

Towards Healing

Principles and Procedures
in responding to complaints of abuse
against personnel of the Catholic Church in Australia.

INFORMATION FOR LEGAL PERSONNEL REFERRING CLIENTS TO THE *TOWARDS HEALING* PROCESS

This document is to be read in conjunction with *Towards Healing*.

INTRODUCTION

When allegations of sexual abuse, or any other criminal offence, are made against personnel of the Catholic Church in Australia the complainant is encouraged to take the matter to the police for investigation. (TH 37.1, 37.2)

Whenever a complainant chooses to pursue a complaint through the *Towards Healing* process, it is made clear to him/her that it is a pastoral process. Consequently any substantiation of allegations will result in a pastoral response from the appropriate Church authority. Should a complainant choose, at any stage of the *Towards Healing* process, to proceed with civil or criminal action, the *Towards Healing* process is suspended immediately, although pastoral support and the provision of counselling may continue.

While *Towards Healing* is a pastoral process and not a legal/criminal process, it is recognised that on occasions there may also be legal and/or financial issues to be considered.

TOWARDS HEALING – A PASTORAL APPROACH

In the *Towards Healing* process the response of the church is based on a commitment to strive for truth, humility, healing for the victims, assistance to other persons affected, an effective response to those who are accused, an effective response to those who are guilty of abuse, and prevention of abuse.

A pastoral approach is pursued throughout the process from the very first contact between the complainant and the Professional Standards personnel.

INITIATING THE TOWARDS HEALING PROCESS

Complainants come to *Towards Healing* in a variety of different ways. They may talk to a priest or other representative of the Church about their experiences and be referred to *Towards Healing*; they may come through a victim support group; they

may initially make contact with a lawyer who explains to them about *Towards Healing*. Whenever a complaint is notified to Professional Standards personnel, the *Towards Healing* process is explained and the complainant is provided with a copy of the *Towards Healing* document. Complainants have a Contact Person to receive their complaint and who may support them through the process.

Legal representatives of complainants are most welcome to make the initial contact. However for the process to begin, a complainant needs to have direct personal contact with *Towards Healing* personnel. The process cannot be conducted through an intermediary. Complainants therefore need to know that they will be required to provide contact addresses and/or telephone numbers and/or e-mail addresses to allow for ease of communication. While a lawyer may also provide advice and support, the lawyer is not a Contact Person for the purposes of the *Towards Healing* process.

As a contact person is 'to listen fully, honestly and compassionately to the person laying the complaint, both concerning the facts of the situation and its emotional, psychological and spiritual effects' (TH 36.3.1), reports provided by legal personnel or police statements may be appended, but do not substitute for the Contact Report. Interaction between the complainant and the contact person is regarded as integral to the pastoral process. It allows for a comprehensive explanation as to how the whole process operates. There may well be several meetings between complainants and Contact Persons before complainants are satisfied that the report provides a clear and accurate account of their story. Experience has demonstrated that quality time devoted to this stage of the process is invaluable in ensuring that the Contact Report is likewise of high quality. The better the contact report, the better will be the implementation of the other stages of the process.

DURING THE ASSESSMENT PROCESS

The Director of Professional Standards has the responsibility for ensuring that the *Towards Healing* process is properly managed. The Director is responsible for the appointment of assessors in situations where the Church needs to investigate the complaint.

Through direct contact with the complainant at each stage of the process, the Director ensures that the complainant is kept informed of the progress of a particular case. Decisions about venues for any required meetings are made jointly by the *Towards Healing* personnel and the complainant.

At each stage of the process, including the meetings with a contact person and, the assessor, the complainant is encouraged to have present a support person with whom he/she feels comfortable. Complainants may of course choose to be accompanied throughout the process by a support person other than the contact person offered by the Director of Professional Standards. Sometimes a complainant will choose a support person who is a qualified legal practitioner. However, as the process is pastoral and not legal, the support person's formal qualifications are irrelevant to the process. As support persons are not remunerated for their role in the process, no legal fees are payable to support persons who are legal practitioners and who choose to sit in on meetings with the contact person or the assessor.

