

**REPORTING GUIDELINES FOR PROFESSIONAL INDEMNITY/MEDICAL MALPRACTICE INSURANCE
AND DIRECTORS & OFFICERS LIABILITY INSURANCE IN RELATION TO CLAIMS FOR ALLEGED
SEXUAL- HARASSMENT OR SEXUAL ABUSE**

Insurance claims involving a sexual or gender element can take various forms. From the insurance viewpoint, there are two principal classes of claims which may be initiated due to sexual or gender issues.

- (A) **Sexual Abuse** - This class includes such matters as sexual assault and child molestation. These are sexual offences within the meaning of the Crimes Act 1958. Claims of this type can lead to fines or other criminal penalties which are not insurable.
- (B) **Sexual Harassment** - ie. breaches of Statute such as Equal Opportunity Legislation. For example, allegations of discrimination on grounds of gender are included within this class of claim. In addition, employment disputes, alleged wrongful dismissal on grounds of gender and other similar type allegations would be included in this broad class. The insurance policies which may be called upon to respond are:
 - (i) Professional Indemnity/Medical Malpractice Insurance and
 - (ii) Directors & Officers Liability Insurance.

The types of claims for which each policy may respond can be categorised or grouped as follows:

- (a) **Sexual Assault**
Such claims will involve allegations of deliberate physical contact leading to:
 - (i) actual bodily injury and/or
 - (ii) emotional distress or psychological upset and/or
 - (iii) financial loss.
- (b) **Harassment**
These types of claims will not involve allegations of assault but may lead to:
 - (i) emotional distress or psychological upset and/or
 - (ii) financial loss, generally through losing or changing employment.
 Within this heading there may also be claims broadly defined as "discrimination" - these may involve discrimination on the basis of gender or sexual preference, or whether an individual may have a sexually transmitted disease.

There are other considerations when assessing whether or not any set of circumstance should be reported as potential insurance claims. These are as follows:

"Organisational Negligence" - where the organisation to which a sexual 'offender' belongs negligently fails to detect and/or take adequate steps to prevent the offender from committing or continuing discrimination, harassment or sexual assault;

"Organisational Indifference" - where an organisation to which a sexual 'offender' belongs is aware that discrimination, harassment or sexual assault is occurring but does not take adequate steps to prevent it continuing; and

"Vicarious Liability" - where an organisation is jointly liable with an 'offender' for discrimination, harassment or sexual assault because it occurred in the performance of the offender's duties for and on behalf of the organisation.

These types of circumstances may lead to liability for:

- civil damages or compensation;
- claimants costs (which are generally covered by insurance when the claimant's damages or compensation are covered);
- defence costs (for civil or criminal proceedings).

Legal opinion has been received which indicates that, depending on the particular circumstances of individual cases, there may be some cover against these types of claims provided by the Uniting Church's Professional Indemnity/Medical Malpractice or Directors & Officers Liability policies. In some circumstances, the Public/Products Liability policy may also respond.

The first two of these policies are issued on a "claims made" basis. It is a condition of "claims made" policies that "the insured shall notify the insurer in writing immediately becoming aware of any claim or of any allegation or the discovery of any circumstance which indicates the possibility of a claim and shall provide to the insurer whatever information is in the insured's possession. Any claim which subsequently manifests out of these circumstances shall be deemed for the purpose of the policy to have been a claim made during the period of insurance.

Failure to notify the insurer prior to expiry of these "claims made" policies (31 March), may result in no cover being available.

In an organisation such as the Uniting Church in Australia, it will be a question of fact as to whether such information known to an individual within the Church is in fact information of which "the insurer" is aware.

In any set of circumstances, these disclosure duties may not be tested until a matter is before the court.

It is therefore imperative that any allegation, or the discovery of any circumstance which indicates the possibility of a claim arising, be immediately reported to the General Secretary of Synod for notification to the insurer.

It is most important that any circumstances which are known within the Church or its agencies be passed on immediately. At no stage should any person or group of persons within the Church or its agencies prevent or withhold the passing on of the relevant facts to the General Secretary of Synod.

Failure to disclose such information will seriously prejudice any potential to recover compensation under the Church's Liability Insurance programme.