



Royal Commission into
Institutional Responses to
Child Sexual Abuse

Submission of Micah Projects Inc.
To Issues Paper 2
Released 9 July 2013

Towards Healing

supporting people

with the **Royal Commission** into
Institutional Responses to Child Sexual Abuse



HISTORICAL ABUSE NETWORK

FOR PEOPLE WHO EXPERIENCED ABUSE IN INSTITUTIONS,
FOSTER CARE & DETENTION.



MICAH PROJECTS INC 

Breaking Social Isolation
Building Community

ISSUES PAPER 2 RELEASED 9 JULY 2013 TOWARDS HEALING

ISSUE

Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse against Personnel of the Catholic Church in Australia (Towards Healing) was adopted by the Australian Catholic Bishops Conference and Catholic Religious Australia in 1996. It is used by all Catholic dioceses and religious orders in Australia excluding the Melbourne Archdiocese, which has adopted the *Melbourne Response*.

Towards Healing was revised in 2000, 2003 and 2010, the first and last revisions followed internal reviews. The original and most recently revised document provides:

The Church makes a firm commitment to strive for seven things in particular: truth, humility, healing for the victims, assistance to other persons affected, an effective response to those who are accused and those who are guilty of abuse, and prevention of abuse.

SUBMISSIONS

The Royal Commission is interested in hearing from people who have engaged in the *Towards Healing* process and invites them to contact the Royal Commission on 1800 099 340 or by email at statements@childabuseroyalcommission.gov.au.

Submissions are sought from interested individuals, institutions, government and non-government organisations about the content and operation of *Towards Healing*.

Micah Projects has worked with Forgotten Australians and Former Child Migrants for fourteen years. In that time, the organisation has developed a growing understanding of the experience of these two groups. In collaboration with Forgotten Australians and Former Child Migrants, a range of services aimed at supporting their efforts in seeking redress from church and state institutions has been established.

In addressing the historical abuse of Forgotten Australians and Former Child Migrants and especially in supporting people to secure individual redress and justice, Micah Projects has been at the forefront of developing empowering approaches to this.

Specifically, in relation to the childhood experience of Forgotten Australians and Former Child Migrants, Micah Projects has developed a model of practice for **individual advocacy** with people who have experienced abuse whilst in the care of Church or state institutions. The process underpinning this model allows for the progression of a complaint or crime through the appropriate civil, criminal or internal process of a church or religious congregation. The individual is supported

through each step of the process, allowing them to be the decision-maker at each critical juncture.

Underpinning Micah Projects' approach to individual advocacy is a number of justice-making principles enunciated by Dr Marie Fortune from the Faith Trust Institute:

- (i) **Truth Telling:** giving voice to the reality of abuse.
- (ii) **Acknowledge the Violation:** hear the truth, name the abuse and condemn it as wrong.
- (iii) **Compassion:** listen and provide support to the person disclosing.
- (iv) **Protecting the Vulnerable:** take steps to prevent further abuse to the person and others.
- (v) **Accountability:** takes steps to assist in the confrontation of the abuser, and seek redress.
- (vi) **Restitution:** make symbolic restoration of what was lost, give tangible means to acknowledge the wrongfulness of the abuse and the harm done, and to bring about healing.
- (v) **Vindication:** move the blame and responsibility for the abuse.

A key component of Micah Projects' core business is individual support and advocacy work with people across a broad range of issues and with varying degrees of complexity. The organisational structure and capacity is organised around the principles of supporting the effective delivery of support and advocacy services including case work, case management and case coordination.

As noted, Micah Projects has been responsible for developing a model of practice for individual advocacy with people who have experienced abuse whilst in the care of the church and state. This process enables the progression of complaint or a crime through the appropriate civil, criminal and or internal organisational process of past providers. Whilst the State has implemented a Redress Scheme every individual church legal identity has a different process for individuals to seek redress which may or may not result in an apology, acknowledgement of the violation and any monetary compensation.

Over the past ten years Micah Projects has worked with every major Christian denomination progressing the development of protocols and processes for processing complaints. Through its work with Forgotten Australians and Former Child Migrants, Micah Projects has assisted over 4,000 people since 1997 to access ex gratia payments through civil, criminal or internal process. Collectively this has resulted in churches paying a total of over \$4 million in amounts ranging from \$5,000 to \$100,000 per individual. Seven perpetrators have been charged, and sentenced through these processes and civil proceedings and out of court settlements have occurred with three class action groups. Unfortunately for some no redress has been provided.

These examples reveal an effective advocacy capacity within the organisation and highlight the values on which this is based. They also demonstrate that the organisation has been responsive to the needs of a vulnerable group of largely “forgotten” people and worked closely with them to achieve justice from some of the most powerful institutions in society. This bodes well for taking the issues of Forgotten Australians and Former Child Migrants to the next step.

Since the late 1990s, Micah Projects has demonstrated its capacity to engage with and deliver professional support services to Forgotten Australians and Former Child Migrants. The chronology table included earlier provides compelling evidence to support this claim. The services provided by Micah Projects have been characterised by high standards and a capacity to change and adapt approaches as the needs of Forgotten Australians and Former Child Migrants evolve over time. In particular, the organisation has developed an effective approach to individual advocacy which has enabled many to secure some form of redress for what they endured as children.

Central to the work of Micah Projects has been a profound respect for the people involved, Forgotten Australians and Former Child Migrants, and a steadfast commitment to walking alongside them as they seek healing, justice and redress.

Micah has undertaken working with the establishment and ongoing resourcing of the peer support Historical Abuse Network (HAN). Over time HAN has become an influential voice and a key driver in securing the service infrastructure required. HAN has been at the forefront of public advocacy and engagement with governments in bringing the issues facing Forgotten Australians and Former Child Migrants into the public domain. Micah Projects has employed other ‘listening’ strategies to inform its service provision such as:

- Conducting annual surveys for feedback about services being provided
- Facilitating Focus Groups around particular issues
- Responding to a Complaints and Feedback Register as part of continuous improvement
- Inviting participation in evaluation and planning processes
- Engaging in individual conversations and suggestions
- Inviting feedback through the Micah Projects’ website.
- This is a clear demonstration of the organisation’s intent to be responsive to the changing circumstances and needs of Forgotten Australians and Former Child Migrants.

In developing relationships with these two groups, Micah Projects’ work has been underpinned by person-centred values which create a platform from which hurt and vulnerable people can be supported and assisted to fulfil their potential and access justice and healing.

These values have been developed collaboratively and can be summarised as:

- Providing people with **choice**
- Enabling people to have a **voice**
- Creating an environment of **empowerment**
- Upholding the **dignity** of people at all times
- Relating with **respect**
- Nurturing **hope** against all historical odds
- Providing space where people feel **safe** and **privacy** is ensured.

Micah Project's commitment to supporting Forgotten Australians and Former Child Migrants is demonstrated further in milestones and achievements that date back to 1998. Up to and until this time, Micah Projects' support for these two groups was non-funded. Receiving funding in 1998 put Micah Projects' work on the public record.

Submissions may address any aspect of the *Towards Healing* process. Of particular interest to the Royal Commission is:

Question One: The experience of victims who have engaged in the *Towards Healing* process.

The content of this submission is based on various sources of feedback available to Micah Projects, including involvement over more than a decade of working through Lotus Place (formerly Esther Centre) with people sexually abused by members of the Catholic Church. This submission by Micah Projects also draws on the work undertaken in support for Forgotten Australians since the Forde Inquiry to present and includes input from people who contributed to this process on an individual basis or through a group process on 17 August 2013 when a forum for people who had experienced abuse while in the care of church based institutions as children was held with members of Historical Abuse Network and other interested individuals. This forum had a dual purpose of providing information to people about how they can make a submission to the Commission and provide input into this submission.

Perceptions of *Towards Healing* by individuals were greatly influenced by the nature of the process and the response they encountered when they first disclosed abuse by a member of the Catholic Church. There were a number of people who had experienced sexual abuse from members of the Catholic Church but had for a variety of reasons not ever participated in the *Towards Healing* process as currently outlined in the *Towards Healing* document. During this forum it became apparent that some participants had not understood that they had engaged in the *Towards Healing* process, but had engaged with the Church individually or through lawyers in seeking a response to their experience of childhood abuse including but not exclusively to sexual abuse. There were only a small number of participants present at the forum who had participated in the most recent iteration of the *Towards Healing* process and able to provide more specific commentary on the current process.

This meant that contributors to this submission had experiences and perceptions of dealing with the Catholic Church through the many variations of what is currently referred to as *Toward Healing* and how the Catholic Church had responded to their disclosure of sexual abuse from the 1970's to the present.

Some of the key differences that emerged from individuals who had engaged in any of the *Towards Healing* processes were influenced by whether:

- I. The first disclosure occurred within the context of the *Towards Healing* process.
- II. The first disclosure occurred prior to the formulating of the *Towards Healing* process
- III. Anyone else had reported the same offender
- IV. It was a class action facilitated by lawyers
- V. There media attention on the religious authority or diocese
- VI. The offender was known by name or simply identified as "a priest"
- VII. The offender was deceased
- VIII. A police complaint was made
- IX. The matter proceeded to court

- X. The offender pleaded guilty or not guilty
- XI. The offender was convicted and sentenced
- XII. The reason for approaching *Towards Healing* was for compensation after the conviction of an offender.

One of the most prevalent and deep-seated concerns of contributors to this submission was the lack of clarity in the *Towards Healing* document that the issues under consideration are criminal acts. Yet the document published by the Catholic Church is in large part an administrative instruction, to provide guidance to decision makers within the Catholic Church on matters of administrative law such as procedural fairness. The document therefore suffers from the inherent contradictions and moral conflicts, which emerge when a decision maker is asked to comply with the administrative guideline at the expense of a duty to protect those within their pastoral care.

At the outset it is important to highlight the disparity between the definition of victim articulated within Part One of the *Towards Healing* document which states:

Victim means: "The person against whom the abuse was directed." The document then goes on to define "sexual abuse" as:

"Sexual assault, sexual harassment or any other conduct of a sexual nature that is inconsistent with the integrity of the relationship between the Church personnel and those who are in their pastoral care".¹

This definition is at odds with the internationally accepted definition of victims as articulated by the United Nations in their *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* when they define victims as:

"persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power"²

The essential contradiction between these two definitions is the absence of any explicit recognition within *Towards Healing* that the people in question, at the centre of the document and proposed processes, have experienced a crime and that the actions of those who are accused of these abuses of power should be first and foremost treated as accused persons within the criminal justice system.

¹ *Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*, January 2010, p. 3.

² United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, Handbook on Justice for Victims: *On the Use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Office for Victims of Crims, United States, Department of Justice 1999, p. 116

The document does not separate out acts of abuse which intentionally are to hurt or injure by maltreatment or neglect and acts of criminal nature such as sexual acts including rape of children which were in the criminal and canon code throughout the history of the operation of children's homes.

