in secrecy and protects the organisation known as the Catholic Church.
36. The delays in the NOPS process is a common theme amongst survivors and victims. Many claimants have engaged with the process for several years. Claimants become exhausted and re-traumatised during the course

of engaging with the process and then waiting for an outcome, which is often to dismiss the claim and offer nothing.

37. We finally comment on redress. It is clear that the Catholic Church is quite unapologetic about offering ex gratia payments to claimants, relying on its legal defences and its own view about what redress should cover, as a barrier to offering more meaningful compensation. It has been a real battle to get the various Bishops and other Catholic institutions to contribute to the legal costs incurred by our claimants. Some still take the view that they should not have to contribute to the debt.
38. As a matter of principle, those who are the most vulnerable in the process should be supported to have legal representation and advice where they ask for that. After all, most of the organisations they are claiming against have legal representation and advice. It is another example of the failure to take a trauma-informed approach — that it has been a real battle to obtain a contribution to the legal costs. The Anglican Church also holds this view.
39. Unlike the Salvation Army and Anglican Churches, which have clearly adjusted their compensation payments in light of the Royal Commission process, the NOPS process shows no such adjustment. Payments made are, in general, lower than those now made by the Salvation Army and the Anglican Churches. In fact, Cooper Legal claimants only receive higher offers from those who deal with claims outside of the NOPS process and particularly those based outside of New Zealand, for example in Australia and now the United Kingdom.
40. We also observe that apology letters are either completely absent or appear to be templated. Those apology letters that are received are typically insincere. Mary Marshall's is a good example of that.
41. Listening to the evidence of those called on behalf of the Catholic Church did not provide much reassurance that the Catholic Church is really hoping to learn from the Royal Commission or is taking on board the evidence of those survivors and victims who have already provided evidence.

42. A fundamental problem with the NOPS process is the requirement to prove that the abuse occurred, and that the perpetrator has been correctly identified. This can be an almost impossible task for a survivor, given the passage of time and the circumstances in which clerical abuse can occur. One Cooper Legal client, for example, was refused any remedy because she was unable to identify the priest who sexually abused her in the confessional box, which by its very nature is dark. It is concerning that priests and nuns who deny abuse are inevitably believed, except in circumstances where they may have been convicted in a criminal court, or have acknowledged the abuse, or where the weight of evidence against them presumably is overwhelming.
43. Of course, the Salvation Army (at least in its early days) had an identical approach to claims. In the present day, however, we see a more nuanced approach by both the Salvation Army and the Anglican Church, and indeed some Catholic orders we deal with, which operate outside of the NOPS process, who will acknowledge that the claimant has clearly suffered abuse of some kind, even if the nature and identity of the abuse and abuser is unclear.
44. As a pastoral process, Cooper Legal considers it is a fundamental flaw that the NOPS process — and indeed the approach adopted by many Catholic orders — is to require survivors and victims to prove their claims before the inevitably nominal redress is offered.
45. While we heard that the Church has received in excess of 1,100 disclosures of abuse (whatever that means), we did not hear the data about how many of those disclosures have actually been accepted by the Church. We suspect that the proportion is very low and that most survivors and victims coming to the Catholic Church have a very unsatisfactory outcome in which their claim is denied, and they are given no outcome.
46. As with the Salvation Army and the Anglican Church witnesses, we heard that the NOPS process is still evolving. The Church has already had a great

of deal of feedback and has both read and seen the evidence of the witnesses through the Commission. It should have a clear idea what is required. If the need for a process that is independent of the Church, indeed all of the Churches has not been made clear enough to date, what will?

47. Our concluding comment is that the Cooper Legal clients and ourselves were underwhelmed by the evidence given over the previous two weeks. It has been frustrating to hear apologies and promises for a better future for survivors which seem to lack any substance and do not show any significant evidence of actually listening to what survivors want.
48. We now leave it with you, Commissioners, to pass on that message so that there can be no further delays in Faith-based organisations implementing processes that truly meet survivor needs and acknowledge Treaty principles.