

**Broken Rites (Australia) Collective Inc.**  
P.O.Box 163 Rosanna Vic. 3084

The Solicitor  
Child Abuse Royal Commission  
GPO Box 5283  
Sydney  
NSW 2001.  
4 September, 2013.

**Re. Issues Paper#2: Towards Healing.**

Broken Rites welcomes the opportunity to respond to some of the questions raised in this Issues Paper.

Over the past 20 years thousands of adults, the majority having been sexually abused as children, have contacted Broken Rites. These abuses have occurred in church run institutions by church related sexual offenders.

Since the Towards Healing process was first publicly announced, this organisation has maintained a “watching brief” on the application of the process and victims’ experience of it. We have worked with many victims on an individual basis to bring their particular case to mediation and we have at times raised our concerns about particular aspects of the process and individual cases.

Yours sincerely,

Chris MacIsaac  
President

### **About Broken Rites.**

Broken Rites is a voluntary organisation that plays an advocacy and advisory role to persons who have or may have experienced physical, psychological and /or sexual abuse by either clergy, religious or church employees. The organisation has been advising and advocating for victims for more than twenty years.

While the secretariat is based in Melbourne, Broken Rites operates nationally. When required, members travel interstate to meet with some victims and/or families, to attend mediations, public speaking engagements, meetings with government officials, lawyers etc.

The organisation has never accepted any financial support from government or church and religious organisation. Instead, we rely entirely on voluntary donations. During the twenty or more years we have carried out the following activities:

- Received complaints about alleged instances of sexual, physical or psychological abuse by clergy, religious and church employees.
- Provided advice to callers about their rights either over the phone or at face to face meetings with victims and their relatives.
- Published a Newsletter (now discontinued) which reached a circulation of about 1200.
- Organised informal social functions for victims to attend.
- Accompanied victims to meetings with solicitors, police, and officials of the churches and/or persons working on behalf of any particular church or charitable organisation.
- Arranged for victims to make statements to police
- Assisted victims with the preparation of victim impact statements where these are required in criminal proceedings.
- Assisted victims with the preparation of individual submissions to government inquiries.
- Acted on behalf of victims, as advocates in conciliation meetings and negotiations over civil compensation.
- Provided information and advice to private solicitors in the course of their acting for and/or advising a client.
- Responded to media enquiries and act as a source of authoritative advice to the media.
- Attended court cases with victims.
- Carried out public speaking engagements.
- Prepared submissions to government and other public inquiries.
- Developed and maintained a user-friendly website < [www.brokenrites.org.au](http://www.brokenrites.org.au) > with extensive information about criminal cases leading to conviction of clergy and religious across Australia.

Individual members of Broken Rites have gained first-hand experience and insights into the “response” processes that are followed by the various church and religious organisations. In regards to the Catholic Church’s process “Towards Healing”, our members have worked directly with at least fifty individual victims over the years. These persons have sought to have their claims heard by the Catholic Church and some have been less than satisfied by their experience of the process and the behaviour of church representatives.

We have also been contacted by many more victims, these being persons who chose not to seek any advice or support at an early stage. Instead, these people made contact with us after they had gone to “Towards Healing”.

### **Towards Healing – principles, provisions and procedures.**

Since 1996, in Australia, a person who experienced sexual or extreme physical abuse while in a catholic-run institution, school, parish etc, has been able to seek to have a complaint considered by entering the church’s process(es) or by resorting to civil litigation. In 1996 the Catholic bishops and the Heads of Religious Orders in Australia released the document “Towards Healing” and since that time many complaints have been brought to the attention of church officials, by persons entering this internal process, in good faith.

Our understanding of the document “Towards Healing” is that provides the details of a process through which the Catholic Church will receive a complaint(s), that might be made by any person about abuse experienced by that person at the hands of any member of the church who has either been ordained or has professed religious vows. Receipt of a complaint activates a pastoral response process and the person will first be contacted by a member of the respective, state-based Professional Standards Resources Group (PSRG). The person will be asked to meet privately with an appointed person(s) who will prepare an Assessment Report. The complainant will receive a copy of the Assessment Report and a copy will be sent to the appropriate Bishop or Head of Religious Order. This person will act upon the Report, in his/her role as the Religious Authority, by first discussing the matters and details of the Assessment Report with the priest or religious who is the subject of the Report if that person is alive and remains a priest or religious.

