



AASW
.....
**Australian Association
of Social Workers**

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

Issues Paper 2: Towards Healing

Submission – Sep 2013

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Introduction

The Australian Association of Social Workers (AASW) is the key professional body representing more than 7000 social workers throughout Australia. Social work is the profession committed to the pursuit of social justice, the enhancement of the quality of life, and the development of the full potential of each individual, group and community in society.

Concern for the wellbeing of children and young people has been a core element of social work practice internationally since the development of social work as a distinct profession. Significant numbers of social workers work in the child wellbeing and protection field in a range of roles including direct case work, management and policy. No other professional discipline is so immersed in the areas of knowledge that are essential for quality relationship-based child welfare practice. As a result, social workers are recognised throughout the world as the core professional group in child protection policy, management and practice.

We are therefore pleased to provide the following submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to Issues Paper 2: Towards Healing.

Responses

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

The AASW provides the following comment and recommendations into the *Towards Healing* document (*the document*) as instructions for Catholic Church (*Church*) authorities.

General Comments

- 2.1** At the most fundamental level, the AASW is concerned that *Towards Healing* reflects a system whereby an Institution is required to make a finding about itself in relation to very serious matters. The AASW understands that many institutions have such self-monitoring processes, but the AASW argues that the seriousness of the matters under investigation, the potential for conflicts of interest and the implications of poor management warrant a significantly more transparent, accountable and independent process.
- 2.2** The AASW acknowledges and commends the existence of this important process to respond to allegations of the sexual abuse of vulnerable persons by Church personnel. The following comments are based on a reading of the document in isolation. The AASW understands that the process outlined in *Towards Healing* may be complemented by a range of operational policies and procedures that are not publicly available and therefore some of the recommendations provided may be addressed elsewhere. The AASW recommends that in such instances, the *Towards Healing* document refer the reader to the relevant supporting documentation. We believe this will enhance transparency and support consistency in decision-making processes.
- 2.3** It is unclear how allegations against a past member of the Church personnel are to be dealt with.
- 2.4** The AASW notes that the Words of Pope Benedict XVI refer to the sexual abuse of minors, whereas the *Towards Healing* process is aimed at children and vulnerable adults. The AASW suggests a statement outlining to whom the process may apply be included at the start of the document to avoid any confusion.
- 2.5** The AASW makes the general observation that the *Towards Healing* document is undermined by:
- 2.5.1** consistent and repeated ambiguity and vagaries of expression
 - 2.5.2** lack of clarity around definitions
 - 2.5.3** absence of information on decision making and risk assessment frameworks rendering the process opaque and difficult to follow
 - 2.5.4** repeated blurring of conceptual boundaries between concepts such as abuse and the context of abuse; confidentiality versus privacy; and, trauma and healing.

Recommendations regarding 'Part One: Definitions'

2.6 'Abuse'

The AASW submits that the definition of 'abuse' included in Towards Healing (2010) is inadequate as a working definition to underpin the principles and procedures that follow. Further, we believe the current definition serves to minimise and impose thresholds on the types and consequences of abuse relevant to the process.

Specifically, the AASW is concerned that:

- 2.6.1** The current definition of abuse lacks the detail and description evident in contemporary child abuse literature (see for example Australian Institute of Family Studies 2012, National Society for the Prevention of Cruelty to Children 2011). The AASW believes that a contemporary and detailed definition of abuse would provide more clarity and guidance to victims of abuse, their representatives and Church Personnel on exactly what kinds of behaviours, actions or omissions might be considered under the policy.
- 2.6.2** Part Two outlines the 'Principles for dealing with complaints of abuse' including specific reference to 'sexual abuse' and 'physical and emotional abuse' however these terms are not defined or encompassed in the definition of 'abuse' provided, nor are they adequately explicated within the principles themselves.
- 2.6.3** The definition is conceptually confused. The definition provided confuses the nature of abuse with the context in which the abuse may have occurred as reflected in the phrase 'legitimate disciplinary purpose as judged by the standards of the time when the behaviour occurred'. The AASW submits that a consequence of this conceptual confusion is to render it unclear whether the Church has a 'zero tolerance' approach to the abuse of children and vulnerable persons, or whether abuse is only wrong when it conflicts with the prevailing social or cultural attitudes of time.

