

Lewis Holdway Lawyers

Submission to Towards Healing Review 2009

Introduction

The Towards Healing document ("the Protocol") establishes "public criteria" according to which the community may judge the resolve of Church leaders to address issues of abuse within the Church. It states that if the principles and procedures are not followed, then "we (the Bishops and Church leaders) will have failed according to our own criteria."

It is our view that, unfortunately, the principles and procedures outlined in the Protocol have in many cases, not been followed. We therefore welcome this opportunity to provide feedback to the National Committee for Professional Standards and Church leaders.

Our submission offers examples of how failure to follow the principles and procedures of the Protocol has impacted, in some cases most severely, on the well being of complainants who have approached Towards Healing and relied on its rhetoric.

Our submission comes from our case experiences with Towards Healing (about 120) since 1996 with an emphasis on cases in the last year to keep it as relevant to the Review as possible.

We note the Principles outlined in Part One of the Protocol and support these. It is the failure to implement the Procedures in the context of these Principles that has, in our opinion, led to Towards Healing being less than satisfactory in a number of cases for our clients and we except the overwhelming majority of Victims who engage with it.

We offer this document as constructive feedback and in the hope that improvements will be made to benefit all parties involved in the Towards Healing process.

Response regarding the Principles (Clauses 1-32)

Clauses 1-5

We affirm the Principles outlined in Clauses 1-5 of the Protocol regarding Sexual Abuse, Physical and Emotional Abuse.

However, we see a gap in that the very critical areas of Spiritual Abuse and Damage are not included in the Principles section. Such an omission fails to fully grasp the gravity of sexual assaults in a religious context. The acknowledgement and inclusion of Spiritual Abuse and Damage would add greatly to a more comprehensive consideration of victims' welfare and needs.

Clause 10

We affirm the acknowledgment in Clause 10 of the Protocol that offenders frequently present as caring and good and that "exemplary public lives can be used as an excuse for a private life that contradicts the public image."

We ask however, given such an acknowledgement, why in practice does the Protocol demonstrate a reluctance to accept a complaint which happens to be the first or sole complaint against an accused? We respectfully suggest that this practice is not only

misguided, but it also creates a bias against the victim in cases where a victim happens to be the first complainant. We understand this to be more of an implementation issue rather than a matter of amending the Principles. Perhaps Guidelines for Implementation should be developed to remind personnel to avoid this bias.

Clause 12

We affirm the stated 7 goals for the response of the Church in Clause 12 of the Protocol.

Clause 20

With regard to "Assistance to other persons Affected," Clause 20 of the Protocol states that the Church will strive to assist in psychological and spiritual healing of "those persons, who as well as victims, have been seriously affected by the abuse." In our view such persons include family members and parish community members. We support the inclusion of these parties but note that in practice, very little is offered to extended family members and communities affected. Guidelines of how these parties could be assisted should in our view, be included in the Protocol.

Clause 20 also refers to an effective response to those accused which has to be appropriate to the gravity of the offence; and consistent with canon law or civil law. However, there are no criteria set out by which to judge how serious the offences are, how the degree of harm is measured, and how the likelihood of repeat offending is established. Indeed, it is not clear who makes these findings, or what canon laws or civil laws apply. These are serious gaps, which should be addressed.

Clause 30

Clause 30 states that the Church will make every effort to reduce risk of abuse by Church personnel. We affirm this Principle but suggest that further detail on how Church personnel will be screened to minimise the risk should be added. We suggest that an inclusion of how such screening will occur would add to the authenticity of such a statement.

Clause 32

We note that in Clause 32 that Bishops and Catholic leaders assert their commitment to the Principles outlined in Part One. In light of this, we respectfully ask that they carefully consider our suggestions and comments, as practitioners who have been using the protocol for some years. We urge them to take action, to ensure that the excellent principles outlined in the Protocol are complied with.

Response regarding the Procedures (Clauses 33-45)

Clause 33

We are encouraged by the acknowledgement in Clause 33.4 that a team approach to address the psychological, spiritual, medical, legal and practical questions may be required. We affirm this statement as since 1996 our own professional approach has been to acknowledge the need for a holistic response to victims of clergy abuse. Despite this clause however, we are aware that on some occasions our holistic approach has been treated with suspicion within the Towards Healing process. In some cases, funding for victims who have preferred the holistic service we offer has been refused by Church authorities, to the detriment of victims.

Clause 34

We suggest that the definition of Pastoral Care in Clause 34 of the Protocol requires expansion to include a range of care that is specific to victims of religious sexual assault. Pastoral care is a difficult concept to define and can be so broad that it can lose any practical application and meaning. In our view, it requires an acknowledgement that pastoral care in the area of assisting victims of clergy/religious assault is a specialised field, and should be promptly provided for victims by those suitably qualified.

Clauses 35 & 36

While Clause 35 outlines Structures and Personnel, it has been our experience that the State Professional Standards Resource Group (PSRG) does not have a public profile. As such, the PSRG is not approachable to professionals or to the public, making communications and establishing a positive relationship difficult.

