

Submission to the
Royal Commission into Institutional
Responses to Child Sexual Abuse

Issues Paper 2:
Towards Healing



4th September 2013

About the Authors

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In 2005, Hetty was announced as a finalist for the 2006 Australian of the Year Awards – she is the recipient of two Australian Lawyers Alliance Civil Justice Awards (2003, 2004) and was named a finalist in the 2008 Suncorp Queenslander of the Year Awards. She was awarded a Paul Harris Fellowship in 2010 and is a Fellow of the Australian Institute of Community Practice and Governance (March 2010). In early 2009, Hetty was recognised as one of approximately 70 outstanding leaders throughout the world, receiving the prestigious annual Toastmasters International Communication and Leadership award. In 2013 Hetty was awarded Northern Australia's Ernst & Young Social Entrepreneur of the year. Hetty is a member of the International Society for the Prevention of Child Abuse and Neglect and sits on the Federal Government's Cybersafety Working Party.

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About Bravehearts Inc.

Our **Mission** is to stop child sexual assault in our society.

Our **Vision** is to make Australia the safest place in the world to raise a child.

Our **Guiding Principles** are to at all times, do all things to serve our Mission without fear or favour and without compromise and to continually ensure that the best interests and protection of the child are placed before all other considerations.

Bravehearts has been actively contributing to the provision of child sexual assault services throughout the nation since 1997. As the first and largest registered charity specifically and holistically dedicated to addressing this issue in Australia, Bravehearts exists to protect Australian children against sexual harm. All activities fall under 'The 3 Piers' to Prevention; Educate, Empower, Protect – Solid Foundations to Make Australia the safest place in the world to raise a child. Our activities include but are not limited to:

EDUCATE

- ◆ Early childhood (aged 3-8) 'Ditto's Keep Safe Adventure' primary and pre-school based personal safety programs including cyber-safety.
- ◆ Personal Safety Programs for older children & young people and specific programs aimed at Indigenous children.

EMPOWER

- ◆ Community awareness raising campaigns (Online and Offline) including general media comment and specific campaigns such as our annual national White Balloon Day.
- ◆ Tiered Child sexual assault awareness, support and response training and risk management policy and procedure training and services for all sectors in the community.

PROTECT

- ◆ Specialist advocacy support services for survivors and victims of child sexual assault and their families including a specialist supported child sexual assault 1800 crisis line.
- ◆ Specialist child sexual assault counseling is available to all children, adults and their non-offending family support.
- ◆ Policy and Legislative Reform (Online and Offline) - collaboration with State Government departments and agencies.

Bravehearts Inc. is a National organisation, it is a registered Public Benevolent Institution, registered as a Deductible Gift Recipient, operates under a Board of Management and is assisted by State based Community Regional Committees, Executive Advisory Committees and a Professional Finance Committee.

Towards Healing

As an agency that works with, and advocates for, survivors of child sexual assault we trust our feedback will be useful in clarifying issues relating the sexual assault of children and young people as they pertain to the *Towards Healing* protocol.

- 1. The experience of victims who have engaged in the *Towards Healing* process.**
- 2. The principles and procedures of *Towards Healing* as instructions for Catholic Church authorities dealing with complaints and redress regarding victims of child sexual abuse.**
- 3. The principles and procedures of *Towards Healing* relating to the accused and particularly the responses and outcomes available.**

There is a great cynicism about the Catholic Church's internal processes and policies used to deal with allegations of child sexual assault, and there is certainly a reluctance to trust the internal procedures of the Church, who have in the past shown to only act when they are made accountable in a legal sense. This distrust is evident every time there is further disclosure of covered up sexual assault in the Church institution. There is a perception amongst sectors of the community that Church interests are more focussed on the public relations and legal liability aspects of allegations against clergy or religious rather than in seeking to achieve healing, restoration and just settlements for survivors.

This deep cynicism will ensure that when sexual assault allegations arise, public attention will be aroused.

The experience when working alongside of victims who are seeking compensation through the *Towards Healing* process is that the processes lack transparency and they are not always followed. Furthermore, there have been cases involving individual bishops and also religious orders where those representing the bishop or the particular Order have not been compliant with the processes.

Indeed 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 (cited in correspondence with Broken Rites). Thus there are no records of anything ever having occurred or being responded to.