In relation to the reference to 'standards of the time', the AASW accepts that cultural and social norms have changed over recent decades and therefore that some abusive behaviour within institutions, such as the use of physical punishment to discipline children, may historically have been considered reasonable. However we submit that prevailing social norms should in no way detract from the fact that the behaviours are nonetheless abusive and their impacts on children profound as a vast child abuse literature serves to evidence. The AASW believes the reference to 'standards of the time' serves to minimise and undermine an individual's experience and the legitimacy of the impacts of such abuse, whether the abuse was culturally or socially sanctioned at the time or not.

Further, the AASW is concerned that reference to 'standards of the time' introduces an ambiguity and subjectivity into the definition that is not helpful to victims or offenders in determining whether or not their experiences or actions are relevant as part of the Towards Healing process. At worst, the AASW submits that such ambiguity may:

- confuse, prevent or discourage victims from pursuing justice insofar as it suggests their treatment was in some way acceptable and their reactions or feelings about their abuse in some way unjustified or illegitimate
- support or affirm for offenders the legitimacy of their abusive behaviours and / or send the message to Church personnel that some forms of abuse are justifiable and acceptable.

2.6.4 The AASW is concerned about the use of threshold terminology, evident in the use of terms such as ‘significant’ and ‘anguish’ in the definition of abuse. The AASW believes these terms relate to degrees of harm and imply that there is some behaviour or harm that would fall below the threshold of what might be considered abusive. Again, these are subjective and unhelpful terms that do not serve the purpose of defining ‘abuse’ for the purposes of the document.

Recommendations

The AASW recommends that:

- 2.6.5** the definition of abuse be redefined to include distinct descriptions of ‘sexual abuse’, ‘emotional abuse’ and ‘physical abuse’ consistent with those presented in contemporary child abuse literature (see for example the Australian Institute of Family Studies 2012). Accordingly, the AASW recommends that such a definition needs to include a detailed description of specific abusive behaviours, both acts of commission and omission, which may be considered under Towards Healing.
- 2.6.6** references to the ‘standards of the time’ and ‘legitimate disciplinary purpose’ are removed and replaced with a statement here or elsewhere in the document that outlines that the Church does not support, regardless of cultural or social context, the use of emotionally, physically or sexually abusive behaviours.
- 2.6.7** threshold terminology evident in the terms ‘significant’ and ‘anguish’ is removed wherever utilised.
- 2.6.8** the Church undertake further consultation with relevant experts in the fields of child abuse and trauma, child safety and complaints management to determine how contextual factors may be better understood and considered as part of a transparent decision-making framework underpinning the Towards Healing process.

2.7 ‘Inappropriate care practices’

2.7.1 The AASW believes the use of the term ‘inappropriate’ is an example of minimisation of abuse. The AASW submits that in the context of Towards Healing, certain behaviours are inappropriate because they are abusive and therefore the term ‘abusive’ should be used explicitly.

2.7.2 The concerns outlined in point 2.6.3 in relation to the use of ‘standards of the time’ also stand for its use here. The AASW submits that the fact that abuse within care was systemic in nature at the time it occurred, should have no bearing on whether it is considered abusive for the purposes of Towards Healing.

Recommendations

The AASW recommends that:

- 2.7.3** The word ‘inappropriate’ is replaced by the word ‘abusive’.
- 2.7.4** The phrase ‘standards of the time’ should be removed and replaced by an acknowledgement that any practices that fall within the definition of abuse (as proposed by the AASW) will be heard as part of the Towards Healing process.

2.8 'Reparation'

2.8.1 The AASW commends the intent to outline how the Church intends to 'promote healing for the victim' as this is the central tenet of the Towards Healing document however we submit that the term 'reparation':

- is not the most appropriate term to describe the provision of monetary or in-kind support as a 'tangible expression of the Church Authority's regret that such abuse occurred'
- confuses two distinct aspects of the Towards Healing process; namely the intent to promote healing, and the intent to recognise the harms done.

