

John Ellis & Nicola Ellis

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

**Issues Paper No.2 – Towards Healing
[Roman Catholic Church entities]**



4 October 2013

Introduction

This submission will deal in a summary way with the primary complaints made by victims concerning the Roman Catholic Church's *Towards Healing* process.

The authors are solicitors who have acted for more than 200 victims of child sexual assault and/or abuse by Catholic Church personnel. The civil claims arising out of that abuse have largely been conducted outside the *Towards Healing* process because of the potential for re-traumatisation inherent in many aspects of *Towards Healing*. However:

1. A number of claims have involved us representing people in, advising on, or supporting them through *Towards Healing* processes. These submissions reflect the feedback of our clients on their experience of the process and our observations of those processes.
2. We have also over the last 5 years been approached by many people who have previously been involved in a *Towards Healing* process. These submissions reflect the feedback of those persons and our observations from the documents obtained by us in relation to the process for the purpose of advising and assisting those persons.

It is noted that we also have our own personal experience of participating in a *Towards Healing* process. That experience will be the subject of separate submissions and evidence to the Commission.

We will not in this submission provide any background information concerning the development, review, revision, procedures or stated purposes of the *Towards Healing* process. We are able to assist with some information relevant to that issue should the Commission require, but have assumed that the Commission will inform itself on those matters. Nor in this particular submission do we intend to address alternative civil redress.

Where reference is made to provisions of the *Towards Healing* documented procedures, those references are, unless otherwise specified, to the 2010 revision of the document titled: '*Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse against Personnel of the Catholic Church in Australia*'

As this is a public submission, particular Church authorities and specific complaints will not be identified. Where we have permission to release detailed information regarding a matter and can provide a 'case study' with supporting documentation if requested by the Commission, this is identified in the relevant submission.

From our conversations with victims, it appears that the fundamental experience of many victims participating in *Towards Healing* processes is of accentuated power imbalance, lack of transparency and lack of accountability, leading to **significant re-traumatisation**. The specific manifestations of this are detailed in the following sections of this submission.

Specific Issues

1. **Victims must approach the Church to make a complaint. They see that as going to the body responsible for harming them. There is no option for a complaint to be made to an independent person.**
 - 1.1. Many victims feel intimidated by having to initiate contact with a Church entity to make their complaint.
 - 1.2 This has the impact of discouraging complaints and reducing the number of complaints made.
 - 1.3 We requested several Church authorities during 2010 to allow independent psychologists and counsellors to undertake the role of 'Contact persons' under *Towards Healing*, and for the Church to fund that role and advertise this option for people unwilling or unable to approach the Church directly. The response was that this would be too costly.
 - 1.4 This suggestion was made because first disclosure is often to a psychologist or counsellor, after the victim has established a relationship of trust with the therapist.
 - 1.5 The National Committee for Professional Standards published guidelines in 2010 for 'legal personnel' that provided, amongst other things, that:
 - 1.5.1 Victims *must* have direct contact with *Towards Healing* personnel;
 - 1.5.2 Lawyers cannot act as contact persons;
 - 1.5.3 The Church will not pay for professional support persons to be present during the contact between a complainant and *Towards Healing* personnel.
 - 1.6 As a consequence of their fear and apprehension about the process and the unavailability of alternatives to commencing a *Towards Healing* process, many victims delay or avoid reporting their complaints.
 - 1.7 The primary anxiety is that the complainant will not be believed. This is a generalised anxiety but often more strongly applied where the first contact has to be made to a person identified with the Church.
 - 1.8 This anxiety is exacerbated by the identification of the relevant Church entity in the *Towards Healing* document as the 'Church Authority'. This underlines and emphasises the power imbalance between the victim and the Church entity and its personnel.
 - 1.9 We have had the experience of people delaying more than 10 years after a decision to disclose before being able to bring their complaint, simply because they are intimidated by the power of the Church.

- 1.10 This 'delay' is then used against the victim as creating a bar under the Limitations legislation because the ability to bring a claim and the impacts of the abuse have been known for a lengthy period.

2. When victims do approach the Church through Towards Healing, they are often discouraged from proceeding, or filtered out at the point of first contact through the Professional Standards Office.

- 2.1 We have been informed of a number of matters where the first contact with the Professional Standards Office resulted in the person being sent away to 'think about' whether they want to go through with the complaint.
- 2.2 As it is often difficult for people to make the first contact at all, this type of response is seen as a rebuff. This makes it considerably less likely that a complaint will proceed at all. If it does, it is likely to be delayed for many years.
- 2.3 In other matters, the claim is effectively filtered out at the point of the Professional Standards Office without the appointment of a contact person to even take the complaint.
- 2.4 **Case Study 1 ['AA']:** In a current matter, the victim approached the Professional Standards Office and gave details of their complaint by letter in 2004. The complaint involved a member of a religious order who happened to be related to the victim. This is not an unusual circumstance. It had taken the victim more than 5 years to be able to come forward with the complaint.

The Director of Professional Standards responded to the complainant that there was nothing that could be done because: *"We do not deal with cases of incest"*

It was a further 8 years, following the death of the perpetrator, before the complainant had the courage to make a second approach to the Professional Standards Office.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

3. If the victim progresses through this initial filter, they are then commonly sent to a priest, religious brother or nun to give details of their complaint.

- 3.1 'Contact persons' appointed under *Towards Healing* are often priests, religious brothers or religious sisters. This has the impact of further intimidating the complainant, and reinforcing the matters referred to in 1.1 - 1.10 above.
- 3.2 Victims are not given a choice of contact person. One is simply 'appointed' by the Professional Standards Office. In one State, the former long-standing

Director of Professional Standards himself acted as the contact person. It is not known whether this practice has been continued by his successors.

- 3.3 As the first role of the contact person is to take the details of the complaint, the process often becomes constricted at this stage if the victim is not able to feel comfortable with the appointed person. Any inability to disclose details of the abuse adequately to the contact person is used to reflect badly on the victim when they later disclose those details.
- 3.4 Initial interviews are often undertaken at presbyteries, parish offices, the Professional Standards Office, other Church premises, or public places such as cafes or even airline lounges. Religious venues can increase the unease and discomfort of victims and use of venues where there is inadequate privacy have been experienced as traumatising and disrespectful when such sensitive information is being elicited.