The Religious Authority then has to indicate how the complainant will be responded to. Where the Religious Authority comes to a view that there is a case to be answered, in a majority of cases the complainant is informed that the Religious Authority is willing to go to mediation. Before the parties get to mediation there can be further contact between the PSRG and the complainant. A complainant may be asked to present for an assessment by an appointed psychologist or psychiatrist and at mediation, either of the parties may have legal representation even though the whole process is supposed to be non-litigious. At mediation, the Religious Authority may be present or may be represented by his/her delegate. At many mediations, while church people did introduce themselves, individuals rarely explained why they were present and in what capacity. During mediation the claimant will usually asked if he/she would like to receive a written apology and in many cases the claimant can be advised that the Religious Authority is willing to meet with the claimant.

In cases where the claimant is not satisfied either with the financial offer that is being made by the Church Authority or with the overall outcome of mediation, there is provision for a “review of process” by the National Office for Professional Standards”. It should be noted that the author of this submission has acted as an advocate for many victims. It became clear to him that when a review was conducted, the national office appeared to have no powers to require an individual Religious Authority to comply with the church’s own process.

In cases where a financial settlement is sought and then offered, the religious authority makes no admission of liability and the money is described as a “pastoral offering” and not compensation (see Document 1.)

Recently a fairly comprehensive and historical outline about the genesis of this process was provided as a submission, to the Families and Community Development Committee of the Parliament of Victoria (FACDC), in the course of its “Inquiry into the handling of Child Abuse by religious and other organisations”. A copy of the submission referred to is provided as Document 2.

### **Issues arising from people’s experience of Towards Healing.**

Broken Rites wishes inform the Royal Commission about a number of issues that have become apparent to us. Some are the result of direct experience and involvement as advocates while others reflect the experiences of individuals and groups of victims. We believe that these issues can be categorised. We admit that our categories are not exhaustive and the Royal Commission will no doubt be made aware of other issues that fall outside of the categories chosen by the author.

#### **Implementation issues.**

*A national, universal response process.....well almost!*

At the time of its release, “Towards Healing” described in detail, a process that was going to be followed across the country. Contrary to the public pronouncement that all Bishops and Heads of Religious Orders would follow “Towards Healing”, neither the Archdiocese of Melbourne nor the Order of the Society of Jesus ( the Jesuits) were party to the process. Eventually the intransigence and callousness of the past leadership of the Jesuits was exposed by both print and electronic media and the Order did agree to use this response process.

*I want my own process.*

The Archbishop of Melbourne at the time (George Pell) had decided to set up his own response process and this became known as the Melbourne Response. This process has become the subject of widespread criticism by victims, Victoria Police, civil rights experts and by members of the legal profession in Victoria. It is expected that the FACDC may make recommendations about the future of this process when it releases its report before the end of 2013.

*Bishops are different.*

The bishops also failed to mention that Towards Healing had no standing if a situation arose where allegations of abuse were made against a Bishop. This fact became evident after allegations against the then Archbishop George Pell (now Cardinal Pell) became public and had to be responded to by the church’s National Office for Professional Standards. This deficiency is now recognised in the Current version of the “Towards Healing” document.

#### **A power imbalance.**

*Let’s king-hit the victim and proceed from there.*

At mediation, personal information has been introduced into the discussion that bore no relationship to the sexual abuse matter at hand - a person having a history of bankruptcy, a person being unpopular with other pupils at a school, a woman having had multiple partners, a woman being a divorcee.

One claimant, (who happened to be a solicitor) was even accused **by the mediator**, of having altered the date on a sworn affidavit! The claimant challenged the matter by producing a certified document that refuted the accusation and the mediator backed off. The person representing the “Church Authority” said nothing during this whole farce and the mediator never apologised to the claimant.