Recommendations

2.8.2 The AASW does not believe that payment of a monetary sum or provision of in-kind support is sufficient in itself to 'make amends for wrongdoing' as the term 'reparation' suggests. Further, we believe it is inconsistent with recognition later in the document that abuse has far reaching and profound consequences for victims (see for example Towards Healing 2010, p. 6). Consequently, the AASW recommends that the term 'compensation', which refers to the provision of recompense for loss, injury or suffering, is more appropriate to defining the aspect of Towards Healing that result in the provision of monetary or in-kind support as it recognises the impact of abuse without implying it is necessarily sufficient to amend for what has transpired.

2.8.3 That the Church consider including a definition of healing for the purposes of the Towards Healing process. The AASW submits that an appropriate definition of healing would recognise the importance of i) acknowledgement of wrongdoing ii) a commitment to natural justice and due process, and iii) compensation and in-kind support as a means of facilitating healing.

2.9 'Vulnerable person' or 'vulnerable adult'

2.9.1 The AASW submits that the definition of a 'vulnerable' person or adult is too concrete insofar as it refers to bereavement and marriage breakdown. Further the AASW submits that the need for pastoral support is not of itself an indicator of an inability to be self-protective.

Recommendations

2.9.2 The AASW recommends that the definition of a vulnerable adult be revised. The AASW suggests the following definition as a useful alternative:

'An adult may be vulnerable because they:

- *Have a physical disability;*
- *Have learning difficulties;*
- *Have mental health problems;*
- *Are old, frail or ill; or*
- *Are sometimes unable to take care of themselves or protect themselves without help.*

A person may also be vulnerable because of a temporary illness or difficulty.

A vulnerable adult may have difficulty in making their wishes and feelings known and this may make them vulnerable to abuse. It may also mean that they are not able to make their own decisions or choices' (North Yorkshire County Council 2012).

Recommendations regarding Part Two: Principles for dealing with complaints of abuse

2.10 General Comments

2.10.1 The AASW recommends that Towards Healing (2010) include a summary statement that describes the purpose of the document, and more specifically, the intended outcomes of the 'Towards Healing' process. The AASW believes doing so will improve the understanding of all relevant parties about what the process may realistically achieve and set the frame within which all related principles, decisions and actions should be viewed.

2.11 'Sexual Abuse' and 'Physical and emotional abuse'

2.11.1 As outlined above, the AASW believes the definitions of sexual, physical and emotional abuse, which are partially evident in point 1, 3 and 5, should be expanded and incorporated into Part One under the heading 'Definitions'.

2.11.2 The AASW believes the remaining content in points 1 – 5 are better understood as principles for the behaviour and conduct of church personnel.

Recommendations

The AASW recommends that:

2.11.3 points 1 – 5 are re-written under the heading of 'Church Personnel'. Utilising existing content, this section would then more clearly outline what the Catholic Church expects of its personnel, the scope of personnel covered by the document and the position of the Church with respect to sexual, physical and emotional abuse of children and vulnerable adults. As outlined in point 2.6 above, the AASW believes this should include a statement about the Church's view of abuse regardless of the context or 'disciplinary intent' of abusive behaviours.

2.11.4 the 'Church Personnel' section should go on to briefly outline the responsibilities of; witnesses to abuse; individuals who have concerns regarding the behaviour of a colleague or volunteer; and / or are privy to allegations of abuse. Research demonstrates that acknowledgement of the role and expectations on individuals surrounding abusive behaviours are critical to fostering a child-safe culture and the management of situational risk (Australian Institute of Health and Welfare 2006). It may be appropriate that this detail is incorporated into a supporting document.

2.11.5 these responsibilities are outlined in more detail and actively promoted within the Church community as part of a comprehensive child-safety policy, procedure and training package.

2.12 'The Offenders'

2.12.1 Point 10 highlights contradictions between an offenders public versus private behaviour while point 11 states that 'a significant number [of offenders] were themselves victims of abuse in their earlier years'. The AASW questions the relevance and appropriateness of this statement. The AASW recognises that the intent of these points may be explanatory, but is concerned it may read as excusatory, whereby personal responsibility is minimised in the context of prior abuse of offenders.