4. Contact persons are supposed to keep the victim informed through the process. In practice that does not happen.

- 4.1 Contact persons often have little or no involvement with the victim after the complaint is taken.
- 4.2 Contact persons rarely (if ever) take the time to develop a relationship of trust with the victim before asking the victim to recount the details of the abuse. The statement of complaint is rarely taken over time. Rather, the statement is usually prepared at the first and only meeting with the contact person.
- 4.3 Trust may be difficult to establish particularly in the circumstances where the contact persons are clergy, and the victim does not feel comfortable with them. Contact persons are not, and are not seen as, independent of the Church or 'on the side of' the victim. Therefore, they are not the appropriate persons to have the role of keeping the victim informed. The fiction that they do so perpetuates the myth of *Towards Healing* as a pastoral process.
- 4.4 In fact, *Towards Healing* is an overly legalistic process, even being described by one lawyer very close to one State's Professional Standards Office as a 'quasi-judicial' process.
- 4.5 One victim specifically asked the contact person: "*Aren't you on my side?*". The response was a resounding "*No, of course not*".
- 4.6 Victims are given little feedback regarding the process as it evolves, and must ask for that information. This inhibits those persons who are anxious, fearful or

not able to stand up for themselves, which are all common experiences of victims, particularly in their dealings with the Church.

4.7 The lack of proactive provision of information to victims during the process also disadvantages less articulate persons. It is an unfortunate fact that those targeted and groomed for abuse may often be more vulnerable members of the community. Further, those who suffer abuse often have had disrupted education as a result, and for many, this inhibits their ability to advocate for themselves.

4.8 Conversely, articulate, educated complainants are often viewed as 'trouble-makers', 'only after money', or as having an illegitimate agenda to harm or 'attack' the Church, and attempts are made to silence or sideline such complainants through the process.

5. Victims have to tell their story multiple times through the process.

5.1 In the name of being 'pastoral', those administering the *Towards Healing* process may ask the victim to relate the account of the abuse many times throughout the process to different people, despite having initially given the statement to the contact person.

5.2 This requirement to revisit the trauma throughout the process represents a fundamental lack of understanding of best practice in establishing conditions most conducive to trauma recovery. Conversely, revisiting the trauma is for many complainants experienced as re-traumatising.

5.3 The impact of re-telling is exacerbated by changes of personnel as the process proceeds, and the successive appointments of a 'contact person', 'assessor' and 'facilitator', together with the involvement of Professional Standards Office staff and representatives of the Church entity.

5.4 Part of the problem is the 'intake procedure' (as described above) whereby the complaint is first articulated, often incompletely, to a 'contact person' with whom there is no relationship of trust, and who is identified with the Church.

5.5 The need to tell and re-tell the history of the abuse exacerbates the experience of the victim of being doubted.

6. The whole process is experienced as being adversarial and over-legalistic and more about protecting the Church than looking after victims.

6.1 The use of the 'assessment' (i.e. fact-finding investigation) procedure is a key aspect of the adversarial nature and impact of the process.

- 6.2 We recognising the entitlement of Church entities to apply, should they see fit, some screening of allegations. However, in our experience, reflected in the experience of other professionals we have spoken to working in the field, the incidence of fabricated allegations is almost unknown.
- 6.3 In most circumstances which do not involve a formal criminal process, the 'assessment' process is, in our view, unnecessary and often misused. It is recognised that in some circumstances, there is a mandatory investigation process, and in such cases, this must be undertaken [for example: allegations falling within the jurisdiction of *Part 3A Ombudsman Act 1974 (NSW)*]. Such an investigation should not, however, delay or affect a Church entity's interim and ongoing supportive response to the victim.
- 6.4 Whether the perpetrator is alive and denies the allegations, or is alive but unable to respond because of severe old age, ill health or dementia, or where the perpetrator has died, there is often no need for a formal, legalistic 'factual' investigation.
- 6.5 There are other means by which the Church entity can be assured of the veracity of a victim's allegations: for example: (1) through the specific expertise of Church personnel who are trained social workers or psychologists and who can themselves recognise victims as truthful and credible, or (2) through forensic assessment by psychologists or psychiatrists whose speciality includes childhood sexual abuse and its sequelae.
- 6.6 Often, victims fear that the *Towards Healing* 'assessment' procedure is being used as a means to denigrate their allegations. This perception may be reinforced by both the implementation and the outcome of the process. In 'historical' allegations, where the perpetrator is dead, cannot be identified, or cannot be found, the reality is that there is little objective evidence that could guide the Church entity in forming a view as to the veracity and accuracy of the allegations. At the end of the day, this *must* be a matter of assessing the victim's truthfulness and reliability as a historian.
- 6.7 These are largely *not* matters that can be reliably assessed by an 'investigator'. As noted above, in our view, the more appropriate professional in that case would be a forensic psychologist or psychiatrist who could assess the victim, provide a report identifying the impacts of the abuse, and provide a professional opinion as to the consistency of those impacts with the abuse alleged. Such a report would serve two purposes in the process, if the aim were truly to provide an adequate and just response to the victim:
- 6.7.1 Providing support for the veracity and accuracy of the complaint: and

6.7.2 Providing information upon which a just and adequate response which properly addresses the harm the victim has suffered and their present support needs could be formulated.

6.8 **Case Study 2 ['AB']:** In a current matter, the victim was interviewed by the Church leader, who indicated to the victim that his account was accepted and that he was believed. A psychologist support person appointed by the Church entity also told the victim that he was believed. The perpetrator was deceased.

An 'assessment' process was then instigated. The assessor's report, once completed, concluded that the allegations could not be substantiated on the balance of probabilities.

The victim was then sent a copy of the report and informed by the Professional Standards Office that on the basis of the 'findings' in the assessment report, there was effectively nothing more that the Church entity was prepared to do for him and the *Towards Healing* process was therefore at an end.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

6.9 In a matter which arose some years ago, the victim was subjected to an assessment process which the victim found extremely traumatic. It was considered that the investigator was not acting fairly and thoroughly, and was not sensitive to the victim's needs. The victim was denied the opportunity for professional support during interviews with the investigator. The investigator failed to interview a number of relevant witnesses.

