

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

## Issues Paper 11: Catholic Church Final Hearing

### 1. INTRODUCTION

**knowmore** is a free legal service established to assist people engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse. Advice is provided through a national telephone service and at face to face meetings, including at outreach locations. **knowmore** has been established by the National Association of Community Legal Centres, with funding from the Australian Government, represented by the Attorney-General's Department. **knowmore** has offices in Sydney, Melbourne, Brisbane and Perth.

Our service was launched in July 2013 and since that time has assisted over 4,900 clients. The majority of those clients are survivors of institutional child sexual abuse. Many were abused within the Catholic Church and, accordingly, providing legal assistance to these clients has in turn afforded **knowmore** insights into how various Catholic dioceses and orders have responded to reports of child sexual abuse, and also to claims for compensation and/or redress arising in relation to that abuse.

As the Royal Commission will know from the many private sessions conducted with survivors of child sexual abuse within the Catholic Church, many survivors are now coming forward only for the first time to disclose their abuse. These survivors, and many others, have not engaged with the Catholic Church at all, or have only engaged recently, about their experiences and/or redress.

**knowmore** does not itself represent clients in relation to actions for compensation, such as civil claims for damages or claims for redress made to an institution, or under an institutional scheme. **knowmore** has established a national panel of experienced private lawyers, who meet specific criteria that reflects their experience with and understanding of the needs of this client group, to whom we refer clients to for such representation.

In responding to this Issues Paper, we have drawn on the collective experiences of relevant **knowmore** clients, as well as information provided to us by lawyers on the abovementioned panel. It should be noted that much of the information provided by clients and panel lawyers reflects recent and/or contemporaneous experiences, rather than historical events.

Our submission does not address all of the questions listed in this Issues Paper. Following from the above, the focus of our submission is upon aspects of the Catholic Church's institutional responses to child sexual abuse. In this respect, our submission contains information that addresses parts of questions 3, 4, 5 and 7, regarding factors that have affected the Church's institutional responses in attempting to meet the needs of survivors for justice, primarily through redress related responses.

As the Commission will be aware, we have in previous submissions commented upon the Church's *Towards Healing* process specifically,<sup>1</sup> and more generally, addressed the inadequacies of institutional redress schemes; the needs of survivors in order to obtain justice; and how those needs should be met through the establishment of a national redress scheme and the enactment of reforms to the civil litigation systems of Australia's States and Territories. In that regard, we support the recommendations made by the Commission in its final report on *Redress and Civil Litigation*,<sup>2</sup> and we remain of the view that the timely implementation by Governments of those recommendations is the best way of ensuring that institutions, including the Catholic Church, do what is necessary to address or alleviate the impact of past and future child sexual abuse in institutional contexts, and to ensure justice for victims through the provision of redress.

Given the Commission's previous consideration of those submissions, we have not referenced them extensively in this submission. However, it should be noted that many of the problems with the *Towards Healing* process, and institutional redress schemes more generally, continue to present.

## 2. INSTITUTIONAL RESPONSES OF THE CATHOLIC CHURCH

The majority of people contacting **knowmore** have reported experiences indicating that the responses of the Catholic Church to claims for redress/compensation continue to feature the following characteristics:

- The large number of Catholic dioceses and Catholic religious Orders has resulted in widely differing outcomes for survivors of institutional child sexual abuse.<sup>3</sup> Many of the dioceses and Orders appear to have adopted different positions in dealing with survivors and claims for redress. The inconsistency of approaches and outcomes is, in our experience, more prevalent within the context of the Catholic Church's institutional responses, than it is in other Churches.
- Processes adopted at times in responding to redress claims conflict with higher level statements of principle made by Church representatives.
- Processes for resolving redress claims are still, in many cases, unnecessarily re-traumatising for survivors.

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<sup>1</sup> In responding to Issues Paper 2. This submission can be viewed at <http://www.childabuseroyalcommission.gov.au/getattachment/1f3f51d4-549f-4cdb-a1c1-aa44ef17e120/7-Knowmore>

<sup>2</sup> Published in September 2015

<sup>3</sup> We understand there are more than 30 Catholic dioceses in Australia and more than 100 congregations/Orders

#### a) Inconsistency

A fundamental point of difference in how various Catholic entities approach redress claims is whether the survivor is compelled to participate in the *Towards Healing* process, or whether a less traumatising process, specific to the needs of the individual survivor, will be contemplated. This issue is explored further below in respect of point c).

It should be noted that some clients have reported receiving outcomes that they were satisfied with, following engagement with *Towards Healing*, or through other specific arrangements. Also, in many instances it would seem that the client's experiences of the redress process are impacted significantly by their relationship with the relevant Professional Standards Office (PSO) member who is in contact with them about their claim. Some clients have reported that the PSO person dealing with them was supportive, compassionate and considerate, which in turn (unsurprisingly) lessened their distress in pursuing a claim, and which contributed significantly to whether they regarded the experience, and the outcome obtained, in a positive way.