This is one of the most fundamental flaws in the *Towards Healing* document, which is principally based on the theological concept of forgiveness and a psychological lens of healing and a minimisation of what occurred as reflecting the standards of the day.

The document has not taken a theological approach which is victim centred and recognised that forgiveness is not something that a victims require but a process which the leadership in the church should be seeking from victims as part of a commitment to justice making with victims. Such a process would be transparent and working in partnership with other institutions in society such as law enforcement, criminal and civil justice systems, correctional institutions, psychologist, advocates.

Micah Projects has advocated for the Catholic Church to incorporate the work of Rev Marie Fortune from the Faith Institute in Seattle. The principles of Justice Making as developed by Rev Marie Fortune to inform the process of negotiation and redress with appropriate authorities responsible for the employee, professional, volunteer or carer who has violated the rights of another person in their care are:

- I. Truth Telling: giving voice to the reality of abuse
- II. Acknowledge the violation: Hear the truth, name the abuse, and condemn it as wrong
- III. Compassion: Listen and provide support to the person disclosing.
- IV. Protecting the vulnerable: Take steps to prevent further abuse to the person and others.
- V. Accountability: Take steps to assist in the confrontation of the abuser and, seek redress.
- VI. Restitution: Make symbolic restoration of what was lost, give tangible means to acknowledge the wrongfulness of the abuse and the harm done, and to bring about healing.
- VII. Vindication: remove the blame or responsibility for the abuse.

The very name of the response to sexual abuse by clergy over the years has gone from a hidden committee in the church such as the special issues committee which was only comprised of clergy to a professional standards committee which has broadened to include religious and laity but is not an independent body despite being marketed as such. A more appropriate response would be seeking justice and accountability with victims as the core purpose of the Churches response.

For many victims the idea of the church assuming that the church is leading them to healing as a process is offensive. Whereas the church leading a process that is transparent, committed to ensuring justice was and is achieved through

accountability in the justice system of a democracy as well as a commitment to reform where such systems collectively are inadequate would provide the evidence that the church is not simply interested in protecting itself.

The key issues which emerged among contributors to this submission were:

The complexity, confusing nature and lack of awareness of the *Towards Healing* process.

Part 3, Section 34.2 of the *Towards Healing* document (p.13) that states that:

Information to make people aware that these procedures exist shall be widely circulated to the public and especially among Church counselling agencies, parishes and schools. This information shall set out as simply as possible the manner for making a complaint about abuse

Despite this direction in the *Towards Healing* document a number of contributors commented:

The proposed process in *Towards Healing* was too confusing, frightening and intimidating..

- I. They were unaware that the Catholic Church had developed a process called *Towards Healing* and they hadn't heard of it.
- II. The poor education they received while in the care of the Catholic Church led to limited life choices & poor self-esteem. This has had major implications for their capacity to engage in the Catholic Church's *Towards Healing* process as it presumes a degree of literacy and education denied to many people who suffered abuse while in the care of the Church.
- III. That the documentation did not provide confidence that disclosure of sexual abuse would be dealt with as a crime and would be minimised without any accountability and protecting the church authorities.
- IV. The document provides no transparency about the use of lawyers throughout the process either on behalf of religious leaders or with Catholic Church Insurance
- V. The process was not independent of the church

Scepticism about the Catholic Church's commitment to responding sensitively to disclosures of sexual abuse

Part 2 of *Towards Healing* (p. 6-8) purports to recognise the potential impacts of sexual abuse by members of the Catholic Church upon victims, identifying the likelihood of feelings of shame, confusion and violation of their person. It also recognises that they can feel guilty, blame themselves and take responsibility for what has happened and that younger victims may find it difficult to trust those in positions of authority or pastoral care, going through long periods of silence, denial and repression.

Despite this acknowledgement by the Church, many of the contributors to this submission were not reassured by these statements commenting:

It was difficult to deal with the processes set down by the Catholic Church in the *Towards Healing* process because I had “buried” and denied what had happened to me and wondered if I had “dreamt it”. This made it more difficult for me to be assertive and challenge the way the Catholic Church denied and minimised my sexual abuse by members of the Catholic Church.

- I. The Catholic Church did nothing to assist me the process and was very inconsistent about whether I should have an advocate or support person engage with me. Whilst they kept offering me counselling I felt they were blaming me for not coping, but did not assist me or have an appreciation of how difficult it is to speak with them and tell them what happened.
- II. I was sent off for assessments and then was told I could not see the result or have a copy as it was the church that paid for the assessment to be done. The assessment was assessing how much of my dysfunction could be attributed to the abuse to determine a payment. This made me feel more like it was my fault because I had a disability. I think the abuse of power by the priest was greater due to my disability.
- III. Another person who participated in the Catholic Church’s *Toward Healing* process noted that: ‘My experience in undergoing this procedure is that the people I dealt with couldn’t understand what I had been through and how I felt about it and what I really wanted to happen.’

A number of people noted that despite the Catholic Church’s espoused principles in Section 2 of *Towards Healing*, they encountered the all too familiar denials they had experienced in their previous attempts to report their sexual abuse to the Church.

One person stated that the Catholic Church’s principles and procedures as articulated in *Towards Healing* heightened their feelings of self-blame. Another was told by a Bishop that he felt ‘victimised because he could not go out with his collar on without experiencing ridicule.’

For people who came forward prior to and including the 1990’s and prior they were often encountered with inadequate responses and in some cases being referred to as liars, and being part of a conspiracy to bring disrepute to the church.

Later in Part 2, Section 13 of *Towards Healing* entitled “Truth”, the document asserts the Catholic Church’s “commitment to seek to know and understand the full extent of the problem of abuse and the causes of such behaviour within a community that professes the values of Jesus Christ. It also seeks to know the truth, so far as possible, about individual allegations of abuse”. (p. 9). The document goes on at Section 17 to state “A sensitive and compassionate response to the complainant must be the first priority in all cases of abuse”.

It is interesting to note that in Section 18 of *Towards Healing* the document goes on to state that:

This attitude must be present even at a time when it is not yet certain that the allegations are accurate. At the first interview complainants should be assured that, if the circumstances are truly as stated, abuse must be named for what it is and victims assisted to move the blame from themselves to the offender.

This statement indicates a subtle but clear qualification of the obligation to believe victims coming forward with allegations. Contributors to this submission were particularly sensitive to this ambiguity and their scepticism about the sincerity of this commitment is apparent from the following comments:

- I. Nobody in the Catholic Church listened when we were children and when we reported it to the people in charge, we were flogged and punished for “telling lies” so why would we have any confidence that the Catholic Church are listening now?
- II. The above experience with the Catholic Church resulted in distrust of authority so we went through childhood not having the confidence to report it again at a later stage to them or anyone else.
- III. A belief that the only reason the church was engaged was to find out what they needed to do to protect themselves
- IV. The tendency of the church to make use of theological language and talk about Jesus Christ just made the whole experience worse, because the church did not understand that there were spiritual consequences to victims who through the sexual assaults and rape experience significant moral and spiritual injury, often depriving them over a lifetime of an possibility of an active spiritual life.

The Catholic Church has been very slow and still has not fully embraced the significant impact on people’s lives that sexual abuse as a child, in an institution that was entrusted to care for vulnerable children, and within a religious context did to each person’s bodily and spiritual integrity. Many people report not only the impact of the physical violation but also the moral and spiritual impact in statements such as:

I feel my soul was raped as well as my body.

The church has done little to redress the moral injury that childhood sexual abuse has created with individuals, within families, within parishes and the wider community.

For children who were not in institutions but were abused whilst in the care of their family, the abuse of power and trust is very rarely acknowledged publically, but rather many families have had to hold the secret and pain in isolation. Many parents and siblings blame themselves for not protecting their child or sibling whilst it is clearly the breach of trust and abuse of power of the offender that needs to be first and foremost addressed through the process. The shame and blame parents feel within their own community has often resulted in families leaving the church and living with the consequences of the secrecy for a lifetime.

Parents have every right to expect that if a priest had access to their family home, to their children that they would be safe. Generally the Catholic Church has done very little to repair the harm in parishes and communities where priests have been charged with sexual crimes which has contributed greatly to the severe consequences of lack of trust in the clergy of the church being truly committed to seeking justice and providing the spiritual leadership as well as courageous leadership for the church community as a whole.

The combination of the lack of leadership and accountability, the cover ups and protection of the institution of the church, whether the sexual abuse of a child occurred within an institution such as an orphanage, out of home care facilities, a school, a parish facility or church, the despair felt has led to the loss of life through suicide, and significant pain in the lives of individuals, families and communities. This reflects a lack of trust in the principles of *Towards Healing* as stated in the document. In many situations this is just as much about acts of omission as it is about what has actually been done.

In Part three, Section 34.6 of *Towards Healing* highlights the Catholic Church's obligations to comply with the laws in various jurisdictions dealing with complaints of sexual abuse, yet much of the document outlines an alternative administrative response dependent upon the discretion of decision makers within the Catholic Church. For example, in a number of places in this part of the document there is more equivocal language such as the statement in Section 37.1 which indicates that the Church has a "strong preference" for allegation to be referred to the police so that the complaint can be dealt with through the justice system. This purported position was undermined by comments made by a number of contributors to this submission who indicated that they had many experiences of not being believed so that by the time they were engaged with the *Towards Healing* process they did not feel they had the ability, the information or the right to access the criminal justice system. People indicated that they felt they were being discouraged by omission or through direction from taking the matter to the police and that instead they were encouraged to deal with the issue solely through the *Towards Healing* process.

It has often been stated that individuals, parents or carers often had a belief that the process of going to the police and through the courts would also be more traumatic and that the church had more resources to defend their case, as well as the system itself being hostile to victims. This belief has led to the preference for out of court negotiations to be undertaken.

The contradictions raised by this approach were brought up by individuals highlighting the following issues where this contradiction was very apparent in the interplay between the Catholic Church and the justice system and the manner in which this reduces the prospects of obtaining a conviction against an offender when using the procedures outlined in *Towards Healing*.

One contributor noted that after reporting his sexual abuse as a child by a member of the Catholic Church, he again reported the assault as an adult

through the Queensland Police Operation ARGOS. He noted that initially after reporting the sexual assault the prosecution advised that they would proceed with a group of witnesses making a series of complaints against a single accused. The complainants were subsequently informed that the defence counsel (funded by the Catholic Church) had objected to this on the grounds that presenting the evidence in this manner would be prejudicial to the interests of the accused and the matters would therefore be broken into individual cases where only 4 out of 15 were heard. The final outcome of this case was that no conviction was recorded.

A number of contributors also expressed disenchantment and frustration where an accused member of the Catholic Church was convicted of a child sexual abuse offence, the maximum sentence was 7 years and ultimately the offender only served 3 years.

This perception of injustice was compounded by the level of support provided to accused members of the Catholic Church who frequently had access to the best legal representation the Church could provide in criminal proceedings.