In this matter, there was not in fact any significant dispute as to the facts. The issues were more concerned with the legal implications as to whether the relevant Church entity was responsible for the conduct.

The assessor found ultimately in favour of the victim. However, the Church leader rejected the findings and once again, the victim was told that the *Towards Healing* process was at an end.

6.10 In other matters, the Professional Standards Office applies the process in a legalistic manner which shows no respect for the victim:

6.11 **Case Study 3 ['AD']:** In a current matter, we act for a victim of abuse in relation to a religious order. Initial contact was made with the Order, and a response received from the Order's solicitor indicating that the Order wished the matter to proceed through *Towards Healing* and that the complaint should be directed to the relevant Professional Standards Office (PSO).

This was done.

The issues concerning 'contact persons' were mitigated by the then Director of the relevant PSO acceding to our request that the victim could provide a statement in his own time with the assistance of his therapist. However, the costs of that assistance were not met by the Church entity.

After the statement was provided to the PSO, a new person (a lawyer) was appointed to the relevant State PSO. It then emerged that the perpetrator was still alive and living overseas¹. A decision then needed to be made as to whether a further report would be made to Police. A *Towards Healing* process cannot proceed while there is a concurrent Police investigation².

The victim chose not to again report to Police in the circumstances. He therefore signed the *Towards Healing* mandated declaration recording that decision.

However, the relevant PSO *also* required the victim to sign certain other authorities and declarations which are *not* mandated by the *Towards Healing* document. These were signed by the victim in a modified form, designed to satisfy the victim's desire to have contact with him be arranged through his representatives and for requests for information etc. to be dealt with in a similar fashion rather than through direct contact between the PSO and the victim.

The response of the PSO was to demand that further declarations and authorities in the originally required form be signed, on pain that the matter would not otherwise be progressed. A legalistic and high-handed approach is being pursued that is not responsive to the victim's particular needs and reasonable wishes.

¹ While the identity of the perpetrator had been notified to the Order some 6 months earlier and to the PSO with the initial notification, this information was provided to us only after the victim's statement was delivered.

² A statement in a particular form is mandated by paragraph 37.2 of the *Towards Healing* procedures if a complainant chooses not to report the relevant assaults to the Police. The footnote to that paragraph states (emphasis added):

When a complainant does not wish to go to the police or other appropriate authority and asks the Church to investigate an alleged crime, the complainant is required to sign the following statement before the Church takes any action:

"The Catholic Church has strongly urged me to take my complaint to the police or other civil authority. It has been carefully explained to me that any process the Church establishes will not have the same powers to investigate the matter and to test evidence as the courts have. A Church process cannot impose the same penalties as a criminal court. Aware of these limitations, I still state that I do not wish to take my complaint to the police or other civil authority at this time and I ask that a Church process be established."

This issue remains in impasse, some 3½ months after the signed declarations were provided to the PSO. The Director of the PSO has steadfastly refused all requests for a meeting over a period of 6 months since taking over the role.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

- 6.12 While the *Towards Healing* procedures provide for 2 assessors to be appointed³, we are not aware of any matter in which this has been done.

7. Victims feel that they are not kept informed regarding the process. They commonly complain of experiencing unexplained and lengthy delays.

- 7.1 In some matters, a copy of the applicable *Towards Healing* procedures is not given to the complainant.
- 7.2 Complainants are often not given a clear indication of the steps involved in the process and the likely timing nor are the range of personnel involved explained.
- 7.3 Complainants are often made to feel like they are a nuisance when they follow up to find out the progress of their matter.
- 7.4 Delays are common, and usually not adequately explained. It is not uncommon for requests for action or information to go unanswered for months.
- 7.5 The whole process can take up to 3 years from initial contact to completion. It is common for the process to be in excess of 12 months.
- 7.6 **Case Study 4 ['AE']:** In a recent matter, the victim made a complaint through the Professional Standards Office.

He was first interviewed by the (single) appointed assessor 6 months later.

After a further 4 months, he was informed that the investigator had completed her report.

Despite this, the report was never provided to the complainant. Three (3) months after having been notified that the report had been completed and submitted to the relevant Church entity, the complainant was notified of the key findings of the report. No details of the reasons were given. This is despite paragraph 40.9.3 of the *Towards Healing* procedures⁴.

³ Towards Healing procedures paragraph 40.1

⁴ "The complainant is entitled to know promptly the findings of the assessment and the reasons for them"

The whole 'assessment' / investigation process took 12 months despite the Church entity being aware that there were particular and unusual reasons why a timely response was required. Reference is made to paragraph 40.11 of the *Towards Healing* procedures⁵.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

8. Paradoxically, some people feel forced or pressured into a meeting with Church personnel to seek to resolve the claim before they are ready.

- 8.1 While many victims complain about extensive and inordinate delay, some victims have felt pressure to meet with a Church official before they are ready.
- 8.2 Often the making of a complaint under *Towards Healing* is at an early stage of the process for the victim, and soon after their first disclosure. Sometimes, the making of the complaint itself represents the first disclosure.
- 8.3 What is required in that circumstance is for an environment of safety to be established before anything else happens. This primarily involves the establishment of an effective and supportive therapeutic relationship. This can take some time, as trust needs to be established.
- 8.4 While offering the victim the opportunity to meet a Church leader at an early time can be supportive, *forcing* the victim into this, and particularly into a meeting where the abuse and the response of the Church entity is to be discussed can be harmful and dangerous. To quote one victim: *"sitting across the table from 'men in black' I'd never met before and being expected to tell them all about what happened to me as a kid was almost worse than the original abuse..."*
- 8.5 While pushing for an early meeting may be well-meaning albeit misguided, the impact on the victim may also be a feeling that they are a 'problem' to be disposed of quickly. An experienced and compassionate Church leader may recognise and diffuse such perceptions, but many Church leaders do not do so.
- 8.6 A truly individualised compassionate response would be for the Church entity to *offer* an early meeting rather than demanding a meeting, especially if the particular Church representative has the expertise and confidence to tell the complainant that he or she is believed at that meeting. The timing of the

⁵ "the process of the assessment shall be undertaken and concluded as quickly as possible and the process shall be as transparent as possible to all concerned"

meeting can be guided by the victim's sense of preparedness in consultation with his or her therapist and/or advocate.