*“Those church people, they just don’t get it.”*

We have received feedback from victims about their individual reactions to the Towards Healing process. A common story is that victims continue to be so traumatised by their experience of child sexual abuse, that they cannot make contact with or participate in a church-run process.

This means that they only have the option of civil litigation. Victims say they are deterred by the presence of priests and religious who serve on the National Committee for Professional Standards and the state-based Professional Standards Resource Groups and in some situations, by the church personnel who are used by these Resource Groups. Victims often report that they left the meeting feeling re-abused.

The author of this submission had experiences where, at mediation, the Religious Authority arrived wearing the full religious outfit. The wearing of roman collars, veils, religious habits and crosses can be intentional and used as a way to signal superiority over the victims.

### **Lack of transparency.**

*Transparency - what’s that?*

There have been cases in Melbourne where conciliation has occurred and an offer of financial compensation has been made, without a single piece of paper ever passing between the parties. Thus there are no records of anything ever having occurred or being responded to. In one case, the complete process was conducted (over three years) without a single document or piece of paper being given to the victim. Everything was handled through phone calls to the advocate.

*How to grow mushrooms .....*

When a solicitor is present with church representatives, there is lack of clarity as to whether the solicitor is taking instruction from the Church Authority, the church people present on the day or some other party eg Catholic Church Insurance Ltd.

### **Gender equity issues.**

A number of female victims have been treated very poorly at mediation. Mediation has been conducted with church representatives making it known that they held copies of the Assessor’s Report. Such reports can contain very personal details about the women and her past “involvement” with an alleged offender. The woman has been alone with a male advocate sitting beside her and 4-5 males representing the Catholic Church, seated on the other side of the table.

In several mediations where the victim was female, the process has failed to comply with Australian guidelines covering discrimination and equal opportunity provisions. Indeed, church personnel fail to be pro-active about these matters. Broken Rites took this matter up with the National Professional Standards Office by requesting that victims always be offered the names of three possible mediators with at least one of these being female. Whilst this was agreed by the national office, a suitable arrangement was never embedded into the Towards Healing protocol. Subsequent mediations occurred where a church-appointed mediator simply turned up and in other cases, women claimants were not informed by the Professional Standards Office that a woman could request to have a female mediator.

### **Non-compliance with national laws.**

A major and ongoing issue for Broken Rites over the years was the church's commissioning of and use of psychiatric and psychological reports. Presumably these were prepared at the request of the church authority and they were not made available to the victim as a matter of routine. This is despite the fact that the report can contain highly personal information about the victim. In some cases, even though Broken Rites (acting on behalf of the victim) requested a copy in the time leading up to the day of mediation, the advocate from Broken Rites was given a copy of the report about twenty minutes before the mediation was commenced.

In correspondence, Broken Rites raised this issue with the National Office for Professional Standards on at least two occasions. In this correspondence we pointed out that under national law a professionally prepared medical report about a person is the property of that person.

This being the fact of the matter, Broken Rites considers that the Catholic Church is not acting lawfully when a Church Authority withholds a report of this kind. Copies of correspondence between Broken Rites and the National office for professional standards is shown as Documents 3 and 4. Document 4, informed us that the question of "ownership of and access to psychiatric/psychological reports" was under review, Broken Rites was never informed about the outcome of that review and the withholding of reports continued.

### **Abuse of process**

*Power corrupts and absolute power corrupts absolutely.*

Although Towards Healing is described as a "pastoral response process" some church authorities have chosen to approach it as a legal process. No information is disclosed about the accused person. Instead, at mediation, private matters about the victim, which have no relevance to the victim's complaint, can be presented! We see this as a deliberate tactic that is used by lawyers representing the church authority, to undermine the victim.

Some Bishops and Heads of Religious Orders have refused to comply with the detail of the Towards healing process and claimants have been coerced and intimidated by aggressive lawyers representing the Church Authority. The author attended mediation (four hours) during which the Religious Authority never uttered a single word and the case was never resolved to the satisfaction of the claimant!