Church authorities did not laicise priests in line with Cannon Law who had committed crimes of sexual abuse. An audit of convicted priests and their status in the Catholic Church would provide evidence of this.

The churches' attitude to the relationship with police and justice system was weighted against seeking justice for a victim to ensuring that the rights of the offender were protected. When people did go through the criminal justice system, the church was not proactive in following up with victims, to inform them that they were able to seek financial ex gratia payment from the church. Also the church would undertake its own process, even after a conviction of establishing the degree of vulnerability or psychological stress that a person had prior to the abuse occurring rather than assessing a person's vulnerability to determine the degree of abuse of power by the offender. This resulted in people with an intellectual disability for example being assessed differently to a person without a disability.

Individuals were very outspoken about the conflict of interest involved in the payment of compensation for the sexual abuse they experienced from members of the Catholic Church. They were particularly unhappy that decision makers within the Catholic Church who were either responsible for the sexual abuse or did nothing to address or prevent it, were frequently the same people who decided what reparation was appropriate. This was identified as an unacceptable conflict of interest. *Towards Healing* does not acknowledge this as an issue at any point in the document. Many contributors made the comment to this submission that even when they outlined the impact of the abuse in detail, they perceived that a lot of the emotional damage they had endured was not recognised or explicitly validated. A number of people who had been through the *Towards Healing* process commented that they felt they were being emotionally blackmailed when they received written ultimatums to the effect that if they didn't

agree to sign the offer for compensation, no other people in groups would get their money. One contributor was told that the Catholic Church was “poor” and that they would need to sell assets to meet the costs of paying compensation to the complainant. Some contributors highlighted that the Catholic Church had given them tight timeframes to accept the offer of compensation, which included caveats clarifying that if this offer was not accepted no further offer would be forth-coming.

Other contributors noted with some irony that “the lawyers took most of it anyway.” In circumstances where this was the experience of people who received an ex gratia payment from the Church, this would suggest the Catholic Church had defended the matter. Such actions are at odds with the stated commitment to striving to offer a “just response” as articulated in Part Two, Section 12 of *Towards Healing*.

There was a strong view expressed by many of the contributors to this submission that no amount of money will ever make up for the extent of the sexual and other abuse people experienced at the hands of (or inaction by) members of the Catholic Church. As one participant asked: “How do you put a price on the impact this has had on our lives?”

Other contributors said they do not want to be bought off with “hush money” by accepting conditional payouts from the Catholic Church and for this reason there was unanimous support for complete transparency in the compensation process.

Several contributors reported that they had received evaluations forms about their experiences shortly after receiving their compensation payments and they were sceptical that the timing of this process was designed to distort the evaluation results by creating a falsely enhanced impression of people’s satisfaction with the overall *Towards Healing* process. These contributors were concerned that some people may be more likely to report being happier with the *Towards Healing* process immediately after receiving their money from the Catholic Church.

Contributors to this submission raised concerns about the amount of compensation paid by the Catholic Church, particularly in terms of the discrepancies with the number of institutions and length of time people spent in Catholic Institutions and the extent and type of abuse they experienced. To some extent this is a direct reflection of the general shortcomings of the *Towards Healing* document that merely sets out an administrative process rather than establishing any form of benchmark or guidance for Catholic Church Officials making determinations about the quantum of ex gratia to be offered.

The church approach to ex-gratia payments was to acknowledge that an individual had experienced harm, but they do not represent that the church is accepting responsibility, or that the offender is accepting responsibility for the crime and the consequences on a person’s life. There are not public benchmarks for how payments are determined.

The statements in Section 36 of *Toward Healing* related to the process of receiving a complaint, suggest that the procedure should offer all necessary support to complainants. (Eg. Section 36.5 and Section 36.8 refer to the obligations of the Catholic Church to demonstrate care and support for complainants, even when the complainant has opted to pursue a civil case against the Church). Yet each of these provisions is written in an equivocal manner. In Part 3 of *Towards Healing* Section 36.5 speaks to the responsibility to act with concern for the well-being of the complainant in seeking to resolve the civil claim yet is silent on any obligation to ensure that the complainant is still offered access to counselling and support at the expense of the Church.

Similarly Section 36.8 creates discretion for the Director of Professional Standards to ensure that the complainant can be supported in the interim while a civil matter is preceding. If the Church wishes to be seen to be sincere in its desire to offer such support then both of these clauses should be written in a manner that creates a *duty* to offer counselling and support. The point was also made that any counselling offered should include an option to attend counselling with a professional completely independent of the Catholic Church.

Many victims believe that the church should also offer legal information, access to an advocate, and support to access lawyers and not limit it to counselling. Whilst the church paid for counselling it did not pay for Legal costs, which had to come out of ex gratia payments. If a civil process occurs and there is a finding against an identity then that entity pays for the legal expenses of the other party. If the church found enough evidence to determine a payment was necessary then costs for lawyers should be dealt with separate to individuals ex gratia payments.

This was a significant issue for a number of the contributors who had received some ex gratia payment from the Catholic Church for the sexual abuse they had endured. They stated that for them there was no follow up or ongoing support offered and they felt it was simply a case of pay up & forget about us.

There is has consistency been a call from victims that a independent process would be the best option. If the church is serious about acknowledgement of the violation and crime of sexual abuse of children then any process of redress or compensation should be independent from the church. Such a process should differentiate from redress or compensation in the light of the scope and purpose of financial payments being an integrate part of seeking justice and resolution for the crime committed to a person as a child in the care of the church and state.

Any benchmarking of payments should be based on similar Victim compensation schemes, should be fully informed about the crimes committed and the lifelong impacts.

Question Two: The principles and procedures of *Towards Healing* as instructions for Catholic Church authorities dealing with complaints and redress regarding victims of child sexual abuse.

The *Towards Healing* document sets out in Part Two Sections 1 to 33 the principles for dealing with the complaints of abuse. While the document has articulated a set of principles as highlighted earlier in this document, contributors to this submission have a significant number of specific concerns, which they consider require revision. These are:

Paragraphs in Toward Healing:

Paragraph 5:

Identifying physical and emotional cruelty as an abuse of power but which then goes on to qualify the principle by stating that determinations of what constitutes abuse should be judged by the standards of the time when the incidents occurred. It is unacceptable to qualify the principle in this way. The people who endured such cruelty consider this to be a lame response and reject the retrospective redefinition of such conduct. The standards of the time did not accept physical assault or deprivation of liberty as acceptable child rearing practices. They may of accepted physical punishment and emotional detachment but the evidence, which has been heard by people who lived in institutions, has gone well above what would have been acceptable physical punishment and would have been condoned if the general community knew it about whether in a family or an institution. In fact for the general community the very existence of institutions was portrayed as the church providing children with a better life free of abuse of neglect by their parents.

Paragraph 8:

Recognition that the responses of many Church Authorities varies greatly and that there have been occasions when the response has been to deny or minimise the pain that victims have experienced. The document then goes on express sorrow and regret for this and to state: "We commit ourselves to principles and procedures that apply to all Church Authorities". The contributors to this submission consider this response to be a feeble assertion in view of the inconsistent, erratic and occasionally hostile behaviour they have experienced. In particular the frequency with which Church Authorities have not adhered to the espoused principles and obligations in the application of the associated procedures accompanying the principles articulated in *Towards Healing* is considered to be unacceptable. This view was reflected in the comments from a majority of contributors to this submission who expressed profound cynicism about the sincerity and value of any apology to people abused by members of the Catholic Church.

Paragraph 11:

Describes offenders as disturbed persons with serious psychological problems. Such statements pathologise the behaviour of the offender and minimise the abuse of power and trust which is central to what is essentially a crime. It makes

the observation that a significant number of offenders were themselves victims of abuse in their earlier years. While this statement may be true, it in no way offers an excuse for such conduct and confuses the issue of where the moral responsibility rests for such crimes. It creates an unhelpful distraction from the central issue of the Church Authorities' responsibility to deal with the specific needs of complainants who have been sexually abused by a member of the Church regardless of the offender's own history.

Paragraph 12:

Articulates the Church's firm commitment to strive for truth, humility, healing for the victims, assistance to the other persons affected, a just response to those who are accused, an effective response to those who are guilty of abuse and the prevention of abuse. While these are stated aspirations, contributors to this submission have provided extensive evidence of the shortcomings of Church Authorities oversight of the implementation of appropriate procedures to realise these aspirational statements, and in so doing, reduce many of them to mere rhetoric.

Paragraph 13:

In a similar vein, the proclamation in this paragraph of the importance of not concealing the truth is undermined by many of the statements made by contributors to this submission who reported collusion by church authorities to deny, suppress or distort their experiences. This is exemplified by the manner in which canon law is used as a shield to exposing the true nature of offences committed by members of the church. In a similar vein, the reported destruction of historical documents by church authorities, or the forwarding of documentation to Rome at the order of the Vatican has impeded the ability of many people to gain access to essential records required to progress their complaints of sexual abuse by members of the Catholic Church and was a common concern among contributors to this submission. Similar allegations were made on 8 August 2013 on the ABC program *Lateline*, where Dr Robert Grant, a psychologist who participated in the committee that developed the first version of the *Toward Healing* Protocols alleged that a member of Catholic Church Insurance announced at a meeting of the committee that they had "just destroyed 40 boxes of personnel records".³

Paragraph 16 / 17:

These paragraphs note that where the offender is a cleric, religious or another person appointed to a position of pastoral care by an agency of the Church, the Church Authorities accept they have a responsibility to seek to bring healing to those who have been victims of abuse. The document goes on to note that a sensitive and compassionate response to the complainant must be the first priority in all cases of abuse. This statement is of concern because it fails to recognise that a crime has been committed and for the majority of people who

³ <http://www.abc.net.au/lateline/content/2013/s3821560.htm> accessed on 11 September 2013

are sexually abused, a fundamental component of the healing process is knowledge that justice has not only been done. The fact that the section dealing with healing for victims does not acknowledge the importance of criminal and civil responses to the healing process reveals the Church Authorities lack of clarity of the needs of those who have been sexually abused and demonstrates a lack of commitment to addressing people's needs in a compassionate manner as espoused to be at the basis of the principles in the *Towards Healing* document. The gap between the principles and the practice are also highlighted by comments made by contributors to this submission who stated that they:

felt dirty, filthy and unwanted after participating in the processes of *Toward Healing*.

In particular, people raised concerns about the manner in which they were required to face assessors who asked them to listen to the accused's version of events and were also asked to outline in detail the impact of the abuse upon them in order for the Catholic Church to understand the needs of people who have been sexually abused by members of the Church.