- 8.7 Certainly, complainants should not be forced into early meetings where a final resolution of the complaint is suggested before all of the necessary information is available from the victim's point of view.

9. Victims feel an imbalance of power, particularly as part of the process involves a meeting with the Church leader or a senior Church person.

- 9.1 Whatever the ostensible basis for mandating direct contact with a Church leader as part of the many process, victims often do not feel that this is a pastoral aspect of the process.
- 9.2 Rather, they often feel anxious about meeting a Church leader and express feelings of intimidation and powerlessness.
- 9.3 This is exacerbated where the meeting with the Church leader is delayed to the end of the process when a 'facilitated meeting' is scheduled, at which time the response of the Church entity is given and the redress or reparation to be provided to the victim is to be discussed.
- 9.4 The procedures and implementation of *Towards Healing* appear to demonstrate little understanding of principles of 'trauma-informed' care. Practice Guidelines for the *Treatment of Complex Trauma and Trauma Informed Care and Service Delivery* have recently been published by ASCA (Adults Surviving Child Abuse). While the final guidelines were launched earlier this year (2013), the principles upon which they are based have been part of the knowledge surrounding complex trauma since well before the latest revisions of *Towards Healing*.
- 9.5 Fundamental to supporting victims of childhood sexual abuse is the creation of an environment of safety and stability. For many victims, this includes as a basic requirement that they have appropriate professional supports (for therapy and advocacy) in order to redress the imbalance of power involved when approaching a Church entity to seek acknowledgement, accountability and redress.
- 9.6 Excluding the ability of victims to have such support, either directly by not permitting complaints to be initiated and progressed through an intermediary or advocate, or indirectly by refusing to meet the costs of that advocacy or by delaying and blocking steps by the advocate to initiate a claim/complaint, denies victims this most basic requirement of safety. This can have the impact that the claim/complaint process becomes overwhelming and re-abusive for victims.

9.7 The role of lawyers as advocates for victims has been often criticised by Church entities. It is true that ineffective or inappropriate advocacy which exacerbates an adversarial and overly legalistic climate, is counter-productive and harmful to victims' interests. However, sensitive, compassionate and 'trauma-informed' advocacy can do much to assist in creating the conditions for an effective response by a Church entity to the victim by facilitating an environment of safety and providing the victim with a 'buffer' which maximises the potential for the process to be experienced as pastoral.

10. The Victim has no control over or say in the process. Meetings are facilitated by Church-appointed facilitators, whom victims see as being part of the 'Church's side', or (contrary to the Towards Healing procedures) by the Director of Professional Standards. Independent mediators agreed with the victim are not generally used. Victims often feel powerless and outnumbered in any meetings.

10.1 Paragraph 41.4 of the *Towards Healing* procedures provide for a facilitator to be agreed between the parties, either from a panel of facilitators maintained by the Professional Standards Office or another suitable person proposed by the complainant. There are procedures where there is a failure to agree.

10.2 In practice, a facilitator is appointed by the Director of Professional Standards and often the first the complainant knows about this is when the 'facilitator' contacts the complainant directly. The complainant's preference for a male or female facilitator is often not sought or respected.

10.3 The facilitators are selected from a small panel of persons apparently maintained by each Professional Standards Office. Preference appears to be shown for 1-2 favoured facilitators, to the extent that facilitators often travel interstate to conduct facilitations, rather than a locally-based facilitator being selected. Independent mediators proposed by the victim are not generally used⁶.

10.4 The list of facilitators is not publicly available.

10.5 Some of the facilitators act also as assessors for Church entities in the *Towards Healing* process. Some of them hold formal roles in other Church entities, and therefore cannot be seen as independent.

10.6 The common experience of victims is that the facilitator is not perceived as independent, but rather as part of the Church organisation.

⁶ This has not been the case in any facilitation meeting we have been involved in or aware of

- 10.7 **Case Study 5 ['AA']:** In a current matter, a facilitator was selected by the Church entity and contacted the complainant to set up a meeting, informing the claimant that they had been 'appointed' as facilitator.

At that meeting, the complainant was represented by an advocate. The facilitator attempted to listen to the needs of the complainant and undertook to follow up on matters requested by the complainant to make the process a meaningful one.

The facilitator was a person who is routinely used by Church entities as an assessor. During the initial meeting, the focus of discussion by the assessor was on indicating to the complainant that the *Towards Healing* process is not a legal process and that the complainant should not expect it to result in proper legal compensation. This was not the primary concern or focus for the victim.

Despite it having been explained to the complainant that she did not have to accept the nominated person as facilitator, it was some time before the complainant was able to express her feelings after this first meeting.

In fact, she had strong feelings that the facilitator was not appropriately matched to her, and that there was little rapport. This was not the fault of the facilitator. However, the delay in raising the issue highlights the power imbalance felt by victims, even when represented.

In this matter, an alternative facilitator was later appointed, and the matter is proceeding. However, the process of removing and replacing the facilitator has caused further delay.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

- 10.8 Contrary to the principles and procedures of the *Towards Healing* document, we are aware of several matters where the Director of Professional Standards has acted as facilitator. The complainants were not advised that this dual role is not usual and no evidence of an approval for that course by the Executive Officer of the National Committee for Professional Standards was evident.
- 10.9 It would be expected that extraordinary factors would need to exist for this to be appropriate, given the express statement in paragraph 41.4.2 that the Director not even be *involved* in a facilitation, let alone as facilitator.
- 10.10 The interposition of the Director of Professional Standards as facilitator can have a dramatic impact on the power imbalance experienced by the victim in the facilitation process:

- 10.11 **Case Study 6 ['AF' and 'AG']:** in a series of related matters over the last 2 years, it appears that the relevant Church entity, as a matter of course, has utilised one of the State Directors of Professional Standards as facilitator.

The pattern has been that a meeting is arranged between the victim, a senior member of the Church entity, and the Director. In each of the example cases of which we are aware, the victim had a family member with them as a support person. However, each reported feeling overborne and intimidated. They each thought that the person acting as 'facilitator' was the Church entity's 'lawyer'.

Each of the meetings took a similar course, with a financial redress amount being nominated by the Church leader on a take-it-or-leave-it basis. Each victim felt that they had no choice but to accept that financial redress.

