

Contact: Steve Kinmond

Phone: 9286 0989

Our ref: ADM/2012/961

Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

By email: solicitor@childabuseroyalcommission.gov.au

Dear Commissioners,

Towards Healing Issues Paper

Thank you for the opportunity to provide a submission to the Royal Commission in relation to the abovementioned paper.

We would like to make the following brief observations about Towards Healing.

1. Its focus on the ‘formal’ receipt of a complaint

The focus of the Towards Healing policy document relates to the Catholic Church’s response to *complaints* of abuse. We note that there are specific requirements relating to the making of a valid complaint. These include the need for the complainant to indicate that they “wish...to invoke the procedures outlined in [the Towards Healing] ...document.” While we appreciate the desire to define what constitutes a valid complaint, there is the need to ensure that any procedural requirements do not result in preventing any victims of abuse coming forward.

We are also of the view that the very strong emphasis in the document on responding to abuse via formal complaints, could potentially divert attention from the need for the Catholic Church to also take proactive steps in identifying, and responding to, abuse. In this regard, the Church should seek to promote a culture where not only victims and their representatives are encouraged to raise concerns about abuse, but also that Church leaders – and the broader Church community – understand the importance of vigilance in relation to this issue.

Part 2 of the Towards Healing document “commits” the Catholic Church to following a number of important principles. One of these is prevention (Sections 30-32). Section 45 of the document also outlines a number of broad preventive strategies. While it is important that the document commits the Church to making widely known the Towards Healing complaint process, as well as recognising the need for preventive strategies, these commitments are not sufficient to guarantee that the important principles in Part 2 will be infused into the culture of the Church. In support of this claim, we note that Towards Healing is principally about the establishment of a system for the handling of *individual* complaints about abuse. For example, nowhere in the somewhat detailed description of the complaint processes does the policy emphasise the importance of utilising the complaints system – and other sources of

information – to proactively identify where risks of possible abuse may exist. Furthermore, notwithstanding its recognition of the importance of preventive strategies, the document deals with this issue in only a cursory manner.

Therefore, while we recognise that Towards Healing contains many positive elements, it is important not to overstate its significance as a vehicle to combat abuse.¹ It is our view that what is required is a multi-faceted and integrated framework operating within the Catholic Church – and in other social institutions – aimed at promoting a holistic response to creating an abuse resistant environment. In this regard, we note that the Royal Commission’s ‘Child Safe Institutions’ issues paper, provides scope for discussing the range of other safeguards which need to form part of an overarching framework designed to keep children safe.

2. Its definition of abuse

We note that the document defines abuse as:

- Sexual assault, sexual harassment or any other conduct of a sexual nature that is inconsistent with the integrity of the relationship between Church personnel and those who are in their pastoral care.
- Intentional acts by a person with responsibility for a child or young person causing significant physical injury, or other behaviour which causes serious physical pain or mental anguish without any legitimate disciplinary purpose as judged by the standards of the time when the behaviour occurred.

Based on our experience overseeing child abuse in the employment field, we believe that the Towards Healing process – and any other similar process – should seek to include in the definition of ‘abuse’ clearly improper behaviour that ‘crosses professional boundaries’. By contrast, the definition requires an allegation of “sexual assault, sexual harassment or *any other conduct of a sexual nature...*”. In our opinion, the requirement that there be an allegation of conduct of *a sexual nature* in order to trigger the Towards Healing process will inevitably lead the Church to exclude from its purview the behaviour of sexual predators who actively avoid displaying conduct which is overtly sexual in their conduct towards intended victims.

3. Its jurisdiction

In terms of the reach of the Towards Healing process, we note that Section 34.4 states that:

These procedures are intended to apply to all complaints of abuse by Church personnel within pastoral relationships, whether by clerics, religious personnel, lay employees or volunteers. In the case of current lay employees, the response of the Church Authority will be made in conjunction with the relevant body for employment relations in each State or Territory, or such other body as is set up for this purpose.

¹ In making this observation, we recognise that Towards Healing is not the only policy/procedures relevant to this issue. For example, the Catholic Church published in 2011 a document entitled “Integrity in the Service of the Church”.

In addition, Section 36.4 states that:

If a Church Authority receives a complaint directly, the complaint should be referred to the Director of Professional Standards to manage the process of responding to the complaint. In the event that a complaint is received by one Church Authority that ought to be dealt with by another, the complaint should be referred to the Director of Professional Standards to make the appropriate linkages.

However, section 39.1 states that:

If the allegations concern a current employee of a Church body, other than a cleric or religious, then the Director should refer the complaint to the relevant body for employment relations to investigate in accordance with the applicable procedures of employment law (and any other relevant laws) in that State or Territory or such other body as is set up for this purpose. When the investigation has been completed, the Director of Professional Standards should liaise with the relevant body concerning how to respond to the victim if the complaint is validated. The response to the victim should follow the principles and procedures outlined in this document.