Paragraph 19:

Outlines the church's commitment to ensure that "where it is established by admission or proof" that the abuse took place, and establishes a duty to listen to victims needs and provide assistance "as is demanded by justice and compassion". Despite the sentiment expressed in this principle, many of the contributors to this submission felt that the church authorities did not provide the opportunity they wanted to re-visit their experiences of abuse by the Catholic Church and for their experiences and reactions to them to be validated. Contributors to this submission observed that even when they outlined the impact of the abuse in detail, they perceived that a lot of the emotional damage they had endured was not recognised or explicitly validated. Several contributors who participated in the Catholic Church's *Toward Healing* processes indicated that they felt compelled to "quantify" what happened and they considered that they were rushed which meant that their statement glossed over important details. This merely escalated their feelings of anger, exasperation and desire to talk about their experiences. Contributors to this submission who had been abused by members of the Catholic Church and then went through *Toward Healing* expressed intense anger that the process had "trawled through their pain" and then abandoned them to deal with it alone. All of the above evidence provided by people who have been through the *Towards Healing* process suggest that the rhetoric of this principle falls far short of the way people experienced the reality of the procedures.

Paragraph 26:

This paragraph deals with the presumption of innocence and the rights of the accused. A more detailed discussion of this issue is presented in Question Twelve of this submission. However the key question to be raised in relation to this principle relates to the following sentence: "If church personnel accused of abuse are asked to step aside from the office they hold while the matter is

pending, it is to be clearly understood that they are on leave and that no admissions or guilt are implied by this fact.” For anyone who has experienced sexual abuse the first response is that there should be not *if church personnel are asked to stand aside* it should be *that any church personnel being investigated will be requested to take leave whilst the investigation occurs.*

Paragraph 27:

While the process of natural justice needs to be observed this principle does not extend to identifying procedures for once the priest has been charged and the innocence or guilt of the accused is determined. On many occasion parishes have been told that a priest has had to take urgent leave respecting his right to natural justice but only for the community to find out via media that the priest has been charged with sexual offences.

Paragraph 27 and 30:

These paragraphs deal with the principle of how church authorities should respond to those who have been proved guilty of sexual abuse or have made an admission of the offence. This paragraph articulates the principle that account will be taken of the seriousness of the violation of the integrity of the pastoral relationship and whether there is any likelihood that such behaviour could be repeated. Later in the document in Section Four, paragraph 40.3.6 makes reference to circumstances where the complainant does not cooperate with the Director of Professional Standards, and clarifies that the Director has a responsibility to investigate the matter, and to assess any risk to children, young people or vulnerable adults if the accused remains in active ministry. The principle espoused in these paragraphs is premised upon a risk assessment being inherent in any decision under canon law to determine whether the accused may return to active ministry. However nowhere in *Towards Healing* is there any mention of how such a risk assessment will be conducted, by whom and what criteria are applied to ascertain the risk of reoffending. This is a serious shortcoming in the document and the absence of such transparency is unacceptable. If the offender has been found guilty in Queensland then this risk assessment is most appropriately conducted under the provisions of the *Dangerous Prisoners (Sexual Offenders) 2003 Act* which incorporates requirements for detailed risk assessments in relation to risks of reoffending. Similarly under this legislation there are existing statutory provisions dealing with the ongoing monitoring of sexual offenders, and while it is recognised that there may be benefits for offenders in having ongoing contact with the church authorities, responsibility for “influencing their conduct” should not vest solely with the church.

There is no reference to what occurs when an offender does not comply with conditions or expectations from religious authorities. There is also no reference to the fact that under canon law a bishop can laicise priest when sexual abuse of children has occurred. It has been more an approach by the church that it is up to the offender /priest to determine whether or not he seeks laicisation. This is a flawed approach and it should be mandatory that all priests convicted of sexual

abuse should be laicised from the priesthood. If the church wishes to continue to support and resource them it should be as a ministry to offenders not as priests.

Paragraph 32:

The principle outlined in this paragraph on prevention is supported and is commendable. However, it could be greatly strengthened if the *Towards Healing* document also included a commitment to ensure that the curriculum in all catholic schools includes education on protective behaviours programs which would provide children with the necessary information about the nature, risks and best response to any experience of child sexual abuse. The church's commitment to the implementation of such prevention programs would be seen as an important demonstration of its sincerity to address the risk of child sexual abuse within the church.

Summary

The principles articulated in *Towards Healing* are frequently not consistent with the procedures followed depending on whether it is a diocesan, a religious order, or both, responsible for the investigation of a complaint involving an offender employed by them.

The other issue related to the payment of compensation to complainants is the current legislative barrier to the civil litigation of the Catholic Church. Micah Projects calls upon the Royal Commission, to include specific recommendations for legislative amendments to remove this barrier in all Australian jurisdictions.

Towards Healing was always represented by the Church as an independent process, when there is ample evidence that it is not independent of the Church. Furthermore the relationship between Catholic Church Insurance (CCI) and the National Committee for Professional Standards is so enmeshed that it raises fundamental questions about the capacity of the Committee for National Standards to fulfil its remit, which according to the Committee's own website is to:

The National Committee for Professional Standards (NCPS) is a joint committee of Catholic Religious Australia (CRA) and the Australian Catholic Bishops. The committee was established to oversee the development of policies, principles and procedures in responding to Church-related abuse complaints. The committee's purpose is to ensure pastoral care for victims of sexual and physical abuse by church personnel.

It is responsible for developing professional standards among clergy and religious. In recent years the committee has called on outside experts to revise two key documents – *Towards Healing* and *Integrity in Ministry*.

Towards Healing sets out the principles that must form the basis of the church's response to complaints of abuse and the procedures to be followed in responding to individual complaints. *Integrity in Ministry* is a resource for those preparing for ministry in the Catholic Church and as a code of conduct and guide for reflection for those already in ministry.

In addition to this committee there are state directors and professional standards and resource groups to advise and assist in matters concerning Church-related abuse.⁴

The extent of the degree of role overlap between the National Committee for Professional Standards and CCI can be seen from the composition of the CCI board of Directors which currently includes the CEO of CCI and one of the CCI Directors, Sr Clare Condon, both of who also sit on the National Committee for Professional Standards. Information obtained from CCI website indicates in its 2012 Annual Report that:

CCI is a truly different type of insurance company – one that has a genuine commitment to client care.⁵

The mission statement of the organisation is “To provide ongoing security to the Catholic Community by ethically servicing its insurance and related needs”. This mission statement is supported by espoused values of honesty, fairness and a commitment to serve”.⁶ The *CCI 2012 Annual Report* then goes on to indicate that it has returned dividends of \$252 million over the past 34 years to the Catholic Church.⁷ This presents an obvious irony in the context of the stated commitment of the Catholic Church to the principles of *Towards Healing* of providing “healing for the victims”. Apparently the concept of healing does not include a specific expectation that this might involve any moral responsibility to provide any significant form of reparation in the majority of cases.

The CCI 2012 Annual Report is interesting in the context of its relationship to the implementation of *Toward Healing* in that at no point in the in the Director’s Report dealing with issues such as “Risk Management” or “Likely Developments and Expected Results” is there any explicit acknowledgement of the importance of “risk mitigation strategies” to prevent further sexual abuse of children and vulnerable adults my members of the Catholic Church. In fact the CCI Annual Report is entirely silent on the issue of current and projected liabilities for compensation payments to victims of sexual abuse by members of the church. In the CIC 2012 Annual Report It is necessary to closely examine the Notes to the Financial Statements on “Outstanding Claims Liabilities” to identify that CIC are well aware of the impending flood of claims the Church is likely to face in the

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http://www.catholic.org.au/index.php?option=com_content&view=article&id=1189&Itemid=518 accessed on 12 September 2013.

⁵ http://www.ccinsurance.org.au/documents/annual_reports/cci-annual-report-2012.pdf p.6 accessed on 12 September 2013.

⁶ Ibid. p.7.

⁷ Ibid. p.9

coming years.⁸ Yet the closest the report comes to even hinting that there might be an existing or emerging risk for the church is where the Director states:

In the opinion of Directors, the inclusion of information referring to likely developments in the operations of the consolidated entity and the expected results of those operations in subsequent years is likely to prejudice its interests. That information has therefore not been disclosed in this report.⁹

In view of the extent of the conflicts of interest which exist for those presently appointed to both CCI and the National Committee for Professional Standards, and the true nature of the company's future risk exposure, one might hope that the external auditors, Ernst and Young, and APRA might see reason to more closely scrutinise the content of the CCI 2013 Annual Report, particularly in view of the Royal Commission and the likely increase in compensation payments associated with disclosures during this process.

In response to criticism about the composition of the National Professional Standards Committee and the inherent conflicts of interest that this presented, when the Royal Commission was announced by the Prime Minister in January 2013, the Catholic Church responded by announcing it had established an "independent church body", the Truth Justice and Healing Council to respond to the issues arising during the Royal Commission. This body is comprised of two bishops and a range of eminent "laypersons". However all of the people appointed to this body (with the exception of Dr Sue Gordon) have current or historical associations with the Catholic Church. This body contains no representation of victims of sexual abuse by members of the church.¹⁰

The terms of reference of the Truth Justice and Healing (TJH) Council require that it is closely supervised by and accountable to an entity called the Supervisory Group.¹¹ This 11 member supervisory group is comprised entirely of bishops and heads of religious orders. The composition of this group has never been made public but on 28 August 2013 the Guardian Australia revealed that this group is comprised of the following individuals:

The group is chaired by the archbishop of Melbourne, Denis Hart, who is also chairman of the bishops' conference. Other members include the archbishop of Sydney, Cardinal George Pell; Coleridge; the archbishop of Adelaide, Philip Wilson; the archbishop of Perth, Timothy Costello; Bishop Eugene Hurley of Darwin; Bishop Peter Ingham of Wollongong; and Bishop Christopher Prowse of Sale. Sister Anne Derwin RSJ, Sister Annette Cunliffe RSC, and Father Tony Banks OSA represent the religious orders. O'Keefe and Sullivan are described as "attendees" at supervisory group meetings but do not have voting rights.