The arrangement was then confirmed by means of a deed of release, in an attempt to preclude further approaches by either victim.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

- 10.12 The oppressiveness of the power imbalance was exacerbated in each case by the meeting being scheduled in the 'big end of town' office of the legal firm which does usually represent the Church entity. The offices were made available free-of-charge to the Church entity. It appears that no consideration was given to scheduling the meetings at a venue where the victims would feel more comfortable. The victims were not given a choice regarding the venue.

- 10.13 This lack of control or say in the process is of critical significance for victims of child sexual assault. It reinforces and exacerbates the pattern of the original abuse, where the child was in a powerless situation. One of the important healing modalities is for the victim of abuse to regain control of their own life. Having a sense of balance, equality and fairness in the process is critical to this. In our experience, such conscious redressing of the power imbalance is rare in *Towards Healing* processes.

11. There is little or no transparency in the process. Complaints are investigated by Church-appointed investigators, and the reports are not always given to victims. There is no process for the victim to obtain information from the Church.

- 11.1 The Professional Standards Offices and relevant Church entities reserve a right to decline to give copies of 'assessment' reports to the complainant.

- 11.2 See Case Study 4 (above)

11.3 Even the information made available to the assessor is limited by paragraph 40.7 of the *Towards Healing* procedures⁷. The reservation of the right to maintain 'confidentiality' has the potential to severely prejudice an investigation. It is submitted that this could cover admissions made by the accused cleric, statements of other complaints, findings made by the Church entity about the accused person etc..

11.4 *A fortiori*, requests for information from the Church entity by the victim or their advisers are usually ignored. 'Privacy' grounds are most often cited. It is submitted that this is not a valid use of privacy principles. Any legitimate privacy concerns could be satisfied by appropriate de-identification and redaction of documents.

12. Victims often feel doubted and questioned throughout the Towards Healing process rather than believed and validated. They feel they have to prove their claim. This is very stressful when they know that they are the only witness to the abuse. Many complainants believe that the word of a priest/religious brother/nun/school teacher/other Church employee will always be accepted over their own truth.

12.1 This underlying attitude of victims is often well-founded. Many victims have been sworn to silence by their abusers, with the threat that if they were to tell anyone, they would not be believed.

12.2 The assessment process under *Towards Healing*, which has been dealt with earlier in these submissions, reinforces this attitude.

12.3 Similarly, pronouncements by Church leaders and others that sexual abuse by clergy is '*ancient history*' or is '*all in the past and "we" have to move forward*' denies the experience of complainants that 'the past' is very much in the present for them psychologically. For many, the impacts are painfully close to the surface and are encountered daily. Such dismissive comments exacerbate victims' fear-based expectations that they will not be believed.

13. Victims are sometimes told that there are no other complaints, even when that is not true.

13.1 We hold information relating to a number of separate matters in which this has occurred.

⁷ "Church Authorities shall comply with all reasonable requests made by assessors for access to documents which may assist them in their work, subject to any legal obligations of confidentiality."

- 13.2 In some of these matters, it is apparent that complaints had been made to the Church entity many years or even decades before the *Towards Healing* process.
- 13.3 In one matter, the perpetrator was later convicted of charges against 39 other boys at the same institution. He has since been convicted of further charges relating to a further 10-12 boys. In relation to a number of the offences, a complaint had been made to a senior Church official and/or the relevant Church leader at around the time of the offences and yet a complainant was told there were no prior complaints.
- 13.4 The default position of the Professional Standards Offices and the Church entities seems to be to state that there have been no other complaints. While it may in some instances be the case that the relevant person making that statement is not actually aware of the prior complaints, it also appears that this position is often communicated without a full and adequate search of the records and without any enquiries having been made.
- 13.5 The impact of this is to reinforce to victims that they are not believed.
- 13.6 Even if it were true that there were no prior complaints, it is inappropriate that this be part of the Church response. In our submission, each complaint should be treated seriously, whether or not there are other complaints about the same perpetrator. There may be a number of reasons for the absence of other complaints.
- 13.7 Even if the complainant is in fact the only (known) victim, this should not diminish the Church entity's response to that victim who has had the courage to come forward.

14. When a victim approaches the Church through Towards Healing, they often feel that they are discouraged from reporting to the Police.

- 14.1 While the official policy of the Catholic Church is stated to be that people are encouraged to report their complaints to the Police, this does not appear to happen in practice. The experience of many people is that they are actively *discouraged*.
- 14.2 One mechanism through which this is done is the provision (referred to above) in paragraph 37.2 of the *Towards Healing* procedures. This is routinely seen by the complainant as a 'threat' that if the victim goes to the Police, they cannot proceed with their complaint through the *Towards Healing* procedures.

- 14.3 While it is acknowledged that this is contrary to the stated intention of the document, apparently little care is taken by some of those administering *Towards Healing* to ensure that the complainant understands this.
- 14.4 It is not generally explained to the complainant that it is the *investigatory* processes that are put on hold, but that the complainant is entitled to pastoral support and the other aspects of the *Towards Healing* procedures.
- 14.5 As a consequence, complainants often choose not to go the Police and sign the required statement under paragraph 37.2 of the *Towards Healing* procedures. None of the complainants we have spoken to have understood the provisions of this statement, and none of them has appreciated that they are confirming, by signing the statement, that they have been encouraged to go to the Police.
- 14.6 Most complainants say that if they had been actively encouraged and offered support to go to the Police, and were informed that apart from the investigation process they could have access to the support encompassed in the *Towards Healing* procedures throughout the criminal process, they *would* choose to report their complaints to the Police.

15. Psychological assessment of impacts is rarely done. If it is, the victim is sent to the Church entity's nominated psychologist or psychiatrist, not to an independent psychiatrist that the victim has some say in choosing.

- 15.1 See paragraph 6.7 above.
- 15.2 The approach of Church entities under *Towards Healing* towards formulating a response to complainants, as a general observation, appears to be to provide the minimum response that can be achieved. This applies to both financial and non-financial redress. Church entities that commit to ongoing care and support, when that is what is asked for by the complainant, are rare.
- 15.3 While we are aware of matters in which a compassionate, tailored response, based on the needs of the victim has been provided, there appears to be a preponderance of matters in which this has not occurred.
- 15.4 The inconsistency of response can *not* be explained by the fact that victims vary greatly in their individual needs. This is a given and would explain individual differences if it applied across the board.
- 15.5 What is asked for by victims is consistency of *approach* and understanding, not consistency of *outcomes*.