Another major deficiency is the fact that these processes continue to be essentially internal ones. This means that persons who are known to and have then been appointed by the Catholic Church are invariably carrying out the administration of and operations of the process. Thus the power relationship between the Church and a victim is being maintained. This has often been further exacerbated by the fact that those representing the Church will often have been briefed by a lawyer or will bring a lawyer to the

negotiating table. Victims have seldom been able to afford this provision for themselves and some have spoken about being actively discouraged from doing so.

Many survivors have spoken about the lengthy process and feeling as though their matters were unreasonably “dragged out”. Many have suggested that the unnecessarily long process “felt as though it was purposively extended in the hope that...” victims would simply accept an offer to end the process; as if the Church were “trying to wear us down”.

Where a settlement has not been reached, then the victim has been faced with two options, either cease with the attempt to seek compensation or move towards making a claim in the courts.

Considerations by the church of fairness, “corporate” obligation, responsibility and morality etc. appear to be able to be suspended and the church authorities choose to see each case as a straight litigious matter. A number of survivors have commented on this situation, observing that the various arms of the Church have been prepared to pay massive legal costs in order to prevent any case ever going to a judgement, rather than meet the genuine needs of survivors in a realistic way. It is emphasised by many victims who have engaged in the *Towards Healing* process that the individuals involved in conducting the process have demonstrated no real understanding of the experience of victims of child sexual assault nor have they demonstrated real, felt compassion for the victim.

The public has also become aware of the common practise by bishops and Heads of Religious Orders to cover up for the offender, to move known offenders around parishes, schools and institutions. This has allowed the paedophiles to continue to sexual assault children. Offenders have even been moved overseas to New Zealand, Asia and South Pacific Island nations. There are recorded cases where critical information about the paedophile’s past history was not disclosed to those in charge of the new diocese, parish or school.

Relocations have not always occurred at the initiative of the authorities. Sometimes it has been the offender who has moved from one congregation to another and has been allowed to do so by church leaders who fail to take action when sexual assault is alleged. In some cases in Australia, ministers or youth leaders have been allowed to resign quietly, citing personal reasons, ill-health, or some other cause, and without anything being done about their offending behaviour.

There is a near-exclusive focus on priests, with little attention to the accountability of bishops, either for sexual harm they may have committed, or for failing to respond adequately to sexual harm carried out by priests under their supervision.

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

Child sexual assault is both a private and a public problem. For the survivors, alleged perpetrators and the institutions involved, there are quite obvious and legitimate private interests in ensuring that the processes used are private and confidential. Processes such as *Towards Healing* provide for confidentiality. However, these private interests in confidentiality need to be balanced with the rights of the victim to have a voice and the public interest in transparency and accountability. The horrific crime of child sexual assault is effectively hidden when allegations are dealt with internally and privately.

The community has an interest in ensuring that the internal processes used by the Catholic Church are sufficiently rigorous, appropriate and fair. This goes to both transparency and accountability.

See also our response under 11.

5. 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.

As stated earlier a major problem with current processes is the fact that these continue to be in effect internal ones. This means that persons who are known to and have then been appointed by the Catholic Church are invariably carrying out the administration of and operations of the process. Thus the power relationship between the Church and a victim is being maintained.

It is essential that selection for those involved in the *Towards Healing* processes include individuals who are external to the Church and inclusive of representatives from specialist victims services with knowledge and understanding of the impact of child sexual assault on victims.

All personnel engaged in the process must have specialised training in understanding the realities of child sexual assault, the impact on victim and how to appropriately handle disclosures and concerns in the best interest of the child/victim.

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

As a document, *Towards Healing* has been strongly influenced by Canon Law and by legal advice sought and received on considerations of Civil Law. It is of interest that the document makes very few statements in relation to Criminal Law.

In the Catholic Church, the tradition was established centuries ago that the Church and the State exist as parallel legal systems and structures. Canon Law emerged as a distinct body of law that paralleled the State's jurisdiction. Canon Law was a vast system of law that governed the Church, and also covered moral and spiritual matters for the population. The Church had its own courts, separate from the common law courts. The ecclesiastical courts were not subject to the other courts, and in this sense, the Church was not subject to the laws of the State. Where the matter was within the jurisdiction of the ecclesiastical courts, the Church dealt with the matter in accordance with its own laws and without reference to the Civil Law or Criminal Law of the State.

Through Canon Law, the Church dealt with its own people. Historically, if the alleged perpetrator denied the allegation, then it was the victim's word against the accused, and usually no further action resulted other than to give a warning to the alleged perpetrator concerned. The Church exercised disciplinary functions over clergy. Such internal investigations were unlikely to be very effectual. If the matter had been seen clearly as one of alleged criminal misconduct, and the police had been called in to investigate, a different result might have been reached.