⁸ Ibid p.56

⁹ Ibid p.22

¹⁰ <http://www.tjhcouncil.org.au/about-us/council-members.aspx> accessed on 12 September 2013

¹¹

The TJH Council's terms of reference indicate that it operates subject to directions from the supervisory group and is required to report regularly on all its activities. Any formal submissions it makes to the Royal Commission have to be referred to the supervisory group for prior approval. The council is also required to submit any recommendations it may wish to make to the Royal Commission in relation to issues such as working-with-children checks, reporting to police, vicarious liability of bishops and other church leaders, extending the statute of limitations, and introduction of criminal offences linked to the conduct of church leaders. As the report in the Guardian noted:

[REDACTED]

Under the TJH Council's published terms of reference it is also required to report to the supervisory group in relation to matters such as; changes to:

- I. existing structures in relation to the Church's handling of sexual/criminal abuse in Australia;
- II. the National Committee for Professional Standards,
- III. the Bishops Committee for Professional Standards, Diocesan and Congregational Committees
- IV. Independent Commissioners, Compensation Panel and Carelink under the Melbourne Response noting also that the approval of the Archbishop of Melbourne will be required.¹³

¹² <http://www.theguardian.com/world/2013/aug/28/independent-church-body-abuse-inquiry> accessed on 12 September 2013

¹³ <http://www.tjhcouncil.org.au/media/31297/Terms-of-Reference.pdf> accessed on 12 September 2013

Question Three: The principles and procedures of *Towards Healing* relating to the accused and particularly the responses and outcomes available

Para's 9 and 11 demonstrate a clear ambivalence – on the one hand in the first instance it is acknowledged that the abuser has made a free choice, which violates serious and sacred obligations indicating a clear awareness of their wrongdoing. Then in Para 11 *Towards Healing* labels the offender as a “disturbed person with serious psychological problems” ostensibly mitigating their conduct and then going further to offer an explanation for the behaviour by noting that a significant number of offenders were themselves victims of abuse in their earlier years. Such statements suggest a preference to “pathologise” rather than criminalise the offender’s behaviour and this inference is then reflected in much of the remainder of the document’s proposed procedures for responding to those members of the church who are accused of sexual abuse. It appears from outside of the Catholic Church administration that the basic principles of the church in responding to sexual abuse of child and the lifelong impacts on people as both children and into their adult life is about the sins that have occurred rather than the crimes, and the theological and psychological analysis rather than an analysis of the abuse of power, and the criminal actions of clergy and religious representatives, teachers, employees, pastoral care workers.

Many people have advocated against the practices of the church in sending offenders to St Lukes in the USA where sexual offending treatment was on a similar basis of a sexual addiction. Men who went to St Lukes would return to Australia, having not been reported to the police if out of court settlements had been reached with child and families, and would be responsible for establishing their own accountability structures with their religious leaders. This whole approach did not:

- I. Foster a treatment program which maximised the accountability of the offender, to ensure that the offender did not hold positions of power in their chosen alternative work to priesthood,
- II. Were not requested to seek laicisation and removed from the position of priesthood.
- III. Challenge the basis of a theological approach to priesthood as being a lifelong vocation ,
- IV. Establish an accountability framework for priests in which a demonstrated abuse of their power in committing a crime would automatically provide grounds for their removal from the office of priesthood.
- V. Provide sufficient justice for complainants who perceived that merely removing the priest from public life is manifestly inadequate.

In accordance with the principles of natural justice Paragraph 26 of *Towards Healing* affords accused persons the presumption of innocence. However the document does not adequately separate the different principles which apply in the criminal, administrative and disciplinary responses to accused persons. Furthermore, as indicated earlier in this submission, the over-riding concern of the church should be its duty of care to minors and vulnerable persons to protect them from exposure to any future risk of further episodes of abuse by the

accused. It is therefore unacceptable that there should be discretion for a church decision maker to ask the accused person to step aside from the office they hold while the matter is pending. This should be a mandatory requirement and any response other than this is unacceptable.

For many people the church has also hidden behind its statements about what they are doing to prevent abuse for children today without making the same commitment to supporting adults today who are still living with the impacts and consequences of their life from their experience of being subjected to sexual assaults, abuse, and rape as children.

Similar issues arise in the proposed procedure outlined in paragraph 42.2 which states that:

“If a police investigation, a civil process or Church procedure makes it clear that the accused did not commit the alleged wrong, the Church Authority shall take whatever steps are necessary to restore the good reputation of the accused, in consultation with the accused”.

Again the document conflates criminal, administrative and disciplinary procedures in an unhelpful manner.

An alternative approach would be that in all circumstances the “precautionary principle” should prevail. Given the higher burden of proof applicable in criminal matters, there are many cases where the accused is acquitted on legal technicalities (particularly where the sexual abuse is of an historical nature) despite clear evidence that the offender committed the crime in question. In such circumstances the proposed response in Paragraph 42.2 is entirely inappropriate and directly contradicts the church’s stated commitment to the prevention of sexual abuse in section 45.

Question Four: The engagement and accountability of institutions and responsible authorities of the Catholic Church in the *Towards Healing* process.

The issue of engagement has been a really mixed experience for people coming forward to talk about their sexual abuse. The assumption is that if a person holds a position of leadership in a diocese or a religious order then they have the skills and knowledge to engage in a process that is victim focused. As highlighted in the responses outlined in Question One of this submission this is highly contestable when measured against people's direct experience and engagement with the *Towards Healing* process.

All senior personnel and decision makers within the Catholic Church involved in the review of complaints of sexual abuse of children and vulnerable adults must have training in at least basic child protection procedures and procedures for working with vulnerable adults. The *Towards Healing* document is presently silent on this question and if the Church is to provide a comprehensive and responsible approach to both prevent abuse in the future and respond adequately to adults who experienced childhood sexual abuse the current document requires extensive review to incorporate such procedures to enhance their accountability and engagement practices. People engaging on behalf of the Catholic Church often have no child protection background and are not trained in a trauma informed perspective which can often result in doing further harm to those who have suffered child sexual abuse. It is critical that adults who experienced childhood sexual abuse are not simply referred to as children, and that they are treated as adults who have lived with the consequences of childhood sexual abuse.

For example, a bishop was reported as saying to a victim who contributed to this submission:

"Well, I feel victimized too. Today I can't walk down the street with my collar on without being judged as a paedophile".

Such comments reveal a distinct lack of empathy and a lack of understanding of the responsibilities which vest with those in positions of authority. It also highlights a lack of awareness of the way in which symbols such as clerical dress trigger a range of feelings in people who have experienced sexual abuse by a member of the clergy. This person clearly did not understand what the clerical collar could trigger for an adult who experienced sexual abuse as a child by a priest wearing a collar.

In addition, a remark of this type only serves to further undermine confidence in the institution's likely response to a complainant approaching the church seeking justice.

People who have been sexually abused primarily come forward to seek justice. Pastoral care may be a useful but secondary aspect of the process for those

individuals who have suffered a profound damage to their faith. People do not come to the church for healing. Healing is in large part a result of his or her own journey, with justice being central to this process. Organizations made recommendations that this needed to have people in leadership who were trained in engagement in the *Towards Healing* process.

There has always been inconsistency between religious orders and between Dioceses and there is limited or no accountability if a religious order chooses not to follow the *Towards Healing* process. There has been no monitoring or quality assurance process of *Towards Healing* or any independent review of complainant's satisfaction about their expectations about the outcomes and timeliness of responses. It is also unclear who owns the documentation following a facilitated meeting and whether the minutes are to be shared. This is important information for people coming forward and the process is not consistent.

There is no public reporting; no benchmarking or guidelines for payments or decision-making that is open to any public scrutiny. There is no clarity about processes of appeal and nor are people engaged in the process fully aware of how they can seek a review. The document does not provide a person with any clear process, contact details, timeframes and available support or professional assistance in how to submit for a review. The committee process leads to a very lengthy process with no identified points for communication with the person seeking a review.

Question Five: The selection criteria, if any, which should be used to employ or engage personnel including assessors and facilitators involved in *Towards Healing*, and their selection, appointment and engagement and manner in which conflicts of interest are dealt with.

There is no transparency about the qualifications, training or information individuals within the Catholic Church required to conduct assessments for *Towards Healing*. There are only two references to the requirements for assessors appointed by a resource group indicated in Part Three, the first occurs in paragraph 40.1.1 which states that “The assessors chosen must be, and be seen to be, independent of the Church Authority, the complainant and the accused.” and the second in paragraph 35.4 which requires that the contact person shall be a “skilled listener, sensitive to the needs of complainants and that he or she should be available to the complainant from the beginning to the end of the process”.

The most common perception and complaint about the process is that there is not an open process which focuses on the relationship of the person with the church as an institution and the conflicts of interest that may exist with any given roles and responsibilities that people have had in their professional and personal life. The perception is that practising Catholics are chosen based on the professional skill but also their ability to cooperate with Bishops and Religious leaders.

In relation to the *Towards Healing* contact person, for a period of time in Brisbane the contact person was marketed as independent, yet it was actually an employee of the Catholic Welfare Agency, Centacare rostered to answer the *Towards Healing* phone. This resulted in a lot of anger and mistrust when people found out that the person was actually an employee of the Catholic Church. Regardless of whether the contact person was a professionally qualified person, it was a question of perception and the process was not seen to be either impartial or transparent and was ultimately a conflict of interest. This undermined the trust of people in the process from the very first point of contact.

The experience of people who have been through *Towards Healing* ranged from being a positive experience to an experience that made that they felt dirty, filthy & unwanted after participating in the processes of *Toward Healing*. The individual skills of the leaders involved the staff of the professional standards committee and the level of compliance of dioceses and religious orders with the process determined the outcomes of the process. The process lacks any legitimate place for independent advocates whose role it is to ensure the complainant seeking redress is:

- I. Informed and supported when they have experienced sexual abuse as a child,
- II. Engaged in a process as prescribed in the published documents.
- III. Provide the resources to a person to maintain a focus on the process,
- IV. Adequately informed,
- V. Has control over the pace of proceedings.

- VI. Similarly supported when engaging with lawyers and negotiations to ensure that the person truly understands what is happening.

In particular, people raised concerns about the manner in which they were required to face assessors who asked them to listen to the accused version of events and were also asked to outline in detail the impact of the abuse upon them in order for the Catholic Church to “understand the needs of the victim”. Such experiences suggest that the assessors and facilitators of the *Towards Healing* process are currently falling far short of even the most minimal standards set by the Catholic Church when engaging personnel to fulfil these roles.

The current version of *Towards Healing* makes no mention that those responsible for conducting investigations should have a clear understanding of the differences between criminal, administrative and disciplinary investigative processes. It is essential that the personnel engaged to conduct such investigations have a clear understanding of what constitutes a crime or grounds for a civil action. The document presently makes no mention of these issues or of the importance that facilitators and assessors possess skills and knowledge relevant to these areas.

There is no transparency about potential conflicts of interest with the assessors who are active in the Catholic Church and what other roles they have undertaken for the church. As stated in the ABC *Lateline* program on 8 August 2013, in many instances people involved in *Towards Healing* believed they were dealing solely with an assessor when in fact a representative of CIC was either also present in the room or in the room next door to be on hand to provide guidance to the assessor.¹⁴ Facilitators and assessors should not be complicit either directly or indirectly in a process where in fulfilling their functions under *Towards Healing*, they are colluding with parties who have a direct pecuniary interest in the outcome of the negotiation with the complainant. People who contributed to this submission were very clear that they wanted it to be mandatory for all personnel involved in *Towards Healing* (including assessors and facilitators) to be completely independent of the Catholic Church to avoid any possibility for a conflict of interest.

Assessors should be people with skill in dealing with people experiencing post-traumatic stress and the impact of managing the process. They should have recognised expertise in historical context including the relevant laws of the time and childhood sexual abuse and an understanding of the lifelong impact of childhood abuse, particularly sexual abuse

It is important that assessors and facilitators have a working knowledge of the law in relation to such matters. Assessors and facilitators should also have a sound understanding of the processes of facilitating reporting offences to police

¹⁴ <http://www.abc.net.au/lateline/content/2013/s3821560.htm> accessed on 11 September 2013

in conjunction with victims. These personnel should also possess a high level of understanding of the dynamics of abuse of power in a religious context.