2.12.2 The AASW points to recent research summarised by the National Child Protection Clearinghouse (2006, p. 9), which states that researchers are 'increasingly coming to see [the linking between being abuse and offending] as problematic' and that 'the majority of male victims of child sexual

abuse do not go on to abuse in later life'. In addition, the claim that offenders are often victims themselves does not account for the fact that the vast majority of children who are sexually abused are female, yet the majority of perpetrators of sexual abuse are male. If the 'victim to offender cycle' were true, it holds that the majority of offenders should be women and this is not the case.

Recommendation

2.12.3 The AASW recommends that points 10 and 11 are reviewed and their purpose and intent made clear if they are to remain in the document. The AASW questions their relevance and suggests their inclusion in the current form is problematic at best, and serves to explain or minimise abusive behaviour at worst.

2.13 'Healing for the Victims'

2.13.1 The AASW commends a commitment to pursuing healing for victims of abuse but submits that the principles outlined in points 16 – 19 are problematic insofar as they reflect a misunderstanding of the nature of trauma; are ambiguous or confusing; and, may be interpreted as patronising of victims of abuse.

2.13.2 The AASW submits that the principle of healing for victims needs to be underpinned by an understanding of sexual abuse and its effects. The AASW is concerned the principle of 'healing for the victims', if not underpinned by such an understanding, has the capacity to be re-traumatising.

2.13.3 The AASW suggests that the statement that 'victims should be asked what needs to be done to ensure they feel safe from further abuse' reflects a misunderstanding of the nature of trauma and support to victims of sexual abuse and wrongfully implies the responsibility of the victim to identify appropriate risk management strategies and actions. While it is appropriate to ask a victim what they would like to occur, the AASW suggests that it remains the absolute responsibility of the Church in coordination with relevant authorities to ensure the ongoing safety and wellbeing of the victim and community by proactively responding to the allegations.

2.13.4 The AASW suggests that statements such as 'victims assisted to move the blame from themselves to the offender' while well-intentioned, may read as patronising. Not all victims of abuse will require the assistance of the Church in determining blame.

Recommendations

2.13.5 The AASW recommends that points 16-19 are rewritten with reference to the points 2.13.1 – 2.13.4 above.

2.13.6 The AASW recommends that principles to underpin how allegations will be dealt with; how victims should be supported; what assistance should be offered; how safety will be ensured; and how the accused should be dealt with as currently evident in point 18, are all distinct aspects of the healing process and need to be outlined as such.

2.14 'A Response to Those Accused'

2.14.1 The AASW notes that the response to those accused allows for the possibility of respondents continuing in their role until such time as a determination on their guilt or innocence is made. The AASW is concerned that this statement:

- provides no guidance to decision-makers in reaching a determination regarding whether or not an individual should continue in their role during an investigation
- renders the decision-making process opaque

2.14.2 The AASW does not believe that a decision which requires an individual to step down while matters are being investigated should be contra to the principle of natural justice. The AASW points to precedents within legal, administrative review and employment settings where principles of natural justice have been preserved. The AASW asserts that the critical issues in such cases are 'best-practice' in complaints handling processes and expediency in undertaking investigations.

2.14.3 The AASW is concerned that the emphasis on confidentiality and protecting the innocence of the accused may reflect a culture of secrecy, whereby allowing respondents to continue in their role denies or conceals that a process is taking place and is thus indicative of institutional self-protection.

Recommendation

2.14.4 The AASW recommends that the decision-making process undertaken in determining whether or not the accused will continue in their role should be outlined as part of a detailed written decision-making framework and process and that such a process:

- Explicitly acknowledge the range of factors that must be considered when making such a determination. The AASW believes these must necessarily include consideration of:
 - principles of natural justice and the right to be presumed innocent
 - the rights of children and vulnerable people including the right to be safe from harm
 - the nature of the allegations
 - threshold allegations, such as serious allegations, that would warrant an immediate requirement to stand aside
 - possible risks to others
 - whether the complaint is an isolated incident or reflective of repeated complaints
- Be undertaken by an independent panel of at least three individuals
- Be undertaken in a timely and expedient manner

2.15 'A Response to Those Guilty of Abuse'

2.15.1 Point 27 states that account will be taken of 'whether there is likelihood that such behaviour could be repeated'. The AASW is deeply concerned that:

- guidelines or considerations relevant to making a determination regarding the assessment of an individual's level of risk to others are absent from the Towards Healing document undermining the transparency and consistency of decision-making.
- support may be provided to individuals who have been found guilty of abusing children or vulnerable persons to continue practising with children and vulnerable people. The AASW suggests this is out of step with child safety practices and legislative structures such as evident in the Working with Children Check laws and processes in many states in Australia.