The legacy of that tradition may be one explanation why the Church has in the past neither reported cases of child sexual assault to the police nor has it encouraged the victim or the victim's parents to do so. In fact, many survivors speak of being actively discouraged, by the Church, in pursuing either criminal or civil proceedings.

In addition, there is the issue of the silence of the confessional. Under *Towards Healing* there is a requirement of the mandatory reporting of any knowledge of child sexual assault, with regard to Australian State and Territory laws. However, the Catholic Church has over thousands of years upheld, and continues to uphold, the seal of confessional as sacrosanct under Canon Law.

This is clearly of concern from a child protection perspective, where the Church has limited (if any) accountability under criminal law. The need for the Church to reform itself is clear if there is to be a zero tolerance for child sexual assault and no sanctuary for child sex offenders. Certainly with the issue of child protection, secular law should over-ride any Church law and there should be no exemptions. We believe that for most parents, if their child was being sexually assaulted and the offender confessed to a priest, they would want the authorities to know about it. This is particularly relevant, but not exclusively so, to on-going sexual assault.

Please also refer to our response under 11.

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

Many victims have reported an unsympathetic response from the Church when disclosures are made. Specifically, many have spoken about being openly discouraged

from taking the matter to the police, while others have experienced the Church “walls going up” once the proposition of compensation is raised.

It is absolutely essential that personnel involved in the *Towards Healing* process are trained and include external individuals who work with victims of child sexual assault.

Also refer to our response above under 1, 2 and 3 and 11.

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

One of the greatest challenges for organisations seeking to address concerns of child sexual assault is the need to understand and overcome the silence, secrecy and shame (the 3 S’s) that surrounds this crime. Child sexual assault strongly relies on silence; in order to keep offending perpetrators need secrecy. Within organisations this can operate at two levels, (1) silencing of victims and (2) silence within the organisation.

Offenders usually put a great deal of effort into ensuring that a child remains silent. Apart from promises, threats and bribes, offenders also take advantage of the child’s powerlessness by presenting a distorted or false view of what is happening. Victims of sexual assault are silenced their whole lives and then again through the *Towards Healing* process. This must stop.

It is Bravehearts’ position that if a victim wishes to speak out about harms they experienced they must be entitled to do so. The silencing of victims must stop at all costs.

Historically, and often in more recent times, Church responses to disclosures or concerns of child sexual assault have come under much scrutiny. If we are to successfully confront the issue of child sexual assault, challenging the culturally and historically entrenched response of secrecy and silence to child sexual assault is imperative.

9. The standard of proof applied during the *Towards Healing* process.

The criminal sexual assault of a child is serious and is a serious criminal offence – every time – without exception. It is not a matter of degree. This in itself makes child sexual assault different to other forms of assault and abuse, both of children and adults.

Bravehearts position is that disclosures or concerns of child sexual assault are not matters that should be investigated internally by the Church. These are, be they current or historical these are allegations or concerns of a criminal nature and must be investigated independently by experienced investigators.

Also see our response under 11.

10. 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.

The role of these parties more often than not hinders the process and as such should be limited. Survivors have provided comment that on many occasions it is when the legal firms become involved that the process and communication slow down. The role and participation of lawyers, insurers and other third parties could be minimised if there was the enforcement of compensation based on an agreed upon scale of harm.

11. The sufficiency of the guidelines in relation to referral of matters to police.

With respect to understanding that some victims are reluctant to proceed down the criminal path by reporting to the Police, we believe that any and all allegation of child sexual assault should be reported to the Police. The idea that Christians should tell it to the Church rather than going to the Police about sexual assault has often led to failures to protect children.

At one stage Bravehearts was speaking with the National Committee for Professional Standards with a view to rewriting the *Towards Healing* protocols, with specific emphasis on referral process and with the first presumption being that if someone discloses the matter is referred to police for investigation:

- **Where the victim is still a child** and the Church becomes aware or has concerns that a child is being sexually harmed, we all have a responsibility to put the protection and safety of children first. Any form of sexual behaviour by an adult towards or with a child is always sexual assault, is always a crime and must always be reported immediately to the police. Allegations of child sexual assault must not be investigated by the Church, and in particular the child/young person or the accused must not be questioned by the Church.
- **Where the victim is now an adult**, the Church should encourage the adult victim to disclose to the Police, and provide them with support to do so. For adult victims who are not confident to report to Police, an alternative process needs to be put in place to assist them. Bravehearts Sexual Assault Disclosure Scheme (outlined below) has been running successfully since 2001 and provides an ideal model for the Church to access. Such a process will ensure transparency and professionalism in responding to complaints of child sexual assault and will reflect criticisms of Church cover-up.