From our experience oversighting child abuse in the employment field, we can confirm that the Director of Professional Standards does not play a pivotal role in relation to responding to the vast majority of child abuse allegations made against lay people who fall under our jurisdiction. However, in making this point, it is important to acknowledge that in NSW, the Catholic Church has put in place strong governance arrangements for responding to 'reportable conduct' allegations which fall within the reach of Part 3A of the Ombudsman Act. However, there would appear to be merit in the Royal Commission identifying the extent to which the Catholic Church has departed from the clear governance arrangements for responding to complaints of abuse that are outlined in Part 3 of the Towards Healing document, and the impact, if any, that this may have had on diluting the overall effectiveness of the Towards Healing process.

4. Its guidance in relation to investigative practice

The Towards Healing document makes a number of important observations about matters which need to be considered following the receipt of an allegation of abuse. Section 38.1 outlines the steps to be taken "where the complaint does not concern a criminal matter, or where a complainant has chosen not to report the matter to the police or other civil authority and wants to proceed under Towards Healing, or the civil authorities have decided not to take further action under the criminal law or child protection legislation."

Section 38.3 appropriately recognises the scope for a more informal dispute resolution process for less serious matters.

However, for more serious matters, an investigative process – led by assessors (see section 40) – will usually be employed.

When reading the relevant sections we have noted that section 38.5 states that:

After receiving notice of the complaint, the Church Authority (or his or her delegate) shall, after consultation with the Director of Professional Standards,

inform the accused of the nature of the complaint, unless through death, disappearance or disability it is not possible to do so. This should occur as soon as possible unless a delay in so doing is required by civil authorities. The accused needs to be given enough detail about the complaint, and the person who was allegedly abused, to be able to offer a response. The Director of Professional Standards may be involved in such a process. The accused shall be entitled to information about his or her rights and about the process for dealing with the complaint.

As an investigative body, we are concerned about this general approach; particularly in relation to matters which involve serious allegations of abuse. While we accept that the policy clearly indicates that action under Towards Healing should not be pursued when other criminal or civil investigative processes are in train, it is nevertheless generally poor investigative practice to put the allegations to the accused prior to obtaining critical evidence that may either support or discount the allegations. While such a practice is acceptable in informal resolution focused processes, it is problematic in serious cases that require a robust investigation.

5. Criminal offences and the reporting of child abuse

Section 37 deals with the reporting of criminal offences to the police and recognises mandatory reporting to child protection authorities (when relevant).

Section 37.4 states:

In the case of an alleged criminal offence, if the complainant does not want to take the matter to the police, all Church personnel should nonetheless pass details of the complaint to the Director of Professional Standards, who should provide information to the Police other than giving those details that could lead to the identification of the complainant.

We have already provided the Royal Commission with information that outlines why we believe that victims' details should be provided to the police in circumstances where the alleged perpetrator of serious criminal abuse may present an ongoing risk to children in the community.² Furthermore, in order to fulfil their ethical obligations to both adult and child victims of serious criminal child abuse, we believe that social institutions should make known their social obligation to provide police with full particulars of serious child abuse allegations (including the details of the victim). Without the provision of such information, police – and other authorities – are generally not well placed to make informed judgement calls relating to what weight should be attached to the allegations, and what lines of inquiry might be productive to pursue (even if the victims maintain their right not to proceed with the matter).

6. Towards healing and civil claims

In sections 16-19 of the Towards Healing document, the Catholic Church's commitment to healing for victims is outlined.

² Ombudsman Submission to the Royal Commission – Schedule of Systemic Issues, May 2013.

As part of its commitment to healing, the document states that “the Church Authority shall listen to victims concerning their needs and ensure they are given such assistance as is demanded by justice and compassion.” (Section 19)

Section 36.5 states:

If a complainant chooses to be represented by a lawyer in seeking compensation from the Church Authority, and is not seeking any form of pastoral support or other engagement with the Church, then the matter should proceed outside of Towards Healing by the normal means appropriate to the resolution of civil claims. The Church Authority should nonetheless endeavour to act with a concern for the wellbeing of the complainant in seeking to resolve the civil claim.

In relation to ‘final outcomes’, the following sections are relevant to financial settlements.

Section 41.1.1

Financial assistance or reparation may also be paid to victims of a criminal offence or civil wrong, even though the church is not legally liable.

Section 41.4.3

The facilitator shall seek to know the ongoing needs of the victim and the response of the Church Authority to these needs. In the event that there are unresolved issues concerning monetary reparation other than through the provision of counselling costs or meeting other needs of the victim, these should be dealt with by negotiation outside of the facilitation, in order to seek a resolution on this aspect of the matter.

While we acknowledge that, even where a matter is being dealt with outside the Towards Healing process, the policy reflects the need for the Catholic Church “to act with concern for the wellbeing of the complainant” to resolve the civil claim. However, given the adversarial nature of litigation, we believe that the Catholic Church – and other social institutions – would benefit from clearly articulated policy relating to how they will conduct themselves in relation to civil claims. While we accept that for some social institutions, their response to such matters is largely governed by insurance companies, it is our understanding that the Catholic Church may have scope to promote ‘model litigant’ practice for matters where claims are made against it.



Bruce Barbour
Ombudsman



Steve Kinmond
Deputy Ombudsman
Community and Disability Services Commissioner