

SUBMISSION TO ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

ISSUES PAPER 2 – TOWARDS HEALING

Introduction

This submission has been prepared by Mary Power, Graham Castledine and Kate Castledine, all of whom have experience as independent facilitators in the Towards Healing process.

Between them, the submitters have facilitated several hundred Towards Healing meetings in Western Australia. They therefore have extensive experience of the benefits, limitations and challenges associated with that aspect of Towards Healing which deals with facilitation (being the ‘normal means of addressing the needs of the victim’).

General Comments

Before addressing some of the specific issues raised in the Issues Paper, we believe it is appropriate to make some general comments about the purpose of the Towards Healing program.

Importantly, the primary focus of Towards Healing is not intended to be ‘compensation’ (in the sense understood by the common law where a monetary value is attempted to be placed on the extent of a person’s loss). Rather, Towards Healing is directed to responding in a pastoral and compassionate way to the needs of the victim. This is made clear in clause 41.1 of the Towards Healing protocol which provides as follows.

‘In the event that the Church Authority is satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a penal process under canon law, an assessment under these procedures or otherwise, the Church Authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses **may include** the provision of an apology on behalf of the Church, the provision of counselling services or the payment of counselling costs.

41.1.1 Financial assistance or reparation **may also be paid** to victims of a criminal offence or civil wrong, even though the Church is not legally liable.

41.1.2 A bishop or leader must seek the advice of the Consultative Panel in determining how to respond to the complainant’ (our emphasis).

This theme is also made clear in clause 36.5 which provides:

‘If a complainant chooses to be represented by a lawyer in seeking compensation from the Church Authority **and is not seeking any form of pastoral support or other engagement with the Church**, then the matter should proceed outside of Towards Healing by the normal means appropriate to the resolution of civil claims.

The Church Authority should nonetheless endeavour to act with a concern for the wellbeing of the complainant in seeking to resolve the civil claim' (our emphasis).

Of course, there may be times when a complainant is seeking both a pastoral response and financial reparation. In these cases, clause 41.4.3 of the Towards Healing protocol is relevant:

'The facilitator shall seek to know the ongoing needs of the victim and the response of the Church Authority to these needs. In the event that there are unresolved issues concerning monetary reparation other than through the provision of counselling costs or meeting other needs of the victim, **these should be dealt with by negotiation outside of the facilitation**, in order to seek a resolution on this aspect of the matter' (our emphasis).

Having regard to these provisions, we consider it to be part of our role as facilitators to ensure complainants understand these distinctions and, in cases where a complainant is only wanting to negotiate a financial settlement (and does not wish to engage with the Church Authority at a pastoral level), we will raise with the complainant the appropriateness of proceeding with the Towards Healing process.

In Western Australia, the experience has generally been that the parties to facilitations are not accompanied by lawyers or insurance representatives. This has helped to ensure that matters do not become bogged down in legal argument or adversarial approaches.

In our experience, Towards Healing facilitations are most likely to be successful in cases where the complainant is seeking one or more of the following outcomes:

- A meeting with a representative of the Church Authority where they can recount their experience knowing that they will be heard and not interrogated or condemned;
- An acknowledgement or apology from the Church Authority as to what has happened (and that it was wrong);
- The provision of practical assistance (including, where appropriate, financial) to assist in meeting the current and future needs of the complainant and their family;
- (in some cases) reconnection with the Church or the complainant's faith life after a long period of separation and/or disillusionment.

Outcomes like these provide a great potential for reconciliation between the victim and the Church Authority which was responsible or partly responsible for their suffering. Reconciliation and transformation of this kind is generally not possible in strictly formal legal proceedings. As such, as facilitators we generally look for opportunities for reconciliatory engagement between the parties.

While not every Towards Healing facilitation reaches a successful outcome, it has been our experience that the process does allow many complainants to take very significant steps forward on a path to recovery. We have seen this positive outcome on many occasions and believe this results from the unique opportunity provided to complainants to meet in a safe environment in a process which is focused on acknowledging their suffering and striving to meet their individual needs.

Specific Issues Raised

1. The experience of victims who have engaged in the *Towards Healing* process

Many victims who come to the Towards Healing process do feel as if their needs get met in the process. This is especially so when victims are wanting to be heard, to be acknowledged, to be believed, and to receive an apology for the abuse they experienced. Some victims present saying they are only interested in some form of 'compensation', and it happens that they experience the process in such a way, that they move from this position, often to their great surprise, and are transformed, and their painful memories are eased because the process does meet their unacknowledged needs. Victims who refused to shake hands at the start of a meeting, will often put their hand out first at the conclusion of the process, or even hug the Church representative. The overall focus of Towards Healing is that it is an attempt at reconciliation.

Not all victims have this experience. Not everyone feels as if their needs get met, particularly if they have a strictly monetary focus. Such victims do not perceive that an apology, or the offer of counselling are helpful to them. If a financial gesture is offered, some victims are genuinely disappointed in the offer, and believe that the offer is 'an insult', given their suffering.