In other instances, PSO officers are reported to be adversarial in approach; unsupportive; reactive rather than proactive; and uncommitted to moving claims forward in any timely fashion.

Additionally, we are told that some Orders (e.g. the Salesians) insist on handling all claims entirely within the Order, and without involving the PSO at all.

Eligibility is another point of inconsistency across the Catholic Church. We are told that some Orders apply a very strict approach to the *Towards Healing* guidelines and eligibility criteria; others apply a more relaxed approach, more focused on affording justice to the specific claimant.

Another fundamental point of inconsistency across different church entities is whether past settlements in claims relating to child sexual abuse will be revisited now, in light of the Church's repeated admissions in proceedings before this Royal Commission, and in other public statements, to the effect that it has on so many past occasions failed to deal empathetically and adequately with survivors coming forward with claims and complaints. Some Catholic Orders and dioceses have shown a preparedness to re-examine cases that have been settled previously, particularly where it seems clear that matters have been settled for inadequate financial compensation.

As the Commission will be well aware, following Case Study 11 into the response of the Congregation of Christian Brothers in Western Australia to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School, the Deputy Provincial Leader of the Christian Brothers Province of Oceania provided undertakings about ongoing counselling and re-examining any cases which had been settled on unjust and unreasonably low terms. In many respects the way in which the Christian Brothers and their lawyers have been engaging with survivors and their lawyers has evidenced a much improved approach towards people affected by trauma.

However, this approach can readily be contrasted with that adopted by many other Catholic Church entities. For example, our service has been attempting to assist several elderly Aboriginal survivors who were sexually abused as children, while at a mission in Western Australia. The payments previously received by this group of survivors from the [REDACTED] Order have been very small; we have been advised of several settlements ranging from \$1,100 to \$5,000 (although one client – who was legally represented during the process - has reported receiving \$30,000). However, despite the obvious inadequacies of the general range of financial settlements made, there is no indication from this Order that it is now willing to re-visit these past claims and settlement payments in any way.

The injustice experienced by these clients is not an isolated instance. Many missions for Aboriginal children were established in Western Australia, with the majority of those missions being run by Catholic religious Orders. It would appear to **knowmore** that when survivors have come forward to seek redress for the sexual abuse they suffered as children on these missions, they have been met with pitifully small payments or with no redress at all. Some of the responsible Orders will not negotiate with lawyers acting for survivors [and see point c) below], and will only correspond and communicate directly with the survivors. For many survivors this just replicates their childhood experiences of abuse and power imbalance at the hands of the institution and its staff. Many missions no longer exist, have changed hands, or have failed to keep adequate or any records – factors making it incredibly difficult for a survivor to ‘prove’ that they were at a particular institution at a particular time, or to ‘prove’ what happened to them.

#### b) Conflict

As the Commission will know, in January 2013 the Truth Justice and Healing Council (TJHC) was established to co-ordinate the Catholic Church’s response to the Royal Commission. The TJHC has made many public statements acknowledging the past failures of the Catholic Church to respond appropriately to matters of child sexual abuse, and putting forward commitments by Church leaders to respond more effectively in the future; for example:

*The leaders of the Catholic Church in Australia commit ourselves to endeavour to repair the wrongs of the past, to listen to and hear victims, to put their needs first, and to do everything we can to ensure a safer future for children. <sup>4</sup>*

In the TJHC Activity Report of December 2014, the Chair, the Hon. Neville Owen stated “*The Church leadership must openly and without reservation accept the failings of the past, engage in the just and compassionate treatment of survivors and chart a course for a future built on the protection of children.*”<sup>5</sup>

<sup>4</sup> Commitment Statement from leaders of the Catholic Church in Australia. See the TJHC website - <http://www.tjhcouncil.org.au/media/42284/131114-Our-Commitment-doc.pdf>

<sup>5</sup> At page 4

As the matters cited in this submission demonstrate, there remains some distance between the intent of these broader statements of principle and commitment, and what many survivors are still experiencing when they seek justice through redress from the Church. A further example arises in the context of the current approach taken by the Church to claims falling under its *Melbourne Response*. We are told all claims involving the Melbourne Response remain on hold, because the review into that process has not been finalised. The effect of this position is to delay the progress of existing claims, and to delay the consideration of any new claims.

While some Dioceses and Orders are readily providing an entity (such as a Bishop of a diocese) as a defendant for the purposes of civil claims, and/or ensuring the timely provision of information about the correct party who should be named as the defendant, we have been advised of instances where repeated requests have had to be made, requesting the provision of such information, before it is provided. These delays obviously increase the legal costs ultimately payable by the survivor/plaintiff. In other instances, lawyers acting for survivors who have indicated they hold instructions to bring proceedings have been told to determine themselves who they consider the 'correct' defendant to be, and they will in turn be advised if their choice is correct.