Given the nature of many of the incidents of historical sexual abuse, it is also important that personnel engaged in the *Towards Healing* process should possess a sound understanding of the multiple vulnerabilities of children and the context they were living in facilities such as institutions and group homes. This understanding is critical given the impact it has on the response of many historical sexual abuse victims when dealing with figures of authority within the Catholic Church in a contemporary context.

People who had been abused by members of the church wanted the decision makers included in the *Towards Healing* process to be legally trained and also wanted to include some of their peers capable of advocating effectively in the interests of people who had been abused by members of the Catholic Church. This was seen to be essential to overcome the power imbalance currently faced by complainants facing the existing processes which they perceive to be so heavily biased in favour of the Catholic Church and its representatives.

The role of advocates should be formally validated and funding provided to enable this to occur through government programs for victims of crime and abuse of power and with provision for the churches to make a financial contribution.

There continues to be many people who despite having engaged with *Towards Healing* are left with a feeling that they were not really believed or understood; that the criminal behaviour was minimised and they felt confused and uncertain about going to the police due to the complexity of their historical context. This did vary according to the particular timelines, with most recent experiences of people being informed that they could go to the police but with no provision of assistance or support to do so. People did not feel encouraged to go further than the Catholic Church's *Toward Healing* process and felt discouraged from going to police more by the attitude and actions of church personal than by any specific directions

Overall the compliant process through *Towards Healing* is confusing in its own process but also in relation to civil and criminal processes. Contributors wanted a simple and straightforward process independent of the Catholic Church that they could understand and access without obstacles. People expressed the need for an advocate or support person who would assist them through the range of processes if they wanted to take matters to police or through a civil process.

Some people were of the view that once a matter was reported to the Church that it was referred directly to the police or to an investigation unit independent of the Catholic Church to support complainants to refer the matter to the police. However as the *Towards Healing* process unfolded no discussion occurred at all about whether their complaint constituted a crime, which should be reported to the police. This was particularly an issue when the Catholic Church involved their lawyers and insurance representatives and individuals were left with a strong

impression that by accepting an ex-gratia payment they were forfeiting their right to take an issue of sexual abuse further by reporting it to the police. In fact, if they went to the police then the *Towards Healing* process would be delayed until the finalisation of the police investigation and court proceedings.

Question Six: The relationship between participation in the *Towards Healing* process and the rights of victims to access the civil and criminal justice systems in Australia.

Many people engaged in *Towards Healing* wanted and expected the criminal and civil process to have been an option put forward by the assessors or facilitators of the Catholic Church;. However while the option of criminal proceedings is not subject to the statute of limitations in Queensland, unfortunately there are presently restrictions, which limit the timeframe within which a civil action may be taken. The contributors to this submission support ongoing law reform in this area to enhance access to compensation and justice for people who experienced childhood sexual abuse through the removal of the statute of limitations on the civil proceedings

The relationship between the *Towards Healing* process and civil and criminal law is not defined and is certainly not easily accessible to people seeking accountability for those who subjected children to sexual harassment, abuse, assault and neglect.

No clear guidelines have been produced to assist individuals understand the different pathways available to them recognising that that both the civil and criminal process also presented significant barriers to progressing accountability due to the historical context and timeframes.

Contributors to this submission overwhelmingly reported that the Catholic Church should have had an “investigation unit independent to the Church to refer to police”. This was no one’s experience however. There was no discussion of taking any sexual abuse cases further than *Towards Healing* by facilitators of the church’s process

Many people engaged in *Towards Healing* wanted the criminal and civil processes to be more actively promoted by the Catholic Church; and that this should have been a separate and transparent avenue to the *Towards Healing* processes, which were favoured by the Catholic Church. Many contributors to this submission expressed the view that the process of dealing with “authority figures” in the *Towards Healing* process was intimidating and that the process felt confusing to them. As one person commented:

“There was never an option to go to the police when you where going through the *Towards Healing* procedure”.

Much attention has been given to the no gag provisions on ex gratia payments and as widely stated they are not an option that people seeking accountability see as appropriate. They further perpetuate the secrecy. Many people would have preferred a “civil process with no cap” if the statute of limitations could be changed through law reform. As noted above, while the option of criminal proceedings is not subject to the statute of limitations in Queensland, unfortunately there are presently restrictions, which limit the timeframe within which a civil action may be taken. This adversely impacted upon a number of

contributors to this submission and there was support for ongoing law reform in this area to enhance victims access to compensation and justice independent of their reliance upon offers for “capped ex gratia payments” made by the Catholic Insurance Company. The Historical Abuse Network and Micah Projects have advocated for law reform in the area.

The frustration expressed by many individuals is understandable when one considers the UN’s suggested requirements for compensation programs:

- I. The victim must report the crime to the police within an established time frame.
- II. The victim must cooperate with the police and prosecutors in the investigation and prosecution of the case. The apprehension or conviction of the perpetrator is not generally a prerequisite for receiving compensation.
- III. The victim must submit a timely application to the program and provide other information as requested by the program.
- IV. The victim must be innocent of criminal activity or significant misconduct that caused or contributed to the victim’s injury or death.

The UN then goes on to note that:

...expeditious claim processing should be a priority for all compensation programs. The processing time can be greatly reduced if the program has established policies and procedures for obtaining and reviewing the necessary documentation, which includes clear, simple questions on any forms. In addition programs should establish mechanisms for requesting and receiving routine verification such as police reports, medical records and explanations of insurance coverage.¹⁵

In addition to the above requirement and concerns, there are strong arguments for separating the processes of compensation and redress for complainants from the *Towards Healing* process completely and these issues are explored further in the response to Question Thirteen.

¹⁵ United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, Handbook on Justice for Victims: *On the Use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Office for Victims of Crims, United States, Department of Justice 1999, p. 46

Question Seven: The conduct of investigations, including the engagement with the victim, the accused and the institution or responsible authority.

There was criticism by individuals who have gone through the *Towards Healing* that the procedures and conduct of investigations in *Towards Healing* are fundamentally flawed in a number of ways.

For example Section 38 which deals with responding to complaints indicates that the procedures in this section are applicable only 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. Paragraph 38.2 then goes on to give the discretion to the Director of Professional Standards the discretion to determine whether the complaint concerns conduct which falls within the definition of abuse in the document. Then in paragraph 38.3 the procedure states that where behaviour complained of could reasonably be considered to fall within the definition of abuse, but was not an alleged criminal offence the Director shall refer the matter to the Church authority to be dealt with by counselling or voluntary mediation.

However, in Part One, abuse is defined to be sexual assault, sexual harassment or any conduct of a sexual nature that is inconsistent with the integrity of a pastoral relationship. Alternatively a person defines abuse as intentional acts with responsibility for a child or young person causing significant 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.

Definitions should be included as to what the criminal code defines as sexual abuse, assault and rape

Considering the definition of abuse, both physical and sexual, there would appear to be very few actions, which by contemporary standards would not meet the test for assault in one form or another. Yet *Towards Healing* gives the Director of Professional Standards the discretion to deny or minimise the criminality of the conduct and divert the matter to the Church Authority to deal with instead of taking the more appropriate action of referring the matter to civil authorities or the police.

One of the common criticisms is that the majority of personnel involved in investigations (including lawyers, advocates and facilitators and assessors) did not appear to have any set of standards to promote trauma informed practice in their response to complainants, their families and supporters and to provide greater guidance in their dealings with complainants. A significant number of individuals have reported that all complaints should have been documented during the investigation process and yet this did not appear to have occurred.

A number of individuals have reported that they would have preferred an advocate present to assist them who was strong enough to stand up for them during an investigation to challenge many of the flaws in the process and to make it less confusing. People felt that this may have assisted to establish a more equal power relationship during the process. These people commented that despite the rhetoric in *Towards Healing* of it being a process designed to support complainants they found it to be a very adversarial process. Several people commented that small things such as visiting people in their own homes to conduct meetings rather than always holding the meetings in the frequently intimidating surroundings of Church facilities would have made them feel much more at ease during the process. For many complainants, merely entering a church triggered intense feelings of anxiety and flashbacks, which could easily have been avoided if the meeting was held in a neutral setting. This is an important role an advocate can play in ensuring that the right place for the individual is requested.

Other contributors were very disgruntled about the fact that they were denied access to the *Toward Healing* process because the accused person was deceased and therefore there was little point in pursuing the matter.

Individuals report feeling “fobbed off” and—“passed around”. They reported that they believed the investigation was “not independent of the interests of the Church”. These people indicated that frequently representatives engaged in the Church’s process were “not identified”. This led to a feeling of confusion about who was in the room and who represented who. This is consistent with the accounts of complainants quoted in the *Lateline* report quoted in Question Five.

As was indicated in Question Four a number of contributors identified that they were left to deal with individual diocese by the *Towards Healing* investigation and that the procedures adopted by these diocese did not comply with the *Towards Healing* protocols or procedures leaving the complainants feeling very confused.

Despite there being no mention made of there being any requirement for complainants to sign “Deeds of Secrecy”, many individuals reported that their “Deed of Release” contained clauses which explicitly prohibited them from discussing the investigation to anyone else and if they did so their offer of compensation would be withdrawn or that people could discuss their experiences but were not to disclose the sums of money.

Contributors to this submission repeatedly reported that that their need to be believed was ignored during the *Towards Healing* process and that during the investigation they felt that the presumption of innocence of the accused was given greater weight than the truth of their complaint and that the onus was on them to prove their allegations, leaving them feeling as though they “were on trial”. Several individuals indicated that when they made their initial complaint it was dismissed completely at the outset and the matter was not pursued at all.

Several contributors indicated that the *Towards Healing* processes and procedures would be greatly improved if they genuinely incorporated concepts of restorative justice rather than masquerading as a “just” response by the church when the processes were actually very adversarial in nature.

In summary, the overriding feedback from individuals was that their experience of the *Towards Healing* investigative processes lacked transparency that they felt unsupported once they had made a complaint and that there was little or no communication with them from representatives of the church authorities. A number of contributors suggested that they would have greatly appreciated being asked the most basic question of “what could we do to make things right for you now?”

Question Eight: The application of confidentiality to any aspect of the *Towards Healing* process and the persons subject to any applicable confidentiality.

Towards Healing contains a mix of duties of confidentiality, duties which not surprisingly largely emphasise the protection of the interests of accused persons. For example in the statement of principles in Part Two paragraph 26, the document indicates that the most appropriate response to the accused upon receipt of a complaint of sexual abuse should be the “proper consideration of confidentiality in the handling of the complaint, particularly prior to the conclusion of the assessment.” In essence this is a fair and reasonable principle when implemented for the purposes of adhering to the principles of natural justice.

