



## HIGH COURT OF AUSTRALIA

13 November 2024

RC v THE SALVATION ARMY (WESTERN AUSTRALIA) PROPERTY TRUST  
[2024] HCA 43

Today, the High Court unanimously granted special leave to appeal, and a majority of the Court allowed the appeal in full, from a decision of the Court of Appeal of the Supreme Court of Western Australia, which dismissed an appeal against a decision of the Supreme Court of Western Australia granting a permanent stay of proceedings commenced by the appellant ("RC") which sought damages for sexual abuse from the respondent ("the Salvation Army"). The application for special leave was heard immediately following the appeal in *Willmot v Queensland* [2024] HCA 42. As in *Willmot*, the Court was required to consider the intersection between the principles relating to a permanent stay and a provision that lifted the time-bar on commencing proceedings for a claim for child sexual abuse.

By s 6A(2) of the *Limitation Act 2005* (WA), no limitation period applied in respect of a child sexual abuse action in Western Australia.

RC commenced proceedings in 2018 alleging that he was sexually assaulted and abused by an officer of the Salvation Army in 1959 and 1960 whilst a resident in a home operated by the Salvation Army. He alleges that he reported the abuse, whilst a resident, to another officer at the home. RC pleaded that the Salvation Army had breached a non-delegable duty to take reasonable care for his safety, as well as a statutory duty of care pursuant to the *Child Welfare Act 1947* (WA) that he would not be harmed by reason of a breach of that Act and its regulations by the Salvation Army, its servants or agents, and also that the Salvation Army was vicariously liable for the officer's intentional torts inflicted on RC. The Salvation Army applied for a permanent stay of the proceedings on the basis that it could not meaningfully defend the proceedings because of the death of potential witnesses prior to the allegations being raised, including the alleged perpetrator, the absence of other officers who could give relevant information, and the absence of documentary evidence.

The issue in the High Court was whether the Salvation Army had discharged its onus to establish there could be no fair trial of the proceedings. The High Court granted special leave to appeal and allowed the appeal. Applying the principles addressed in *Willmot* to the unique facts of RC's claim, the High Court by majority held that the proceedings should not be stayed.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*