In case after case, victims were required to sign confidentiality agreements until this was exposed on the TV program “60 Minutes”. Church authorities then gave the ridiculous public explanation that there had been a failure in communication between them and their lawyers! While a silence clause is no longer included in the Church’s Deed of Release, victims still feel that they are required to remain silent.

### **People engaged in the process and the conduct of investigations.**

Broken Rites believes that these matters should be the subject of vigorous inquiry. The basis upon which the Catholic Church engages persons to carry out various bits and pieces of the Towards Healing process, remains unfathomable to us. In the different states an office is established as the PSRG. Despite the title, each appears to consist of one salaried person (and an answering machine) who has the capacity to call upon additional people as required. People can be called in to act in roles as facilitators, assessors. Sometimes these are members of religious orders and sometimes lay persons. One common feature has been the fact that they were all associated with the Catholic Church in some way whilst another was the number of lay persons who had in the past been in various police forces.

We have become aware of the process sometimes taking the form of a quasi or actual investigation involving the engagement (presumably by either the PSRG or the Church Authority) of commercial, private investigators. In Queensland, the media reported on the case of the PSRG in that state using the services of a private investigator who had formerly been a senior police officer who had recently taken “early retirement”. It was revealed that the investigator was not registered to carry out such work.

We have also been very concerned about the inability of church personnel to understand and to recognise situations where there is a conflict of interest. This matter is considered further in the section dealing with Towards Healing and insurers.

In addition, cases have been conducted where the appointed Assessor was a member of the same religious community as the alleged offender. There have been cases where the same lay person has operated in several roles – as a facilitator, then the independent mediator and then as a possible psychological counsellor at the conclusion of mediation. Presumably all of these services were being paid for by the Church Authority.

### **Links between Towards Healing and Insurers.**

We have come to the conclusion that for many victims who enter mediation in good faith, the outcome is pre-determined because of private agreements that have been entered into by the Bishops and Heads of Religious Orders and their insurer Catholic Church Insurance Ltd (CCL). We believe that the activities of CCL need to be examined in details as well as the links between this company, the Towards Healing process and the church’s Encompass Program, a CCI-funded treatment program for offenders. Arrangements here appear to be riddled with conflicts of interest, with church authorities serving on management/advisory committees, the NCPS and the board of CCI. For a time the nun in charge of the National Office for Professional Standards was also a Director of the insurance company!

There is a list of matters that need to be explained including:

- The early involvement of CCI in the development of Towards Healing.
- Payments of fees to advisors and Directors.
- Conflicts of interest.
- Information and data about risk being given to or withheld from secondary underwriters to CCI.
- Whether all obligations of company directors were always fulfilled.
- Whether all reporting obligations to the Prudential Regulatory Authority were always met.
- The validity of annual audit reports about CCI.
- Whether any senior advisor, senior employee or Director involved with any one of the three bodies/programs mentioned, ever contacted police in any jurisdiction.

We have come to look upon Towards Healing not as a pastoral response process, but instead a skilfully operated “shop window” process. Against the backdrop of Statute of Limitations effects and the protection afforded by the Roman Catholic Church Communities’ Lands (Amendment) Act 1986, it has operated to minimise financial payouts by church authorities and CCI and its successful operation has been used by the church to dampen down possible concerns by other insurers/underwriters about their exposure to significant and accumulating risk.

The church has been able to avoid having to meet the real needs of persons whose lives have been blighted by their childhood experiences, because taxpayer-funded programs have been available to provide for housing, health needs etc.

The most constant complaints reported to Broken Rites by victims are:

- Lack of transparency.
- Victims are not told the contact person’s qualifications or background.
- Victims being “grilled” by assessors.
- Suspicion of what has been reported back to church authorities.
- Victims being left with a feeling that the church authorities have been evasive and defensive.
- The lack of professionalism at the mediation meeting.
- Victims being given no information about how a financial offer has been determined by the Church Authority. Understandably they look upon Towards Healing as a process that is exploited to minimize the payment that is offered and they see the process as a lottery.