- 15.6 If the Church entities were seriously interested in addressing individual needs, then they would take expert advice on the impacts of the abuse on the individual. Generally, this would require a report from an independent psychologist or psychiatrist. In our experience, this is not routinely done.
- 15.7 Where a psychological assessment *is* undertaken, it is common for complainants to be sent to a 'preferred' psychiatrist or psychologist of the Church entity. This is overwhelmingly an unsatisfactory experience, both in terms of the way the victim is treated during the assessment, and in terms of the quality of the report obtained.
- 15.8 In such cases, the complainant gets no choice in the selection of the report writer and once again feels as though the assessment is an aspect of the process aimed at minimising or denying the claim.
- 15.9 On the contrary, in processes where the report writer is a truly independent person, selected in consultation with the victim or their advocate, rather than a partisan player, the assessment process is more often viewed as a positive, supportive part of the process aimed at examining and exploring the victim's individual impacts and consequent needs.

16. Redress is not assessed on the basis of an assessment of the harm the victim has suffered, or the victim's needs. Rather, in most instances, an arbitrary financial amount is offered, based on an arbitrary cap on payouts. [There is some doubt about whether there is an official cap on payouts under Towards Healing. The Melbourne equivalent – 'the Melbourne Response' has a formal cap. In practice, there appears to be a notional cap applied under Towards Healing]. As a consequence, victims do not feel that they are treated as individuals.

- 16.1 In addition to the matters referred to under the previous heading, there often appears to be little attempt by the Church entity to explore with the victim what their specific needs are, and then to seek to meet those needs.
- 16.2 The lack of this appears to be more commonly the case where the victim is unrepresented.
- 16.3 We are aware of recent statements from representatives of the Church about tailored individual outcomes, and do not doubt that these have been entered into by some Church entities. We are aware of some Church entities who have engaged in this process with particular claimants. The real question, however, is how common these are, and how the majority of complaints are dealt with.

- 16.4 The more common experience appears to be that an arbitrary financial redress is offered to victims, based on some real or notional 'cap' on financial redress. There appears largely to be little discussion or negotiation of the redress, and it tends to be offered on a take-it-or-leave-it basis.
- 16.5 Non-financial outcomes where agreed are often not followed through. For example, one of the most significant matters often promised but not provided are written apologies. When the promised written apologies are provided, these often have the appearance of having been prepared by the Church entity's lawyers rather than the Church leader who promised the apology.

17. Different State Professional Standards Offices and different Church entities seem to have different 'caps' and ranges of financial redress.

- 17.1 There is a marked and noticeable difference between how complaints are dealt with across States.
- 17.2 This appears to be accepted by Church entities, so that across the same religious order, a claim arising in one State will be dealt with less favourably than those arising in another State. This is sometimes put on the absurd basis of maintaining fairness and equity across claims previously dealt with in the particular State.
- 17.3 Similar discrepancies arise between various Church entities. Once again, maintaining 'fairness' and 'equity' with previous claimants is often used as the basis of denying appropriate and just redress to a later claimant.
- 17.4 It is simply not correct to explain the inconsistencies as a matter of individual differences between *claimants* and what is required to properly address their individual needs.
- 17.5 In our submission, the only reasonable way to address this is for each Church entity to adopt a uniform set of principles akin to a 'model litigant' seeking to implement a community (and externally monitored) standard of adequate legal compensation. Anything less places Church entities in a favoured position compared to other organisations and places the victims in a disadvantaged position compared to other persons harmed by negligent or deliberate conduct.

18. Where ongoing support and assistance is provided, victims are made to feel that they are beholden to the Church, and need to go cap-in-hand to request assistance.

- 18.1 Much has been made of recent statements by Church officials regarding the provision of individually tailored responses where ongoing support is provided in

the form of payments for therapy, payment of school fees, and other ongoing payments.

- 18.2 These arrangements are to be applauded where they represent a genuine pastoral response, of benefit to the victim.
- 18.3 However, it appears to be a common experience that there is no ongoing, binding commitment to such payments. Victims report feeling like they need to beg for support on an ongoing basis, and that they feel constantly insecure and anxious that arrangements will change without notice or consultation.
- 18.4 Approval of particular requests are often slow, sometimes taking months, during which time the victim assumes that the request will be refused.
- 18.5 In some cases, longstanding arrangements have been unilaterally curtailed or terminated without warning when there has been a change in personnel within the Church entity.
- 18.6 **Case Study 7 ['AH']:** A financial payment was made to a victim of child sexual assault and around 12 months later, a commitment was made that ongoing payments would be considered in the future for specified needs.

One such modest payment was made, a further 12 months after that. That payment took several months to approve.

The Church official who made the commitment then proceeded on extended leave during the time that a second request was being considered. That request (which had also been outstanding for several months) was met by the person standing in for that official. However, the letter approving the second payment contained a statement that such payment was considered to be "*full and final financial settlement*" and "*full and final resolution of the determination that the [Church entity] consider further financial support*".

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

- 18.7 In other instances, the victims receiving such payments feel beholden to the Church entity and are fearful of speaking out critically against the Church or its personnel, lest the arrangements be terminated or curtailed.
- 18.8 We are aware of an instance of a victim speaking publicly in the media about their abuse and being critical of the Church response, and soon afterwards, ongoing financial support was summarily terminated.

18.9 Even where ongoing commitments are made, payment of particular expenses are often delayed, sometimes for up to 6 months, leading to anxiety and uncertainty by the victims, who fear that the payments may not be met as promised.

18.10 **Case Study 8 ['AI']:** In a current ongoing matter, the victim has been provided various forms of ongoing support over a period of years.

Frequently, the approval of interim requests for specific matters are delayed, sometimes for months. Even when a form of support has been approved, often the payment itself is then delayed. This causes the victim, for whom (not uncommonly) trust is a significant issue, to become anxious as to whether the payment will be made. The delay often results in monies being borrowed while payment is awaited, causing further anxiety.

Presently, payment has been approved for ongoing therapy. Payment of the therapist's invoices are often delayed for several months. No explanation is given for the delays. The victim is aware of this and is extremely anxious about it.

