



Guiding Principles for Responding to Civil Claims for Institutional Child Sexual Abuse

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Explanatory Note

These Guiding Principles reflect the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the RC), in its Final Report on *Redress and Civil Litigation* published in September 2015 (RC's Final Report) relating to Model Litigant Approaches¹ and take into account the following sources:

- the submission of the Uniting Church in Australia's National Assembly to the RC's Consultation Paper on *Redress and Civil Litigation* published in January 2015;²
- the NSW Government's *Guiding Principles for Government Agencies Responding to Civil Claims for Child Sexual Abuse*;
- the *Common Guiding Principles for responding to civil claims involving allegations of child sexual abuse*, of the Department of Human Services and Department of Education and Early Childhood Development, in the State of Victoria;
- the Christian Brothers, Oceania Province, *Guiding Principles for responding to civil claims involving allegations of child sexual abuse*.

Terms used in this document are defined in the Glossary in Section 7.

1. Objectives

The Uniting Church in Australia, Synod of NSW and the ACT (the Synod) recognises that proceeding with a civil claim for compensation is a difficult and potentially re-traumatising experience for claimants who are survivors of institutional child sexual abuse. Through implementation of these Guiding Principles (the Guiding Principles) the Synod seeks to:

- minimise the potential for re-traumatisation of claimants
- ensure a compassionate and consistent response to civil claims across the Synod
- avoid unnecessarily adversarial responses to civil claims
- promote transparency and accountability across the Synod.

Underpinning the Guiding Principles is the Synod's commitment to treat claimants with dignity and respect.

¹ Recommendations #96-99 on p. 534 were as follows: #96. *Government and non-government institutions that receive, or expect to receive, civil claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse*; #97. *The guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily adversarial responses to claims*; #98. *The guidelines should include an obligation on the institution to provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified*; #99. *Government and non-government institutions should publish the guidelines they adopt or otherwise make them available to claimants and their legal representatives*.

² The principles that the UCA committed to adopt in the resolution of claims of child sexual abuse brought to its attention, were cited at p.521 of the RC's Final Report as follows: *Act at all times to minimise potential further trauma to survivors*; *Support the survivor in undertaking a redress process*; *Attempt to resolve matters without the need for litigation*; *Respect that survivors are individuals and will require different responses to their different circumstances and needs*; *Ensure that all survivors are treated in a manner which is consistent with claimants in similar circumstances*; *Ensure that those dealing with child sexual abuse matters have appropriate skills*; *Provide survivors with early information about available services and supports*; *Facilitate survivors receiving access to records*; and *Not act or instruct representatives to act in a manner which is unnecessarily adversarial*.

2. Application

The Guiding Principles apply to current and future claims under the civil law for full compensation or common law damages concerning allegations of institutional child sexual abuse, to which the Synod or a Synod Property Trust is a respondent (civil child sexual abuse claims). This includes civil child sexual abuse claims before courts, tribunals and inquiries and in arbitration and other appropriate dispute resolution processes such as mediation, expert determination, independent evaluation and conciliation and related claims for common law damages made in letters of demand, prior to institution of formal civil proceedings.

The Guiding Principles apply to civil child sexual abuse claims involving the Synod and institutions established and/or maintained by or on behalf of the Synod in the furtherance of its responsibilities (institutions of the Synod) and the predecessors of institutions of the Synod.

The Guiding Principles do not apply to:

- (a) complainants seeking redress outside the court system, such as an ex gratia payment (which is not fully compensatory in the same manner as common law damages), financial assistance to fund counselling, other practical support, an apology and so on: the Synod's Interim Redress Policy and the principles stated therein, apply to claims for redress from the Synod and its institutions; and
- (b) claimants whose claims have been judicially determined or settled prior to the date of issue of the Guiding Principles.³

The Guiding Principles are binding on the Synod and its institutions, but, are to be applied flexibly, according to the circumstances of each civil child sexual abuse claim.

Lawyers and other professionals instructed or engaged by the Synod and/or by institutions of the Synod in relation to civil child sexual abuse claims, are expected to be familiar with and act in accordance with the Guiding Principles.

The Guiding Principles do not prevent the Synod from protecting its proper and legitimate interests, which include legitimate steps to defend claims, including where a claim is vexatious, unmeritorious or an abuse of process.

3. Statement Of Principles

The Guiding Principles are that, in responding to civil child sexual abuse claims, the Synod and institutions of the Synod and lawyers and other professionals instructed or engaged by them, will:

1. Act fairly, consistently and with high professional standards;
2. Provide early acknowledgement of claims and provide information about supports and services available to claimants;
3. Provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified in material received by the Synod from a claimant or their representative;

The NSW Government Guiding Principles state on page 2 final paragraph: *[The Guiding Principles] should not apply to any claim that has been judicially determined or settled by the State.*