Prepared by Wayne Chamley



# NATIONAL COMMITTEE FOR PROFESSIONAL STANDARDS

A Committee of the Australian Catholic Bishops & the  
Australian Leaders of Religious Institutes

ABN 35 339 924 339

Document 4.

15 May 2006

Mr. Wayne Chamley  
Broken Rites (Australia) Collective Inc.  
P.O.Box 163  
Rosanna Vic. 3084

Dear Wayne,

I acknowledge receipt of your letter of 1 April 2006. Incidentally your letter of 1 September 2005 was not received at this office. The copy you included in your letter of 1 April is our first knowledge of it.

Both matters you raise are of serious import to the National Committee for Professional Standards.

1. The future ministry of a priest who has found to have abused a child in the past is addressed in *Towards Healing* 30 and 44.3.

*We commit ourselves to making every effort to reduce the risk of abuse by Church personnel.*

*Church bodies, especially those involved in providing care for children, shall have in place procedures, consistent with good child protection and industrial relations practice, for verifying the suitability of persons for employment or for participation as volunteers. They shall obey all applicable laws concerning employment screening and the prohibition of certain convicted persons from employment involving children.*

2. Ownership of and access to psychiatric/psychological and assessment reports are currently under review.

Like you and so many others, we are working to ensure that victims of abuse are given the best assistance available. We likewise share your resolve to ensure that preventative measures are in place to protect all who are at risk of abuse.

We thank you for your interest and wish you well in your work in this most serious matter.

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## Executive Officer

Sr Angela Ryan CSB  
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PO Box 981  
Bondi Junction NSW 1355

## Executive Officer

Br Julian McDonald CFC  
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Mobile: 0419 014 607

With best wishes,

Yours sincerely,

A handwritten signature in cursive script that reads "Angela Ryan". The signature is written in dark ink and is positioned above the typed name.

Angela Ryan CSB  
National Committee for Professional Standards

## Broken Rites

(Australia) Collective Inc.

PO Box 163 Rosanna 3084.

Telephone (03) 9457 4999

Sister Angela Ryan  
Executive Officer,  
National Office for Professional Standards  
PO Box 684  
Bondi Junction 2022.

Dear Sr. Ryan,

**Re. Outstanding matter that have been raised with your office.**

Chris MacIsaac has suggested that I write to you seeking a response to two matters that have been raised in previous correspondence. Our records show that we have not received a definitive reply from you about one matter and no correspondence to date about the other.

The matter about which we did receive an interim response is this question of catholic dioceses' compliance with the principles outlined in "Towards Healing" in respect of deployment of any priest who has been found to be a child abuser. The case raised with you (letter dated February 3, 2004) was the priest [REDACTED] who was discovered to be working at a church in [REDACTED] and the church was adjacent to the catholic primary school.

The second matter was raised with Penny Lackey and a copy of the letter was sent to you (dated 1-9-05). In brief I expressed concern about process, when I was advocate for [REDACTED]. I expressed concern about the fact that [REDACTED] was not provided with a copy of a psychiatric report (about [REDACTED] until Mr Shane Wall handed one across the kitchen table when he visited [REDACTED] at his residence.

You will see in the letter that I asked if there was a need for a review of the policy in relation to this question of release of reports to the claimant. I would expect that any review of policy must be done by the national body and you will know that this has been a continuing problem and I raised this matter with two other claimants prior to [REDACTED] case. [REDACTED] from Western Australia was one case I recall. It is my genuine view that the church is probably acting unlawfully when the Responsible Authority refuses to voluntarily provide a copy of any medical report, that is about a claimant, to the respective claimant.

There is now plenty of case law on this question and if it is your wish, I am more than willing to get an opinion from the Victorian Mental Health Legal Service.

Yours sincerely,

**WAYNE CHAMLEY.**

**cc. Chris MacIsaac, President, Broken Rites Australia.  
M Penny Lackey, PSG – Victoria.**

[REDACTED]