2.15.2 Point 29 states that ‘Church Authorities need to have some contact with offenders and some form of influence over their conduct. In order to achieve change, they need to be able to tell them that there can be forgiveness, by human beings as well as by God, and that change is possible’.

The AASW believes that this statement is vague and its purpose is not evident.

Recommendations

The AASW recommends that:

- 2.15.3** Offenders who are found guilty of abusing a child or vulnerable person are not supported to continue in their role with the Church.
- 2.15.4** Point 29 is re-written with a view to improving the clarity of the statement, specifically to outline what kind of contact, in what circumstances and to what end the contact should be pursued.

2.16 ‘Prevention’

2.16.1 Point 31 indicates that police checks will be undertaken for all potential employees. The AASW is concerned this is insufficient and inconsistent with best practice among institutions who undertake child-related work.

2.16.2 Point 30 indicates that ‘no one should be selected for clerical or religious life if, on all the information available, they would pose an unacceptable risk to children, young people or vulnerable persons’. The AASW is concerned that the term ‘unacceptable’ suggests that there is a level of risk that is acceptable.

Recommendations

The AASW recommends:

- 2.16.3** that all Church personnel including both employees and volunteers in any capacity, be required to undertake a Working With Children Check or, if not available in a specific State, should consent to undergo a background check of a similar scope and nature.
- 2.16.4** that a Working with Children Check occur in the context of a raft of policies and procedures aimed at fostering a child-safe environment. The AASW recommends that the Church consider recent literature by the National Child Protection Clearinghouse (2006) in the development or review of such policies and procedures.
- 2.16.5** removal of the work ‘unacceptable’ from point 31. The AASW suggests that any risk to children is an unacceptable risk.

Recommendations regarding Part Three: Procedures for dealing with complaints of abuse

2.17 Notes

2.17.1 Point 34.4 states that the document applies to '*complaints of abuse by Church personnel within pastoral relationships*'. The AASW recommends this statement be clarified to indicate whether or not this applies to:

- current *and* former Church personnel
- abuse that occurred outside a formal pastoral setting or outside an interaction that occurred while the Church employee or volunteer was undertaking their formal role or activities.

2.17.2 Point 34.5 states that an appropriate response may need to be based on a 'team approach' but it is not apparent what this means.

Recommendations

The AASW recommends that:

2.17.3 Point 34.4 be re-written to address current ambiguities.

2.17.4 Point 34.5 outline in detail what is meant by a 'team approach'.

2.18 '*Structures and Personnel*'

2.18.1 Point 35 outlines the various personnel involved in the development, implementation and review of the Towards Healing process. The AASW suggests that as a working document to guide the implementation of Towards Healing, this section could be improved to:

- enhance clarity around the roles, responsibilities and relationships between all relevant parties
- support the accessibility of the document to individuals who may not be familiar with Church terminology, structures and laws
- demonstrate the knowledge and skill set expected of and held by complaints handlers

Recommendations

The AASW recommends that:

2.18.2 The specific knowledge, skill set, role, responsibility and reporting relationship of each individual, committee, group and panel are detailed as part of section 35. The AASW suggests that an organisational chart and the accompanying description should assist the reader in understanding:

- the role and responsibility of each individual Director, 'contact person', committee, panel and group
- how each role relates to the other and to the Church more broadly
- the relative independence or otherwise of various individuals involved in the process
- to whom specific enquiries or issues should be addressed
- when the involvement of individuals, committees and groups should begin and end
- how confidentiality is maintained and who has access to what information
- how records are shared, managed and stored and who has access to these
- whether supervision will be made available

2.18.3 Information or supporting documentation be developed, made available to all relevant parties and referenced in section 35 to support individuals in their understanding of religious or Church terms, structures, laws and processes evident in terms such as 'the supreme moderator for a major superior of an institute of pontifical right' (Towards Healing 2010, p. 14) or 'suffragan, auxiliary or retired bishop' (Towards Healing 2010, p. 15).