4. Publish the Guiding Principles on the Synod's website and make them available to claimants and their legal representatives and to lawyers and other professionals instructed or engaged by the Synod and/or by institutions of the Synod;
5. Deal with claims promptly, resolve claims as quickly as possible and not cause unnecessary delay;
6. Communicate regularly with claimants or their legal representatives about the progress of their claim;
7. Facilitate access to counselling for claimants;
8. Facilitate access to records relating to the claimant and the alleged abuse perpetrator, subject to the privacy of other persons and legal professional privilege;
9. Endeavour to facilitate an early resolution of the claim in a manner that is fair and reasonable and be willing to enter into negotiations to achieve this. This includes seeking to resolve claims before formal proceedings are filed in court: for example in response to a letter of demand seeking common law damages, through participating in appropriate Alternative Dispute Resolution (ADR) processes or settlement negotiations and considering any requests from claimants for other forms of acknowledgement or redress that may resolve the claim;
10. When participating in ADR or other settlement negotiations, participate fully and effectively;
11. Where it is not possible to avoid litigation, take all reasonable steps to keep legal and other costs to a minimum;
12. Not take advantage of a claimant who lacks the resources to litigate a claim and encourage claimants who are not legally represented to obtain such representation and provide advice on how to do so;
13. To reduce trauma, unnecessary cost and delay:
 - suggest to claimants a range of potential experts that are acceptable to the Synod and
 - facilitate agreement on the use of a single expert where practicable and appropriate;
14. Act consistently in handling of claims and:
 - consider verdicts and settlements in other litigated claims involving similar harm to claimants, and
 - take into account the individual circumstances of each case;
15. Not require a claimant to sign a Deed of Release unless legal advice has first been obtained by the claimant and, where a claimant is not legally represented, the Synod will, pursuant to a formal agreement with the claimant as to reasonable legal costs, pay the reasonable cost of the claimant obtaining such legal advice;
16. Not require that any settlement be confidential, except as to the quantum of any monetary amounts paid to the claimant; but consider any request by the claimant that a further confidentiality clause be used in relation to a settlement. In the event a further confidentiality clause is used, it will not restrict a claimant from discussing the circumstances of their claim and their experience of the claims process;
17. Offer a written apology to the claimant in all cases in which the Synod or an institution of the Synod has acted improperly;
18. Report claims of any serious indictable offence to the New South Wales Police or relevant investigating agency in the ACT, as applicable, and comply with all other relevant legislative reporting obligations, including to any oversight agencies, such as the NSW Ombudsman;

19. Make appropriate training available to staff of the Synod and its institutions, who conduct civil child sexual abuse claims and encourage legal firms instructed by the Synod and its institutions, to make such training available to their staff. This training will address, for example, the effects of child sexual assault and the use of a trauma-informed framework when working on claims involving adult survivors of child sexual assault.

4. Feedback and Review

The Synod welcomes any feedback and suggestions, from claimants and their legal representatives. Please send your feedback to: [title of officer and email and postal address.] The Synod will use this feedback to improve its responses to claimants and to review the Guiding Principles, to reflect the insights gained during their implementation.

5. Monitoring

The Synod accepts that the Guiding Principles should be supported by transparent and independent monitoring of their application.

The adherence of the Synod and its institutions to the Guiding Principles will be monitored through a nominated, legally qualified independent Monitor.

Any person who considers there has been a failure on the part of the Synod, an institution of the Synod or their representatives to act in accordance with the Guiding Principles may lodge a complaint with the Monitor who may consider and enquire into the complaint. Any review by the Monitor will be of adherence to the Guiding Principles and not of any outcome, such as settlement amount.

If the Monitor finds there has been any failure to act in accordance with the Guiding Principles the Monitor will report the failure to the General Secretary and may recommend corrective measures to rectify or mitigate any failure. The Monitor may monitor the implementation of any corrective measures recommended.

The Monitor may make such recommendations to the General Secretary as the Monitor considers appropriate and will provide an annual review of the operation of the Guiding Principles to the General Secretary.

6. Further Information

For further information about the Guiding Principles, please contact the Acting General Secretary, Rev. Jane Fry jane@nswacu.uca.org.au

7. Glossary

“**ADR**” means an alternate dispute resolution process including, but not limited to, mediation, settlement conference, independent evaluation (binding or non-binding), judicial resolution conference, expert determination, conciliation and arbitration.

“**Civil child sexual abuse claim**” means current and future claims under the civil law for full compensation or common law damages concerning allegations of institutional child sexual abuse, to which the Synod or a Synod Property Trust, is a respondent. This includes claims before courts, tribunals, inquiries and in arbitration and other appropriate dispute resolution processes such as mediation, expert determination, independent evaluation and conciliation and related claims for common law damages made in letters of demand, prior to institution of formal civil proceedings.

“**Institution**” means any body whether incorporated or unincorporated, established by or on behalf of the Uniting Church in Australia or any of the uniting churches (being the Congregational Church, the Methodist Church and the Presbyterian Church) or in which the Uniting Church in Australia participates for a religious, educational, charitable, commercial or other purpose.

“**Institutions of the Synod**” means any institution established and or maintained by the Synod in the furtherance of its responsibilities, as authorized by the Uniting Church in Australia Constitution paragraph 32 and as prescribed by the Uniting Church in Australia Regulations clause 3.7.4.7.

“**Synod**” means the Uniting Church in Australia, Synod of NSW and the ACT.