However Part 3 – paragraph 40.13 dealing with assessment procedures later indicates that:

“The records of interview and all other documents or material associated with the assessment are to be treated as confidential. The Director of Professional Standards shall maintain a confidential record of all findings and any documents relevant to the suitability of the person for future ministry.”

The manner in which this duty is struck is not qualified by any requirement to balance this duty with countervailing duties of disclosure in the public interest and the right of complainants to access information, particularly in circumstances where the content of such information is central to civil claims for damages.

Later in Part Three, paragraph 45.6, captured under the heading of “Preventative Strategies” the document states that:

“Whenever a cleric or religious is to transfer from one diocese or institute to another (whether within Australia or coming from overseas), or is to carry out a ministry or apostolate in another diocese or institute, the Church Authority to which the person is to be transferred shall ask for a written statement from the cleric or religious indicating whether there have been any substantiated complaints of abuse against him or her, or whether there are known circumstances that could lead to a complaint of abuse. Such statements shall be held as confidential documents by the Church Authority.”

The potential for secrecy surrounding potentially abusive clerics and religious is further emphasized in Part Three 45.7 which states that:

In these same circumstances the Church Authority in the diocese or institute where the cleric or religious previously lived and worked, shall provide a statement in writing to the new diocese or institute indicating whether such authority knows of any complaints of abuse which have been substantiated, or is aware of circumstances that could lead to a complaint of abuse, or whether it considers that there would be an unacceptable risk to children, young people or vulnerable adults if the person were to be

allowed to engage in particular kinds of ministry. Where there has been a substantiated complaint, the Church Authority shall furnish all information necessary to evaluate the seriousness of the offence, and shall report on all treatment undertaken, and other measures employed to ensure that further offences do not occur. The Church Authority shall hold such statements as confidential documents.

Clearly the appropriateness of establishing such strong duties of confidentiality to protect the interests of accused (or convicted) persons are questionable to individuals and families impacted on by childhood sexual abuse. Such procedures are not in the public interest and represent an abrogation of responsibility to the safety of the wider community. It is precisely these practices, which prevailed in the transfer of known serial offenders such as [REDACTED]

One particularly prominent case, involving the Salesians of Don Bosco religious order moved a priest, [REDACTED], to Samoa in 1998, when he had one child molestation conviction on his record and was facing a new criminal investigation in Australia. The South Pacific island nation had no extradition treaty with Australia – and when an arrest warrant was issued, the Salesians did not send him back. The Salesians leaders claimed that they hadn't tried to shield him, and that he had no active ministry or unsupervised contact with children. But when the journalist who reported on the story visited Samoa, he watched him help lead a Mass and then hand candy to young children who knew him on a first-name basis. The reporter also talked to several teenage boys who reported meeting him alone in his room.¹⁹

To enshrine a similar doctrine of secrecy to protect the interests of the accused in the latest iteration of *Towards Healing* is totally unacceptable. Furthermore to incorporate these procedural requirements under the heading of "Preventative Strategies" is perverse in the extreme. Such procedures merely prevent the detection and prompt investigation of allegations of abuse with the consequence

¹⁶ Armitage, Catherine, Vatican knew early of paedophile priest, *Sydney Morning Herald*, 4 July 2013, <http://www.smh.com.au/national/vatican-knew-early-of-paedophile-priest-20130703-2pcgm.html> accessed on 14 September 2013.

¹⁷ The paedophile priest and the prostitute, *Mildura Weekly*, June 21 2013, <http://www.milduraweekly.com.au/2013/06/21/the-paedophile-priest-and-the-prostitute/> accessed 14 September 2013

¹⁸ Broken Rights Australia, How an Australian archbishop covered up for a criminal priest who continued to offend. <http://brokenrites.org.au/drupal/node/75> accessed on 14 September 2013

¹⁹ Reese Dunklin, Australian Government Report cites DMN findings on Catholic Church moving paedophile priests. Dallas News, 12 October 2012, <http://www.dallasnews.com/investigations/headlines/20121012-australian-government-report-cites-dmn-findings-on-catholic-church-moving-pedophile-priests.ece> accessed 14 September 2013.

of actively undermining the prevention of sexual abuse of children and vulnerable adults by members of the clergy.

For many families and communities of the Catholic Church the fact that priests were transferred in a culture of secrecy and confidentiality when church authorities were alerted to matters of childhood sexual abuse by priests, religious, employees or volunteers is a source of great anger and disbelief by members of church communities across Australia. Investigation into the extent of the practice in transferring priests where sexual abuse was reported would highlight how many children could have been prevented from abuse if this practice did not occur.

Part Three, paragraphs 34.5 and 34.6 of *Towards Healing* focusses on duties of confidentiality to complainants but these duties are, in some instances, equivocal. The notion of adopting a team approach to dealing with complaints within the constraints of respecting the privacy and confidentiality of complainants is recognised to be necessary for good case management. However the document does not clearly identify or define the scope of the composition of a “team” and therefore who might be entitled to access a complainant’s records under these procedures. In Part 3 - Assessment procedures – paragraph 40.7 creates a duty for church authorities to comply with requests by assessors for access to documents which may assist them in their work, subject to any legal obligations of confidentiality.

This is potentially a significant issue given the lack of role clarity between assessors and representatives of CIC and the conflicts of interest this may create by granting unfettered access to complainant’s records. Such access may in many circumstances prove to be prejudicial to the interests of complainants.

For the Catholic Church the exclusion of mandatory reporting for clergy in the sacrament of confession is an area that requires reform. Examples of where this practice could have assisted in the prevention of further abuse of more children were an offending priest used the confessional to silence his peers about his behaviour, possible even Bishops. If the sacrament of confession is to have any credibility then surely a priest would refuse absolution until the offender reported his crimes to the police or the priest would report them on his behalf.

Question Nine: The standard of proof applied during the *Towards Healing* process.

The distinction between the standard of proof operating in disciplinary, administrative, civil, criminal and canon law need to be made totally explicit in any future revisions of *Towards Healing*. The general standard of proof applied during the *Towards Healing* process is based on the standard of proof of the balance of probability generally applicable to civil proceedings, rather than the higher criminal standard of proof of “beyond reasonable doubt”, applicable to criminal proceedings. Many individuals considered this as appropriate.

However, this question does not speak to the issue of the burden of proof, which still presumes that the accused is innocent until proven guilty. It therefore does not adequately reflect the need for the application of the “precautionary principle” in all circumstances where the ongoing presence of the accused is potentially intimidating and presents an ongoing risk to the safety of others and where the suspension of the accused is essential for the preservation of the safety and well being of vulnerable people. *Towards Healing* does not propose that the “precautionary principle” should automatically apply and indeed in paragraph 26 in the section of *Toward Healing* dealing with the “Response to the accused” the procedure is clearly qualified by the statement “*if* Church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions or guilt are implied by this fact”. It is questionable whether this procedure strikes an appropriate balance between the principles of natural justice and the application of the precautionary principle.

Many individuals who have been through *Towards Healing* would like assurance that the evidence that has been received collectively throughout *Towards Healing* would be used in the assessment of situations which involved deceased priests or religious, employees or volunteers. If a pattern of behaviour was evident through a number of different investigations individuals would prefer that the church did not deny people access to the *Towards Healing* process simply due to the death of the accused. Individuals would prefer that the balance of probability principle be applied.

Question Ten: The role and participation of lawyers, insurers and other third parties in the *Towards Healing* procedure and whether such involvement assists or hinders the process.

It is well recognised that a person centred approach to working with individuals who have experienced childhood sexual abuse requires a collaborative approach between front line professionals with whom a person may come in contact with. This includes a wide range of potential professionals from police, lawyers, judges, advocates medical staff, mental health professionals, community workers, elected officials, spiritual leaders, counsellors.

The Catholic Church has operated *Towards Healing* in a very silo and fragmented way with little attention to encouraging effective partnerships which would benefit individuals, families and communities seeking assistance and redress from the process with regard to their experiences of childhood sexual abuse as a child by a clergy , religious, employee or a volunteer.

While advocates including those engaged through Louts Place, formerly the Esther Centre have tried to facilitate the engagement of *Towards Healing* with people who have experience childhood sexual abuse it has often been a fragmented and difficult process. Overall *Towards Healing* as a process and the people involved in its implementation have a mixed and sometimes different understanding of the process itself. It is not a consistent process.

This lack of a shared understanding and a commitment to collaboration has often led to 'secondary' victimisation. This is victimisation, which arises not from the direct result of the criminal act but through the response of the institutions and individuals to the victims.

The involvement of lawyers, advocates and other support people is often hindered by the lack of collaboration, shared information and understanding of the process. It has also led to very different outcomes for individuals resulting in an inequity according to who was supporting or advocating on behalf of a person.

In addition the lack of coordination between the church, the police, the criminal and civil justice systems, a person's support network and the person seeking redress contributes to further fragmentation and secondary victimisation.

The participation of lawyers is also impacted on by the lack of transparency and information. The negotiation of sums of money requires a very clear process of the role of lawyers for individuals so that the balance of power, the issues of feeling intimidated being forced or coerced to make decisions and involves a lack of understanding about what is happening.

Advocates through Lotus Place (formerly the Esther Centre) provide advocacy with a person through the system but do not advocate or negotiate on sums of money. Referral to a lawyer would be an appropriate option but we are limited to pro bono lawyers as the sums of money are very low in some circumstances.

The church should pay the legal fees for the person at the negotiating stage and contribute to the cost of advocates.

Question Eleven: The sufficiency of the guidelines in relation to referral of matters to police.

Towards Healing should not be seen as a substitute for police investigation in any Australian State or Territory. The police must respect privacy in compliance with law and justice. Whilst legislative reform is urgently required, there is in fact no barrier to the church immediately adopting civil criminal reporting, reporting all credible allegations or evidence of sexual abuse of children and advising all complainants that complaints will be shared with the police. Micah Projects believes it is essential to report any suspected or alleged child abuser, particularly if there is any possibility of other victims, current or potential.

There has been widespread support for the mandatory criminal reporting of child sexual abuse from the members of the Historical Abuse Network and individuals and families seeking assistance through Lotus Place (formerly Esther Centre) on this question and complete consensus that the current guidelines of *Towards Healing* in relation to the referral of matters to the police, is presently manifestly inadequate.

In the 1980's and early 1990 in the Brisbane Archdiocese there was a strong feeling among individuals and their families who were impacted on or were reporting sexual abuse by clergy, religious, employees or volunteers. There was a strong perception due to both the attitude and behaviour of police and the Catholic Diocesan Authorities that interference from practicing Catholics clouded the relationship between the police and the Brisbane Archdiocese creating interference and a blocking of investigations that had been reported to the Juvenile Justice Bureau and to the Catholic Church.

Prior to the Fitzgerald Inquiry into police, the CJC inquiry into paedophilia many people reported a closed response from both police and the Catholic Church and were often subject to threats and intimation from other practicing Catholics as to why they wanted to bring down the good name of the church. Disclosure to anyone was met with obstacles and intimidation.