Such approaches are not consistent with the guidelines released by the TJHC for how Church authorities should respond when claims of child sexual abuse are made against them. The guidelines require Church dioceses or religious Orders to assist a claimant to identify the correct defendant to respond to legal proceedings.<sup>6</sup>

### c) Re-traumatisation

The Commission has already reported on some case studies that involved investigations of how specific cases were dealt with under the *Towards Healing* process. It is unnecessary to set out herein the findings made in those case studies; it will suffice to note that those findings might generally be summarised as identifying many shortcomings in how those specific cases were dealt with, which in turn exacerbated the trauma of the respective claimants. We are aware that many of the panel lawyers to whom we refer clients seeking redress claims are strongly of the view that the *Towards Healing* process is inherently re-traumatising for survivors, and that the interests of survivors are better served through negotiating with the Church to pursue an alternative dispute resolution style of process that lessens the client's re-traumatisation.

Given the publication of the Commission's findings in these case studies, in this context it is surprising that, as noted above, some Dioceses and Orders are willing to negotiate settlements of claims outside the *Towards Healing* process, while others will only allow clients to work within the confines of this process.

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<sup>6</sup> See <http://www.tjhcouncil.org.au/media/113893/151123-MEDIA-RELEASE-Catholic-Church-releases-guidelines-for-responding-to-civil-claims-for-child-sexual-abuse.pdf>

Moreover, several clients who have embarked on claims under the *Towards Healing* process have reported that Church representatives have advised them against, and have actively discouraged them, from engaging independent legal assistance with their claims.

One client reported that she was informed that if she did not go through the *Towards Healing* process without legal representation, there would be “*nothing at all*” for her. Several times this client has voiced her concern to us that had she known that the process was “*going to be like this*” she would never have started a claim under *Towards Healing*.

Another client has recently started the *Towards Healing* process. This client reports that she has been told that she cannot have a lawyer to act for her, if she wants to engage with the process. She has however been advised she can have a lawyer from **knowmore** involved as her support person. This client has found the process to be so traumatic that she has for the time being requested all mail from the Catholic Church be directed to **knowmore**. Accordingly, we are aware of a letter recently written to this client by the Professional Standards Office that is dealing with her claim. The letter referred to the investigation of the client’s allegations, with statements being made that some claims were ‘UNSUBSTANTIATED’. The use of such language and particularly block letters in the letter to report these findings evidences a lack of understanding of how such material might readily cause distress to anyone affected by trauma.

Even when clients are legally represented during the *Towards Healing* process, several clients have advised that Orders have continued to deal directly with them, ignoring their legal advisors.

Other clients have reported the trauma of attending the last meeting in the *Towards Healing* process, to be informed that their legal representatives (who have worked with them all the way through the process), cannot attend.

A consistent concern about the *Towards Healing* process expressed by lawyers representing redress clients is that the Church has wanted to take full control of the process, and of the client. The lawyers have reported that in many cases the client’s views are neither listened to nor accepted.

We have been told of several cases where particularly adversarial approaches have been adopted towards claims, more consistent with contested civil litigation proceedings, than a restorative and pastoral response. Such approaches involve conduct such as seeking full and immediate disclosure of all material from survivors. We were recently informed of an instance where a survivor who was making a claim disclosed, for the first time in their life, the full details of their childhood sexual abuse to a treating psychologist. Upon becoming aware that the claimant was seeing this professional, the lawyers acting for the relevant Catholic Order sought immediate and full disclosure of all records relating to the survivor’s professional treatment. The client was extremely distressed to learn that their disclosure of this most private information may have to be provided in full to the Church’s lawyers, in order for the claim to advance.

We have also been advised that matters under the *Towards Healing* process which involve the National Review Panel are commonly attended by significant delay, which survivors in turn regard as adding to their perception that the process remains one that is essentially 'adversarial' in nature.

The situations outlined above have occurred in 2015 and 2016 – these are not historical accounts of the operation of the *Towards Healing* process. These situations show that there is still a power imbalance between the Catholic Church and the person trying to engage with its processes, and underlines the need for an independent redress scheme, with processes and decisions that are truly independent of the Church.

### 3. CONCLUSION

We have identified above a number of factors affecting current institutional responses to redress claims made against dioceses and Orders of the Catholic Church. It has to be acknowledged that some of these factors, such as inconsistencies and inequities in outcomes, are (in the language of Question 5 of the Issues Paper), common to other faith-based institutions or organisations providing services to children.

For example, different Anglican Dioceses in Australia have different financial caps on redress claims. The Salvation Army has until recently operated as two territories in Australia, with each territory offering different approaches to dealing with survivors of institutional child sexual abuse, such as in respect of the initial preparedness to re-open past settlements. The impact of the recent move of the Salvation Army from two territories to one national organisation is yet to be determined.

However, the extent of the adoption of different approaches, and the resulting inconsistencies, across the large range of dioceses and religious Orders within the Catholic Church in Australia means inevitably that the extent of the problem is more significant in the context of survivors seeking justice from the Catholic Church.

As noted above, the implementation of a national, independent redress scheme, as recommended by the Royal Commission in its 2015 report, and as recommended previously by **knowmore** in our redress related submissions, would largely overcome the continuing problems highlighted in this submission. A national redress scheme continues to present as the response that will be the fairest, and most effective, in delivering timely justice to survivors.