The Director endeavours to ensure that the process is conducted as smoothly and quickly as possible. The Director is available for approach by any participants for ongoing consultation at any point during the process.

THE FACILITATION PROCESS

If the assessor finds on the balance of probabilities that the complaint is true, or the Church Authority is otherwise satisfied of the truth of the complaint, then the next stage is the facilitation. This is a meeting between the victim and the Church leader set up and managed by a facilitator. This is also a pastoral process, but it will also involve discussions about how the Church should respond to the needs of the victim in such ways as are demanded by justice and compassion.

It is to be noted that facilitated pastoral meetings occur in some cases where assessments have not sustained allegations of abuse and where the Church Authority is not satisfied of their truth. Such meetings constitute pastoral outreach to people in need.

Where the matter complained of constitutes a criminal offence or a civil wrong, reparation or other financial assistance may be paid to victims even though the Church may not be legally liable to do so. Lawyers can be of considerable assistance in advocating for the victim and in working out what would be a reasonable amount for an ex gratia payment in the circumstances. There may also be issues about what form the payment should take. For example, where the complainant has a drug addiction, it would not be appropriate for a cash payment to be made. The Church might instead make payments to a third party towards reasonable needs of the complainant.

If a lawyer is involved in negotiating the amount of reparation, the negotiation should be progressed as far as possible before the facilitation, or be continued afterwards. An important purpose of the facilitated meeting is for an apology to be offered and for the Church to listen to the account of the victim and how the abuse has affected him or her. This pastoral purpose cannot be achieved if the meeting is dominated by arguments about the level of reparation.

If an amount of reparation has not been finalised prior to the date of the facilitated meeting, discussions should be scheduled with the Church leader and the facilitator, after the Church leader has met on a pastoral basis with the victim. In some cases it may be appropriate to schedule a financial mediation on the same day as the pastoral meeting

DEEDS OF RELEASE

If some form of reparation or other financial assistance, apart from counselling costs, is to be paid by the Church, then the Church may reasonably require a Deed of Release. The Church will not require the victim to sign a Deed of Release unless he or she has had independent legal advice or has indicated in writing that he or she declines to seek legal advice. In some cases, the Church authority may consider it sufficient to have a letter confirming the understanding of the parties to the agreement.

LEGAL EXPENSES

The Church will pay the reasonable costs involved in obtaining legal advice on a Deed of Release, and may make an allowance in a settlement of a contribution towards the reasonable costs of other professional advice or assistance that have been incurred in the process of resolving the matter. In complex cases, the Church recognises that a greater level of legal assistance will be necessary, and will make a greater contribution to costs accordingly.

ALTERNATIVES TO THE TOWARDS HEALING PROCESS

Sometimes, complainants choose to be represented by a lawyer in seeking compensation from the Church and do not seek any form of pastoral support or other engagement with the Church. If the complainant does not want to engage in the process outlined above, then the matter should proceed outside of *Towards Healing* by the normal means appropriate to the resolution of civil claims.

An approach may be made directly to the Church authority responsible for the matter, such as the Bishop of the Diocese or the Leader of the religious order. The Director of Professional Standards is available to assist lawyers in helping to identify the appropriate authority.

While the resolution of the claim will proceed in the same way as any other civil case, through negotiation, mediation and court involvement, the Church will nonetheless endeavour to act with a concern for the wellbeing of the complainant in seeking to resolve the matter.

In a case where the accused is still serving in ministry, an accusation brought against that person will need to be investigated as a matter of risk prevention in terms of the future ministry of that person. The assistance of the complainant may need to be sought for the purposes of such an investigation. The Director of Professional Standards will inform the police of the matter if a criminal offence is alleged, without naming the complainant.