The ongoing delays and 'wall of silence' appear to demonstrate both an attitude of disrespect and a blind or perhaps contemptuous disregard for the impact of this on the victim, despite these impacts having been notified to the Church entity.

18.11 One is left to wonder whether some of the other arrangements recently mentioned by Church representatives as examples of *Towards Healing* providing effective 'pastoral' responses are subject to similar failures in timeliness and responsiveness.

19. Interim support is not consistently provided.

19.1 Victims approaching Church entities often have a range of pressing basic needs, such as dental or medical treatment and housing, many of which are directly related to their childhood trauma.

19.2 While in most instances, some immediate therapeutic support is made available, this is often severely limited. It is not uncommon for as few as 5 sessions of therapy to be provided for. Following this, further sessions are sometimes approved. In other instances, the victim is supposed to pay for their own therapy pending settlement. Many are not financially able to do so.

19.3 Given that *Towards Healing* processes can typically take 12 months or more to resolve, the lack of a clear commitment to continue funding therapy until resolution is a significant detriment to the victim.

19.4 The provision of other forms of interim assistance is even more inconsistent. For many victims, such assistance is essential to create the conditions of safety and stability necessary for their effective engagement in a 'healing' process. The range of issues can include medical needs, housing needs, other financial needs (e.g. crushing debt) and other issues. The denial of such support places the victim in a position where he or she is not able to appropriately engage in the process.

19.5 Another impact of a denial of interim support is to place financial pressure on the claimant to settle their financial claim for less than a proper and adequate amount. This generally leads to later regrets and ongoing feelings of injustice which are inimical to 'healing' and closure.

19.6 **Case Study 9 ['AD']:** In a current matter, the victim is experiencing severe psychiatric symptoms and requires intensive therapeutic support.

The victim also required expensive medical procedures, directly related to the abuse he had suffered, which he was unable to afford.

Approximately 3 months after the initial notification and request, a payment for interim therapy was approved which covered approximately 2-3 sessions with his psychiatrist. Further interim support of any nature was refused until resolution of the *Towards Healing* process. Urgent requests were not responded to in any manner for over a month, despite a number of follow up communications. Upon notifying the Church entity that the victim was suicidal, we were notified in writing to "*do what you have to do*".

The response when it did come was a flat refusal to even consider any further support until *completion* of the *Towards Healing* process.

This position of the PSO was steadfastly maintained despite several further requests, which included evidence of the critical and worsening condition of the victim.

To exacerbate matters, this is the victim the subject of Case Study 3 [paragraph 6.11 above], whose claim is presently subject to ongoing and unresolved procedural delays. He remains a significant risk of suicide.

Substantiating documents are able to be provided to the Commission, on a confidential basis, if required.

20. Threats of cutting off therapeutic support have been made in an attempt to force people into settlements.

20.1 Where continuing interim therapeutic support has been provided, the threat of discontinuing such support has been used in an attempt to force the victim to negotiate a final settlement when they were not psychologically able to do so.

20.2 See section 8 above in relation to the need to establish safety and stability before proceeding with a restorative process whether through *Towards Healing* or otherwise.

20.3 **Case Study 10 ['AJ']:** This was a relatively recent matter involving a victim of a member of a religious order. The victim suffers from a severe Post Traumatic Stress Disorder, which is not uncommon. He was in the relatively early stages of therapy when the complaint was notified.

After funding therapy for a period, the Church entity's representative notified the victim that if he did not agree to participate in a *Towards Healing* facilitation, the therapy payments would be discontinued.

The victim reacted by consulting a lawyer and protracted and expensive litigation ensued. While the matter was eventually resolved, by then, the victim had unnecessarily incurred a significant legal bill.

It is notable that in that matter, there was never any dispute regarding the abuse the victim had suffered, or the severity of his symptoms.

21. There is very rarely any negotiation of outcomes. Financial offers made by Church entities in *Towards Healing* are routinely made on a 'take-it-or-leave-it' basis and victims are told that they have no other avenues for legal redress. They are also told that the financial payment to them reduces the funds available to the Church for its 'charitable works'.

21.1 The first aspect has already been mentioned – see paragraphs 10.11 and 16.4.

21.2 A further aspect of this is that victims are usually threatened with a 'vigorous' defence if the matter is taken to Court. This includes indications that limitation defences will be run to defeat the claim, as well as other defences such as the *Ellis* defence.

21.3 While it has been said by Church officials that the first response of a Church defendant when a claim is notified is to seek mediation, the opposite appears to be the case after a failed *Towards Healing* process. While some of the fault of this may lay with some victims' lawyers, the fact appears to be that the Church lawyers do *not* immediately suggest mediation. There appears to be a deliberate attitude of 'punishing' the victim for rejecting the offer made in *Towards Healing*. In the matter referred to in Case Study 10 [paragraph 20.3], there was no offer made under *Towards Healing*, and no offer of mediation was made by the Church entity at any time.

- 21.4 The second aspect is more insidious. A number of persons who choose a Church-based process do so because they retain some connection with the Church, however tenuous, or because their families retain such a connection.
- 21.5 Such persons often feel either internally conflicted or externally pressured about seeking financial redress from the Church. These people are particularly sensitive to being made to feel guilty about harming the Church financially or detracting from its ability to undertake charitable works.
- 21.6 We have personally witnessed on numerous occasions statements being made to victims that the Church entity cannot afford to make a more appropriate financial 'gesture' because to do so would impact on its charitable works. In our submission, this amounts to emotional blackmail and is re-traumatising.

22. Victims who are seen as difficult or demanding get treated more harshly than those who go along with the Church's process.

- 22.1 We have observed anecdotally that the more outspoken and demanding a victim is, and the more critical of the Church (or of the particular Church entity), the harsher their treatment can be in the *Towards Healing* process (see 4.8 and 18.8).
- 22.2 This appears to be a by-product of the degree to which the implementation of the process relies upon the personality of the particular Church personnel involved.
- 22.3 Paradoxically, the type of behaviours and conduct objected to by Church entities and the Professional Standards Offices are often the impacts of the abuse the victim has suffered, or a combination of those impacts and the effects of not being compassionately and justly responded to.

23. The overwhelming feeling at the end of the process for victims is that they have been pressured into an inadequate and unjust settlement.