A further difficulty is that PSRG members are appointed by Bishops, with the criteria for such appointments being unknown. In addition, to our knowledge there are no victim representatives on the PSRG. This is a concerning omission as such a role would clearly assist in ensuring that the service offered by the PSRG adequately meet the needs of victims.

Clause 35.3.1 states that "the Director shall manage the process." We regret to inform that our experience of the management of the process, in particular over the past four years, has been inadequate to say the least.

This is in part due to the Victorian Director being based six hours out of the Melbourne CBD, making it logistically difficult for victims and their representatives to receive an adequate service. You will appreciate that face to face contact can provide reassurance to victims who often are injured psychologically in such a way as to become dislocated.

It has also been due to a significant number of avoidable issues which our clients have experienced. These issues and errors have made client victim experiences of the Towards Healing process highly stressful at best and damaging at worst. We offer the following specific examples, noting that this is not an exhaustive list:

1. Insistence that victims make the 1800 call themselves to enter their complaints. In Clause 36: Receiving a Complaint, it does not state that victims have to ring the 1800 number. It is our view that it is not ethical to expect a victim of sexual abuse to report their experiences to complete strangers over the phone as a pre-requisite to entering the Protocol. Written entry or entry via a representative should be expressly permitted in the Protocol.
2. Failure to keep telephone appointment to enter complaint.
3. Inadequate preliminary investigations.
4. Significant and ongoing time delays in management of process.
5. Ongoing lack of Communication from Towards Healing office.
6. Appointments of inadequate or inappropriate Contact Persons - e.g. not caring/compassionate, unable to record claim clearly/accurately.
7. Inadequate Contact Reports - not complying with Protocol requirements
8. Inadequate Assessor and Assessment - e.g. not interviewing Victim but still making a finding.
9. Unnecessarily Legalistic process - e.g. cross-examination type approach/questioning of everything/requiring Court level evidence to prove each allegation/referring for Psychiatric testing to a medico-legal therapist unskilled in Pastoral Care.
10. Refusal to engage in a pastoral meeting.

11. Unnecessary Referral for Assessment - e.g. where known serial offender already incarcerated.
12. Failure to notify of medical appointment and refusal to reschedule same appointment.
13. Requirement for concession or prior treating psychologists will be contacted.
14. Lack of pastoral care.
15. Badgering of victims as to their need for legal/pastoral services.
16. Assessor confusion between beyond reasonable doubt and balance of probabilities in making Assessment findings (exacerbated in Victoria by being mostly former Police personnel).

As a result of experiencing some or many of the issues noted above, we have had a number of clients who have suffered considerable stress, exacerbating their original injuries. This has been all the more serious because the Towards Healing protocol is seen as a Church response. As such, when the protocol is not adhered to, this adds another layer of damage to the victims and further damages the Church's integrity.

One way for victims to receive a better service is to follow the suggested practice for the role of Contact persons as outlined in Clause 35.4. In our experience, the Contact Persons have in practice had no role post-interview, neither have they been a support person or a liaison person.

We note in Clause 36.2 that "information on these processes will be widely circulated to the public." It is our view that this is not practised. However, if we are incorrect, please advise how such information is circulated.

Clause 41

In our experience the approved panel of Facilitators mentioned in Clause 41.3 is not made available to Victims or their advocates, is very small and not updated and is dominated by the preferences of the Lawyers acting for Insurers, particularly Catholic Church Insurances. The approved panel should be published, broadened and updated.

Clause 41.3.9 should be clarified to make it clear that the legal and other advocacy/support costs of the Victim are ordinary and reasonable costs of the process of Facilitation.

Other

We have been previously informed that Towards Healing is a "free pastoral care service." However, in our experience, this is far from the case. We have had clients who are desperately seeking a pastoral care response but have been refused pastoral meetings and have not been offered any practical support. Our view is that this lack of pastoral response renders Towards Healing (despite the positive principles it espouses) to be merely a complaints process which leaves many victims hurt and frustrated.

For many of our clients, they have found the lack of provision of pastoral care and the absence of Church personnel in the Towards Healing process to be an overwhelming negative. Clearly, each victim's needs should be assessed on a case by case basis.

Summary

The Protocol states that the Church is responsible to bring healing to victims (Clause 16). For many of our clients however, sadly, this has not been the case. Our goal as professionals in this area is to promote and assist healing for the victims. Our comments are provided in this spirit and we hope they will be accepted as such.

The protocol further states at Clause 17 that a compassionate response to the complainant must be a priority. Again, for many of our clients, the response of Towards Healing has unfortunately been anything but compassionate.

Despite this, we are committed to continuing to work within the protocol to the best of our ability to meet the needs of our clients.

We greatly appreciate this opportunity to contribute to discussions for a better process for victims.

We look forward to receiving a copy of your report in due course.

A handwritten signature in black ink, appearing to read "Paul Holdway". The signature is written in a cursive, slightly slanted style.

for Paul Holdway & Ruth Baker
Australian Lawyers
Lewis Holdway Lawyers
Melbourne, January 2009.