Question Twelve: The role of canon law in *Towards Healing*.

The *Towards Healing* document contains very little information about the importance and role of canon law in guiding the Catholic Church's response to dealing with complaints of sexual abuse committed by clergy or religious offenders. For example paragraph 41.1 of the *Towards Healing* document refers to a "penal process under canon law" but it is unclear to the lay reader what such a process might involve and the nature of such proceedings. A basic explanation of the most important concepts and their impact on this issue is required in order to make the proposed approach in *Towards Healing* more transparent and understandable for the lay reader. The omission of this information is a serious shortcoming in the document.

Individuals have always expressed considerable frustration with the way in which the Catholic Church relies upon the precepts of canon law to avoid responsibility of disclosure to protect those who are being or have been sexually abused by clergy. In particular, a culture of secrecy created through the seal of confession draws criticism for the immunity it afforded clergy accused of sexual abuse. For example, a woman who was deeply troubled by the sexual abuse she had endured as a child, revealed that in the early 1960's she disclosed the circumstances of her sexual abuse as a child by a member of the clergy to another priest within the confessional. In this instance the woman sought guidance and support from the priest she trusted during the process of confession.

Mindful of his obligations to the seal of the confessional under canon law, the priest in question asked the young woman to wait and speak with him outside the of the confessional about the matters she had revealed during confession. The young woman complied with the priest's request and he took her to see two nuns and asked her to repeat to them what she had told him in confession. The young woman did so because she had been treated with empathy and kindness by the priest and trusted him to support her. However, on this occasion when she repeated the details of her ordeal to the two nuns, they reproached her for lying about such "wicked" things. Unfortunately, the priest also did not pursue the matter further after observing the response of the nuns.

While this particular incident is extremely disturbing in that no one chose to assist the young woman further, what it does highlight clearly, is that it *is* possible for priests to respond to disclosures made in the seal of confession in ways that are directly supportive of people who have been sexually abused by clergy, without undermining their duties of compliance to canon law. Sadly, *Towards Healing* is entirely silent on any procedures which countenance such constructive options.

A further and related issue is the raised when the accused person is a religious or a clergy who chooses to confess their offence within the seal of confession to a bishop. In choosing to make such a confession to a bishop, who might ordinarily be an important participant in the decision making procedures outlined in the *Toward Healing* process, the bishop is effectively reduced to a bystander

role because of his obligations under canon law. This presents a serious conflict of interest for a bishop placed in such a situation and potentially undermines the intent of a number of procedures in the *Toward Healing* document. This issue requires attention in any future review of the document in order to provide clearer guidance to bishops facing such moral dilemmas.

Question Thirteen: The options for redress under *Towards Healing*, in particular:

- a. the circumstances in which financial assistance may be paid
- b. the level of monetary payments and how they are determined
- c. other forms of financial support
- d. the apologies or acknowledgements which are provided to victims
- e. the conditions imposed including any confidentiality agreements.

Part Three Section 41, dealing with outcomes relating to the victim, paragraph 41.1 indicates that:

“In the event that the Church Authority is satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a penal process under canon law, an assessment under these procedures or otherwise, the Church Authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses may include the provision of an apology on behalf of the Church, the provision of counselling services or the payment of counselling costs.”

Then in the following paragraph 41.1.1 it is noted that:

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.

However paragraph 41.1.2 requires a bishop or leader to seek the advice of the consultative panel and paragraph 41.2 goes on to give the Church Authority the right to seek further information it considers necessary to understand the needs of the victim, including a report from a suitably qualified and independent professional concerning the impact of the abuse on the victim. Later in paragraph 41.4.3 it is noted that in the event that there are unresolved issues concerning monetary reparation other than those of counselling costs or meeting other needs of the victim, these matters should be dealt with by negotiation outside of the facilitation, in order to seek a resolution on this point.

There have always been high levels of dissatisfaction *Towards Healing* deals with issues of redress and reparation by those who are recipients. Firstly it is considered their only options despite the flaws in the process. Many people indicated high levels of discomfort about the conflicts of interest embedded in the pastoral healing objective in the processes of *Towards Healing* and the protection of the church's reputation or the limiting of financial payments to victims and the financial and legal interests of the church and how this influences the settlement of claims. This conflict needs to be managed carefully to ensure that undue influence by insurance or legal advisors does not prejudice a just and pastoral settlement. These people indicated that they wanted to see compensation dealt with by an independent national compensation body, funded by those institutions against which complaints of abuse have been established, including the dioceses and religious congregations of the Catholic Church.

As a process for determining compensation contributors felt that *Towards Healing* is inherently flawed because:

- I. There are no benchmarks for determining the degree of harm suffered by complainants and a corresponding uniform approach to the payment of compensation leading to inequitable outcomes
- II. This absence of guidelines means that there has been little or no consistency in the award of compensation payments.
- III. They often felt the need to discuss aspects of their abuse and its consequences to a level of detail, which left them feeling distressed, dirty and uncomfortable particularly when the person seeking further information was a stranger and was determining a financial settlement. This process only further traumatised them rather than providing any sense that they were being treated with respect and compassion in a spirit of true pastoral care.
- IV. The conditions of confidentiality attached to any offer of compensation were perceived to be a “gag” and many people reported. There has always been a lot of confusion about the legal status of the gag clause if any future possibility of seeking a more adequate ex gratia payment was to occur. Contributors to this submission wanted these conditions removed from the because it felt as though they were just being paid “shut up” money.
- V. There was frequently considerable confusion about the legal processes and obligations associated with claims for compensation and the majority of complainants wanted access to free legal support to assist them during this process. This was identified to be a particularly important issue in class actions where the level of understanding of the legal processes, requirements and decision-making was very variable.
- VI. On many occasions the Church Authorities used the threat of going to court to pressure complainants to accept an out of court settlement they suspected to be less than just.
- VII. In circumstances for complainants involved in class actions the absence of any benchmarks, standards or guidelines makes it very difficult to apportion legal costs when representing a group.
- VIII. In cases of historical sexual abuse, the present statute of limitations for civil proceedings impedes complainant’s access to just through the civil courts and contributors identified a need for national law reform in this area.
- IX. The definitions of ex-gratia payments, redress and compensation require more detailed information that is in line with current personal injury claims in other areas of financial payment for harm and injury.

An independent body with the authority to investigate, assess and , make decisions would be the option that most individuals, families and advocates would see as critical to which the church provides financial resources. A body such as the Human Rights Commission being extended to have a role to be an independent body undertaking the receipt of complaints within a restorative

justice framework. Such a body would work with the Catholic Church and all religious bodies in ensuring an independent victim assistance program was established nationally; with clear processes of a multidisciplinary response with all stakeholders include police, justice systems, human services agencies and victims and their families in relation to matters of sexual abuse for children and vulnerable adults. The appointment of a Commissioner for Religious and non-government organisation in relation to matters of sexual abuse of children historically through to the present could also fill this role. Such a role could ensure that appropriate standards are being established by all stakeholders in responding to disclosure and an appropriate response to individuals and their families who have been victims of the crime that sexual abuse of children is and always has been.

Question Fourteen: The nature and extent of the review process available.

Towards Healing is inherently flawed with respect to its review processes. Essentially under Part Three Section 44 entitled Review of Process and Findings, the Director of Professional Standards governs the entire review process. However, at no point, does the document clarify that such a person should be qualified and have expertise in matters of administrative, employment, civil and criminal law. Similarly, the document is entirely silent on the necessity of this person being independent of the institution and its decision making processes. Furthermore there is no public reporting or transparency on the outcomes of any review process. This does not meet the most basic standards of natural justice expected by the broader community in relation to matters of good governance and the basic rule of law.

Although Professor Parkinson, from the School of Law at Sydney University was one of the original authors of the document, in November 2012 he indicated that could no longer support the document because it believed that the Church had failed to comply with the both the letter and the spirit of the protocols in *Towards Healing* and that he was aware of several contemporary cover-ups of serious complaints of sexual abuse within the Church. As a matter of integrity Professor Parkinson indicated he no longer wished to be publicly associated with the protocols.²⁰ It is therefore the position of Micah Projects that it does not support any aspect of the current review processes outlined within the *Towards Healing* Protocol.

The establishment of an independent body for the whole process is the preferred option.

²⁰ Smith Suzanne, Key Church Lawyer Alleges Cover Up. ABC *Lateline*, 14/11/2012, <http://www.abc.net.au/lateline/content/2012/s3633089.htm> accessed on 15 September 2013.

Question Fifteen: Does *Towards Healing* assist in the prevention of child sexual abuse within institutions of the Catholic Church?

One of the fundamental issues with *Towards Healing* and the Churches response to people who have experienced sexual abuse, assault and rape by clergy, religious, employees or volunteers is the minimisation of the impact on individuals from a historic context to refocusing the public conversation on prevention of abuse today. This further leads to people feeling marginalised from the process.

The prevention of child sexual abuse also needs to be viewed in light of the relationship between the *Towards Healing* document and the document *Integrity of Ministry* when it comes to prevention of child sexual abuse. For any matters of concern to be raised with the Catholic Church the *Towards Healing* process focus is on after the abuse has occurred.

In raising issues of concern with the Brisbane Archdiocese about a situation with a priest the matter was referred to *Integrity of Ministry*.

An audit of how disclosure of sexual abuse of children in Catholic schools would provide some evidence as to the effectiveness of the policy and procedures in place.

Towards Healing is an inadequate attempt in establishing a victim assistance program for individuals who have been subject to sexual abuse, assault and rape of children and should be reviewed in the light of the United Nations handbook on Justice for Victims (1996).

However the overwhelming view is that an independent body should take over the current role of *Towards Healing* with the Catholic Church being a stakeholder not the responsible authority for the process so that there can be more cooperation with other stakeholders, compliance with the Australian Law, independent of canon law, transparent and reportable to the community.

It is suggested that the principle objective (and effect) of the document is not to prevent the sexual abuse of children within the institution of the Catholic Church, but is instead a protocol formulated for the sole purpose of keeping such matters out of the criminal, legal and civil domain where they are more properly dealt with. The isolation of the document from the usual modes of public accountability may in fact or by perception create a climate of secrecy which has surrounded the sexual abuse of children within the institution of the Catholic Church. To this extent the document completely fails to prevent further sexual abuse and protect children within the Catholic Church. The document should be disbanded and rewritten solely as a guide for the provision of pastoral care and leave the management of investigations and determination of redress to the appropriate criminal and civil authorities.

Submissions will be made public unless the person making the submission requests that it not be made public or the Royal Commission considers it should

not be made public. That will usually only occur for reasons associated with fairness.

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Submissions should be made by **Wednesday 4 September 2013**, preferably electronically, to solicitor@childabuseroyalcommission.gov.au, otherwise in writing to GPO Box 5283, Sydney NSW 2001