Sexual Assault Disclosure Scheme

Bravehearts understands that many victims need the belief and/or validation of others to gain the strength to disclose and to heal. Bravehearts also recognises that disclosure, awareness and education are the best weapons against the continuing sexual assault of children.

Many challenges exist in the identification, reporting and disclosure of child sex offenders and offences. These include:

- Fear of breaking the silence and coming forward;
- Fears that the victims' story will not be heard let alone believed or validated;
- The victims themselves are increasingly isolated by their own fear, shame and self persecution;
- Fear and lack of faith in the establishment/authority figures;
- Anxiety about their own families and society's potential disbelief, intolerance and lack of support;
- Fear that disclosure will result in them being treated 'differently' by friends and family;
- Concerns about confidentiality, losing control of the situation; and
- No confidence or gratification in the sentencing/justice outcomes.

The Sexual Assault Disclosure Scheme (SADS) was developed by Bravehearts to overcome these barriers and assist survivors in their disclosure to police in a safe and non-confronting way:

Two forms (linked by a common identification number) are completed either online or via paper copy.

1. Form A only seeks information on the person making the disclosure. Form A is held securely by Bravehearts.

2. Form B seeks information on the alleged offender and offence. Form B is provided to the Police. The first question on this form provides you with the opportunity to provide police with your name and contact details directly, or choose to remain anonymous and only be contacted through Bravehearts.

Information from Form B is processed by the Police and entered into their system.

The Police assess the information and contact Bravehearts with the forms identification number when they wish to speak to the discloser (unless you have indicated on Form B that Police can contact you directly)

Bravehearts contacts the discloser, letting them know that the Police are interested in speaking to them, what this means and seeking permission to pass on your name and contact details to the Police.

If you are happy to speak to the Police your details are passed on and Police can speak with you to establish whether or not an investigation is possible. If you do not wish to speak to the Police, the information from Form B remains in the Police system as intelligence.

This process was offered to the National Committee for Professional Standards and to date has not been taken up.

12. The role of Canon Law in *Towards Healing*.

As stated under 6:

As a document, *Towards Healing* has been strongly influenced by Canon Law and by legal advice sought and received on considerations of Civil Law. It is of interest that the document makes very few statements in relation to Criminal Law.

In the Catholic Church, the tradition was established centuries ago that the Church and the State exist as parallel legal systems and structures. Canon Law emerged as a distinct body of law that paralleled the State's jurisdiction. Canon Law was a vast system of law that governed the Church, and also covered moral and spiritual matters for the population. The Church had its own courts, separate from the common law courts. The ecclesiastical courts were not subject to the other courts, and in this sense, the Church was not subject to the laws of the State. Where the matter was within the jurisdiction of the ecclesiastical courts, the Church dealt with the matter in accordance with its own laws and without reference to the Civil Law or Criminal Law of the State.

Through Canon Law, the Church dealt with its own people. Historically, if the alleged perpetrator denied the allegation, then it was the victim's word against the accused, and usually no further action resulted other than to give a warning to the alleged perpetrator concerned. The Church exercised disciplinary functions over clergy. Such internal investigations were unlikely to be very effectual. If the matter had been seen clearly as one of alleged criminal misconduct, and the police had been called in to investigate, a different result might have been reached.

The legacy of that tradition may be one explanation why the Church has in the past neither reported cases of child sexual assault to the police nor has it encouraged the victim or the victim's parents to do so. In fact, many survivors speak of being actively discouraged, by the Church, in pursuing either criminal or civil proceedings.

The 2010 *Towards Healing* document presents a positive step towards improving the Catholic Church response to allegations of child sexual assault and abuse broadly.

13. 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.**

Compensation based on an agreed upon scale of harm, developed in conjunction with specialists in the sector of child sexual assault would provide surety and transparency in the determination of compensation and financial support.

At no time, should compensation or financial support be contingent on the signing of a confidentiality agreement. Victims' voices should not be silent to protect the Church or the offender and it should always be the decision of the victim on whether or not they wish to speak about the harm perpetrated against them.

Compensation and financial support should cover, for example:

- pain and suffering
- loss of enjoyment of life
- loss of income
- counselling and support
- medical expenses, which includes the costs of getting medical reports
- other incidental expenses (such as travel for medical treatment).