2.18.4 It is critical to the success and integrity of the process that the individuals appointed to implement it have the necessary skill base to do so and that the skill base is explicitly acknowledged. The AASW believes this will assist in ensuring best practice in terms of decision-making at each stage of the Towards Healing process. At a minimum, the AASW recommends this include:

- knowledge of the traumatic impacts of all forms of abuse
- knowledge and skill in identifying and responding to trauma
- skills and processes to ensuring minimisation of the possibility of re-traumatisation as part of a complaints process
- knowledge and understanding on creating child-safe institutions and institutional cultures
- knowledge of complaints management best practice and skill or experience in complaints handling processes

2.18.5 The membership and constitution of each group, committee or panel is clearly outlined in one area of the document alongside information about how members are appointed, reviewed, elected or otherwise.

2.19 Sections 35 to 41

2.19.1 The AASW recommends that processes for receiving a complaint should reflect:

- best practice literature on complaints handling
- principles of natural justice and

- an understanding of relevant abuse and trauma literature.

2.19.2 The AASW submits that the language in sections 35-41 are littered with vague, ambiguous statements that render the process opaque or difficult to follow. Examples include phrases such as 'as soon as possible' and 'enough detail' (p. 19); 'where possible they should be given some suitable activity' (p. 20); 'unless urgent action is required' with no accompanying description of when this might apply (p. 20); 'assessors shall endeavour to reach a conclusion concerning the truth of the matter' with no description of what this might entail (p. 23); 'sufficient degree of certainty' with no guide as to what sufficiency means (p. 23); and 'the process shall be as transparent as possible' with no information on what transparency should and should not involve (p. 24). In addition there are multiple references to processes that should be undertaken 'as soon as possible' with no guidance on what might constitute a reasonable timeframe.

The AASW recommends that steps are taken to address all ambiguities within the Towards Healing document and where necessary supporting or complementary processes are developed and made available to all interested parties that explicate the processes, including decision-making processes and frameworks, in more detail. In addition, we recommend that timeframes are established for the Towards Healing process and mechanisms put in place to address and deal with delays or obstacles to the progress of complaints wherever possible.

2.19.3 The AASW recommends that the procedures could better address and outline the ethical obligations of the Church in handling complaints including issues such as when and how informed consent will be obtained; obtaining informed consent from legal guardians; confidentiality and when and why it may be breached; and the rights of all interested parties.

3. The principles and procedures of Towards Healing relate to the accused and particularly the response and outcomes available.

3.1 The AASW reiterates the importance of a documented, transparent and independent decision-making process regarding whether or not the accused is supported to continue in their role while investigations are undertaken (see 2.14.3).

3.2 Point 38.3 identifies the possibility that a complaint may relate to an incident that could 'reasonably be considered to fall within the definition of abuse' in Towards Healing but 'does not represent a serious breach of pastoral ethics'. The AASW is unsure of what form of abuse could fit this kind of scenario and recommends that further clarification is needed.

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

No response.

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.

5.1 The AASW submits that it is critically important for personnel engaged in the Towards Healing process to be skilled and professional. They should be 'chosen for that function and be fully trained in the work of the agency and in exemplary complaint handling practices' (Commonwealth Ombudsman 2009).

Literature on best practice in complaints management suggests that complaints staff need to be warm, analytical, unbiased, astute, firm, resilient and decisive. In addition the Commonwealth Ombudsman (2009, p. 18) recognises that complaints on 'specific topics... such as sexual harassment ...require specialist skills that many complaints handlers do not have'. The AASW believes the specialist knowledge required for personnel engaged in the Towards Healing process includes:

- Knowledge and awareness of contemporary definitions of all forms of abuse
- Knowledge and understanding of the traumatic impacts of sexual, physical and emotional abuse
- Capacity to identify signs of trauma
- Knowledge and understanding of strategies to avoid re-traumatisation
- Awareness of support structures and expertise appropriate to adequately supporting victims of sexual abuse through the complaints process and in dealing with the impacts of disclosure

5.2 The AASW recommends regular supervision and mentoring of individuals engaged to implement Towards Healing. The AASW suggests that depending on the nature of the role undertaken a range of supervision approaches may be appropriate. For example, clinical as well as administrative supervision.