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

It is our experience that the Church authorities who have become part of this process do take the process seriously, and they act responsibly towards the victims and the process. In the early days of the process, many Church authorities who participated in the actual meetings with the victims, were the leaders of their Order or Congregation, and this is still the case in many instances. Other Orders or Congregations have a designated member, who is responsible for representing the Order or Congregation and for speaking on the Order's/Congregation's behalf. None of these Church representatives are lay people, they are all members of their Order or Congregation. Naturally, some Church authorities are more genuinely suited to this work, either through natural ability or training, and the majority are genuine in their concern for the victim.

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.

We are unable to comment about assessors.

In relation to facilitators, we believe that having mediation training is very helpful, as it helps the facilitator to understand the nature of conflict, and the mediation model helps the facilitator to guide the process. While classical mediation training would form the basis of the facilitation work, it is important to note that, as with all mediations in real life, the process needs some adaptation in *Towards Healing*. It would also be helpful, we believe, to have some counselling experience, but to have clear boundaries so that the facilitation remains a facilitation and does not become a counselling session. Of similar importance, is experience in dealing with Culturally and Linguistically Diverse clients.

It is also extremely important to have different genders in the facilitator pool.

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

It is of the utmost importance that victims understand that their confidentiality will be respected. In the *Towards Healing* process, facilitators and Church authorities are not to disclose any details of the victims or their complaints to anyone else. However, victims are assured that what has happened to them is part of their life, and they are free to reveal their story to whomever they wish. In the early days of the process, many Deeds of Release did contain a confidentiality clause about the process itself and the outcomes, but, to the best of our knowledge, this has been abandoned and is no longer in use.

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

Our experience as facilitators is that the Church authority requires some standard of proof, as outlined in clauses 38.8 and 38.9 of the *Towards Healing* document:

‘The Church Authority(or his or her delegate) shall seek a response from the accused in order to determine whether the facts of the case are significantly disputed. If they are not, then the Church Authority shall proceed in accordance with Clause 42 of these procedures. There does not need to be an assessment of the facts if the Church Authority is satisfied of the validity of the complaint’

And

‘Where there is a significant dispute or uncertainty about the facts the Director shall have the matter investigated in accordance with the procedures set out in this document to the extent that it is possible to do so.’

In many of the facilitations we have done, the Church Authority accepts the victim’s report at face value, in that, the victim may cite persons who have already been mentioned in other reports by other victims, and there is a strong belief that such persons are offenders.

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.

As facilitators operating in Western Australia, our experience is that lawyers, insurers or other third parties are generally not present in the process. In all cases, the victim is allowed to have a support person accompany them.

12. The role of canon law in *Towards Healing*.

As far as we are aware, canon law has no role in *Towards Healing*.

13. The options for redress under *Towards Healing*, in particular:

a. the circumstances in which financial assistance may be paid

In most cases we have facilitated, some financial payment is considered, and this usually pertains to the needs of the victim, and their circumstances. However, it is generally not presented as an attempt to 'compensate' victims for their suffering. In many cases, the representatives of Church Authorities acknowledge that no amount of money could erase the suffering which has occurred.

b. the level of monetary payments and how they are determined

The resources of the Order or Congregation are relevant to what they believe they can afford to pay a victim, as are the needs of the victim and their level of suffering.

c. other forms of financial support

Orders and Congregations sometimes offer victims:

- counselling at no cost to the victim for either a limited or unlimited period.
- contributing to or covering the cost of funerals
- the payment of utilities bills
- buying or supplying practical household goods
- paying for enrolment in educational or other training courses.

d. the apologies or acknowledgements which are provided to victims

Our experience is that, without exception the Church Authority will offer the victim a sincere apology, always orally and in many cases, in writing as well. In almost every case, the apology is well received, though some victims reject the apology altogether. For the majority of processes we have facilitated, an acknowledgement about what has happened to the victim, and the fact that

what happened was wrong, are the key components to victims reaching some level of healing.

e. the conditions imposed including any confidentiality agreements.

Generally, for cases involving more substantial payments, victims are asked to sign a Deed of Release. As mentioned above, we understand that confidentiality clauses no longer form part of the Deed of Release.

14. The nature and extent of the review process available

This is set out in some detail at clause 44 of the Protocol. As facilitators we are not involved in this process.

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

It is our belief as facilitators that *Towards Healing* does assist in the prevention of child sexual abuse, in as much as, many Church authorities will explain to victims the checks and balances now in place that go a long way to ensuring that such situations cannot occur again. Most victims are reassured and comforted by this information, and it is, in fact, one of the questions that victims often ask.

Conclusion

While *Towards Healing* is not suitable for all cases where complaints have been made concerning abuse within Catholic Church institutions, we have experienced many cases where genuine healing and even transformation have occurred as a result of this process. In our view, *Towards Healing* provides an vital alternative to other processes (particularly legal proceedings) in cases where a pastoral response is valued and/or legal action is either not available or not viable.

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