For many survivors, an acknowledgement of the harm perpetrated and the impact of that harm on the individual and their families is crucial to the healing process. Many survivors have lived with guilt and shame for their entire lives and an acknowledgement that the harm occurred, that they were not protected or safe in a place where they should have been, that they as a victim were not responsible and an acknowledgement of any lack of duty of care at the time of the sexual harm or at the time of disclosure is essential.

14. The nature and extent of the review process available.

Review process are an essential part of any system, however they must be timely and transparent.

15. Does *Towards Healing* assist in the prevention of child sexual abuse within institutions of the Catholic Church?

We have seen no evidence that *Towards Healing* assists in the prevention of child sexual assault in the Church. In some cases we continue to see a reluctance of the Church to proactively support initiatives that aim to raise awareness and increase support and preventative approaches.

Child-focussed Prevention

Catholic Education has been supportive of personal safety education programs with children and have supported Bravehearts *Ditto Keep Safe Adventure* programs.

Providing children with personal safety education has the effects of not only building resiliency in children and young people and reducing their vulnerability to sexual exploitation, but it can foster a cultural environment in organisations that they are proactive in preventing sexual harm to children.

Programs like Bravehearts' *Ditto's Keep Safe Adventure School-based Program* have the overall objective to help educate children in the fundamental principles of personal safety in a gentle, non-confronting way, using language and concepts that children, teachers and parents can feel comfortable using. The main aims of these programs are to provide teachers, children, and parents with appropriate language to discuss the topic of personal safety comfortably, assist children with the development of resiliency and protective factors, and empower children to disclose information on any unsafe situation.

Child Protection and Risk Management

While positive steps can be taken in empowering and building resiliency in our children – lessening their vulnerability to child sexual assault, it is equally as important that these programs are complemented by programs highlighting the responsibility adults play in keeping children safe. Adults should be taking proactive steps to protect children from this significant risk. It is unrealistic to think that a young child can take responsibility for keeping themselves safe. Adults are the ones who need to prevent, recognise and react responsibly to child sexual assault.

Research suggests that many adults are unaware of effective steps they can take to protect their children from sexual assault (NAPCAN, 2010). Most do not know how to recognise signs of sexual assault and many do not know what to do when sexual assault is suspected or discovered.

Adults involved in organisations that have regular and ongoing contact with children and young people need to have an understanding of the dynamics of child sexual assault, including the indicators and the barriers to speaking out. In order to properly address concerns or disclosures by children in their care, such training should be an integral component of the organisation’s child protection and risk management policy.

It is every organisation’s responsibility to do their best to protect the children who they come in contact with. This is true whether harm or potential harm is internal or external to the organisation.

There are a number of organisational factors, particularly relevant to religious organisations, that are associated with greater risk of child sexual assault. Research has shown that the following factors increase risk within an organisation:

- Staff being alone with a child: Environments where staff members have the opportunity to be alone with a child or children are high risk.
- Lack of staff accountability: Lack of transparency and accountability (both internal and external) create organisations where there is a high risk of problems and concerns being unidentified and/or hidden.
- Lack of professionalism: Staff professionalism should be regulated to ensure integrity and increase compliance with organisational policies.
- Poor policies and procedures: Organisations with no or poorly written policies and procedures increase the risk of employing high risk staff.
- Risky physical attributes: Opportunities to harm children are increased in organisations which are closed and create isolation from the outside. The physical structure of an organisation plays an important role in creating ‘safe environments’ for children and young people.
- Accountability independence: The lack of external scrutiny is a high correlate to the high risk level organisations.
- Inadequate resources: Inadequate funding and resources increases the likelihood that organisations will slip in terms of positive staffing and oversight practices. These organisations tend to not prioritise instituting effective policies and procedures.

Strong child protection policies and a risk management focus must be the cornerstone to any organisational approach to protection against child sexual assault and the appropriate response to concerns and disclosures.

This approach is founded on the following principles:

- Organisations have a moral and legal responsibility to protect children within their care.
- Organisations have been, are and will continue to be vulnerable to child protection concerns until the issues are brought into the open.
- Organisations without child protection policies, guidelines and risk management strategies are more vulnerable to attracting offenders to their organisation.
- Organisations without child protection policies, guidelines and risk management strategies are more vulnerable to false or malicious accusations.
- Organisations without child protection policies, guidelines and risk management strategies may be more vulnerable to civil action.