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

6.1 The AASW submits that the Towards Healing process is distinct and should be considered completely unrelated to the rights of victims to pursue matters via the civil and criminal justice systems. The AASW believes that all three avenues should be available to complainants and that this should be clearly communicated to complainants when they contact Church personnel.

6.2 A continuing impediment to people seeking justice from the Church is the statute of limitations. Effectively this means in most cases of past abuse a person has to accept they cannot initiate a civil suit against the Church and that their only hope for some form of monetary compensation relies on the organisation itself. The AASW recommends that the statute of limitations be overridden in cases of abuse against children.

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

The AASW takes the 'conduct of investigations' to include the processes detailed in points 36 to 40.

The AASW points to the recommendations outlined in response to question 2 above.

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

No response.

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

Point 19 indicates a very high burden of proof must be achieved in order for an allegation to be substantiated. The AASW suggests the requirement for proof or admission reflects requirements of criminal proceedings, however the balance of probability is sufficient for matters of abuse heard in civil courts. The AASW recommends that the balance of probability apply to matters addressed through the Towards Healing process.

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.

No response.

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

11.1 Point 37 outlines when a matter should be reported to police such that it can be dealt with through the justice system. However, it is not clear when an allegation is to be considered an 'alleged crime' versus some other matter. The AASW is concerned therefore that this determination rests on the assessment of an individual(s) who may or may not have the knowledge and skill relevant to making such a determination.

In any case, given Towards Healing deals with the sexual and physical abuse of vulnerable persons, the AASW suggests it is appropriate to report all allegations of abuse to the police. The AASW suggests the police are best placed to make a determination regarding the criminality, or otherwise, of alleged abuse.

11.2 Point 37.1 states that the Director for Professional Standards will express the ‘strong preference’ of the Church that allegations are referred to the police. The AASW recommends that this point be expanded to include a requirement that the Director for Professional Standards also highlight *at that time* the fact that pursuing justice through the relevant authorities does not preclude the complainant from pursuing a complaint with the Church at a later date.

11.3 Point 37.5 states that, if required by law, Church personnel will report suspected child abuse. The AASW believes that the obligation to report allegations or suspicions of child sexual abuse does not solely rest on legal obligations. The AASW submits that all Institutions and their employees or volunteers also have moral obligations. These include an obligation to ensure children and vulnerable adults are safe from harm. A report, regardless of legal requirements, may therefore be appropriate.

In any case, the AASW recommends that all reports occur in consultation with and with the informed consent of victims and that due consideration is given to the risks and implications of such an action.

11.4 The AASW submits that any reporting of matters relating to alleged child abuse should be accompanied by a comprehensive risk assessment and management process to ensure that such reporting does not place anyone at risk of harm. This should occur at all stages of the Towards Healing process. Such risk assessment should be undertaken by individuals with knowledge and skill in the field of child protection.

12. The role of canon law in Towards Healing

No response.

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 acknowledgments which are provided to victims
- e. the conditions imposed including any confidentiality agreements.

No response.

14. The nature and extent of the review process available

No response.

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

15.1 No. Towards Healing, as a document designed to respond to allegations of sexual abuse, assists in responding to such allegations post fact and therefore does not constitute a mechanism for preventing abuse.

15.2 The degree to which Towards Healing may be seen as a preventative measure may be evident in how

the document outlines what abuse is; how it should be viewed by Church personnel; and the value the institution places on uncovering and addressing abuse. However, as the preceding discussion has outlined, the AASW submits that the document fails to outline a commitment to the prevention of abuse insofar as it is ambiguous, unclear and at times reads as though risk to children and certain forms of abuse (such as legitimate disciplinary behaviours) are acceptable. The AASW suggests that the document requires significant revision to be seen as a preventative measure.

15.3 The AASW reiterates the recommendation that this document must be part of a raft of child safety policies, procedures and training if the aim of prevention is to be realised.

Submitted for and on behalf of the Australian Association of Social Workers Ltd



Glenys Wilkinson
Chief Executive Officer

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