- 23.1 This appears to apply across the board where the process has been unsatisfactory, not trauma-informed, and unresponsive to the particular needs of the victim.
- 23.2 This is not generally a matter of 'unrealistic expectations' of the victim, as it is often portrayed to be. It appears to be independent of the objective comparison between proper legal compensation (as would be provided on a 'legal' assessment of the claim) and the actual financial redress provided.

- 23.3 Rather, it is a matter of perception, based on how the victim has been treated during the process, and whether the process has been objectively transparent, fully explained to the complainant, independent, and fairly applied.
- 23.4 It is an insidious falsehood that a pastoral response and an objectively just response cannot go hand-in-hand. Emphasising the non-financial elements of a 'pastoral' response over the commitment to justice and compassion which appears in paragraph 19 of the *Towards Healing* procedures and is said to be one of the principles underpinning the Church's response to victims of abuse is disrespectful to those victims. Justice requires the Church as an institution to make 'reparation' to its victims. Such reparation should go beyond (rather than fall short of) a strict legal assessment of financial damages. In this sense, it is a wider concept than legal compensation. As a model 'litigant', Church entities are asked to eschew technical defences and artificial protections from liability and do all that is in their power to make good, to the fullest extent possible, the trail of destruction that some of their personnel and clergy have left in their wake.

24. There appears to be no effective or independent review or oversight of the implementation of Towards Healing.

- 24.1 The *Towards Healing* procedures contain provision for review. However, we have not yet seen a review of process that has been adequately and satisfactorily undertaken, and that has resulted in redressing the unsatisfactory aspects of the process which have been complained about.
- 24.2 A review of process under the *Towards Healing* procedures appears to be conducted on a highly technical basis – that is, the reviewer only looks at whether the specified procedural steps have been complied with. The review is conducted solely 'on the papers'.
- 24.3 Such a review process, from the victim's perspective, will almost inevitably founder on the rocks of the unsatisfactory and unsuitable nature of those procedures for resolving the claim of the victim.
- 24.4 Assuming that the procedures were suitably modified, what would be required for an effective review process is in effect the ability for the victim to have a rehearing on the merits and an assessment of whether the expressed *principles* of the *Towards Healing* procedures have been properly implemented.
- 24.5 This would require the whole process to be overseen by appropriate *independent* professionals appropriately trained in trauma-informed practices.
- 24.6 Such 'review' will never be effective where it is limited to an appeal process instigated by a victim in relation to a specific complaint process. In conjunction

with this, there needs to be a procedure for ongoing monitoring and review of the implementation of the Church's procedures.

- 24.7 It would appear that to be effective and to provide proper accountability and transparency, any review must be completely external to the Church.
- 24.8 We stress that these comments on the review process are general in nature. They are also hypothetical as they are premised on a more appropriate model being implemented to replace the present *Towards Healing* procedures. The above comments have been included for completeness only.

25. Many Church personnel involved in responding to victims of child sexual abuse appear to have little if any understanding of the nature and sequelae of 'complex trauma' and the conditions most likely to facilitate recovery.

- 25.1 As noted in 9.5 above, victims of childhood sexual assault, particularly in a religious context, generally exhibit symptoms of 'complex trauma'. Accordingly, both the process for responding to claims and the actual responses of particular Church personnel need to be formulated around an understanding of complex trauma and its impacts.
- 25.2 A 'trauma-informed' approach requires relevant expert input into reconsideration of the *Towards Healing* process, including consideration and implementation of the Practice Guidelines for *Treatment of Complex Trauma and Trauma Informed Care and Service Delivery* published by ASCA (2013).
- 25.3 There is now much known about optimal treatment and recovery from childhood traumata including sexual abuse (as well as the physical and emotional abuse that is often a concomitant of sexual abuse). A few years ago, we heard a senior cleric whose role was to respond to victims say: "*I take advice from no-one*". We hope that in the current climate, Church entities are increasingly more open to taking advice from those whose expertise is in best practice trauma recovery.
- 25.4 Creating the conditions for 'trauma-informed' responses to complainants would include:
 - 25.4.1 Professional training and accreditation of all persons having direct dealings with victims of abuse;
 - 25.4.2 Recruitment and selection of personnel with appropriate training, relational skills, and experience; and
 - 25.4.3 Professional supervision and oversight of the implementation of the process and input into the management of particular claims.

Closing remarks

In our experience, victims can benefit where a complaint is met (in a timely manner) with belief, compassion, kindness, understanding and validation. There can be 'healing' when Church personnel dealing with the complaint are responsive to the individual's needs and wishes, and when (if this is sought by the complainant) Church personnel ensure that time is taken to establish trust and ongoing relationships of care, or the complainant is allowed to have an appropriate advocate as a buffer in dealing with the Church.

If Church personnel and leaders respond transparently and without defensiveness, the foundations of 'recovery' can be facilitated.

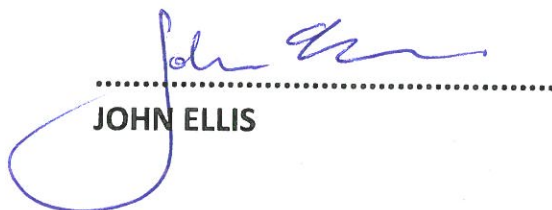
Towards Healing adopts as one of the key principles listening to victim's needs and providing a response as 'demanded by justice and compassion'⁸. Even more than reform of its specific procedures, the potential for any church response to child sexual abuse to become 'healing' may be realised when all those responding to victims on behalf of Church entities understand and consistently embody principles of trauma-informed care rather than defensiveness and blaming the victim.

Also, the Church's concept of 'reparation' must be given its full and proper meaning of 'the action of making amends for the wrong one has done'. This requires full and adequate compensation. Further, victims need the security of external oversight of Church responses to ensure accountability and a 'safety net' of alternative remedies where Church processes fail to deliver justice consistent with standards applied generally across the community within the Australian legal system.

Adversarial practices and attitudes need to be relinquished by Church leaders before complainants coming to Church entities for acknowledgement, support and reparation can consistently rely on an experience of dealing with Church entities that is congruently victim-focused and guided by principles of true justice.

SYDNEY

4 October 2013



.....
JOHN ELLIS



.....
NICOLA ELLIS

⁸ Paragraph 19, *Towards Healing*