

GUIDELINES FOR CHURCH AUTHORITIES IN RESPONDING TO CIVIL CLAIMS FOR CHILD SEXUAL ABUSE

Background

The Catholic Church in Australia is deeply ashamed that some of its priests, religious and other personnel have sexually abused children. The Church acknowledges that many of those abused carry the impact throughout their lives and, as a result, require ongoing support and assistance.

Many of those abused want justice. They want an opportunity to restore their lives and to repair the damage arising from their experiences. For many, recourse to civil litigation is important 'not only as an avenue to seek compensation, but also a form of acknowledgement and accountability for the harm they have suffered'.

As long ago as 1912 the High Court observed that the law entertains expectations of fair play in the dealings which public bodies have with individuals. Those expectations of fair play underlie the model litigant standards which governments in Australia now apply to guide the handling of claims and the conduct of litigation by government.

It goes without saying that, for the Catholic Church, which seeks to live the moral teachings of Jesus Christ, fair play must be an absolute touchstone in handling claims and conducting litigation in relation to allegations of child sexual abuse.

Purpose of the guidelines

The guidelines have been prepared by the Truth Justice and Healing Council to promote fairness and consistency in the way Church authorities handle claims and conduct litigation in relation to child sexual abuse. The guidelines apply to current and future claims.

Recognising that civil litigation is traumatic for persons who have suffered abuse, the guidelines seek to ensure that Church authorities act compassionately when dealing with claims. Following the guidelines will enable Church authorities to meet community standards embodied in similar guidelines that have been adopted by governments and will also enable them to adopt the compassionate and consistent approach expected of a Church authority towards victims, their families and other third parties. However, the guidelines are not intended to prevent Church authorities from acting properly to defend claims related to child sexual abuse that they consider should be defended.

Guidelines

When dealing with civil claims related to child sexual abuse, Church authorities should at all times act honestly, fairly and compassionately by:

- a. (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- b. (b) assisting the claimant to identify the correct defendant to respond to the legal proceedings
- c. (c) facilitating access to records relating to the claimant, subject to considering the privacy entitlements of third parties and documents that are legally professionally privileged
- d. (d) making an early assessment of:
 - i. (i) the Church authority's prospects of success in defending the proceedings, and
 - ii. (ii) the Church authority's potential liability in the claim made against it
- e. (e) acting consistently in the handling of claims and litigation
- f. (f) mindful of the potential for litigation to be a traumatic experience for claimants who have suffered sexual abuse, endeavouring to avoid legal proceedings wherever possible or to confine the scope of the proceedings
- g. (g) paying legitimate claims without litigation

- h. (h) considering resolving matters without the need for a claimant to take the formal step of filing a statement of claim
- i. (i) providing information about services and supports available to claimants and considering requests from claimants for counselling, pastoral and psychological care assistance, and other kinds of acknowledgement or redress, including meetings with the Church leader, site visits, etc
- j. (j) offering, and participating fully and effectively in, alternative dispute resolution processes wherever possible
- k. (k) if it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - i. (i) not requiring the claimant to prove a matter which the Church authority knows to be true or has accepted as true
 - ii. (ii) not contesting liability if the Church authority knows that the dispute is only about the amount of compensation
 - iii. (iii) monitoring the progress of the litigation and using appropriate methods to resolve the litigation, including alternative dispute resolution, settlement offers and payments into court, and
 - iv. (iv) ensuring that arrangements are made so that a person participating in any alternative dispute resolution process or settlement negotiations on behalf of the Church authority can enter into a settlement of the claim or legal proceedings in the course of the process or the negotiations
- l. (l) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
- m. (m) if a statutory limitation period is available as a defence, not relying on that defence unless:
 - i. (i) the claim involves other defendants that are not Church defendants and there is a risk that the Church authority might bear a disproportionate share of the whole liability to the claimant, or
 - ii. (ii) the lapse of time has a burdensome effect on the Church authority that is so serious that the Church authority considers that a fair trial would not be possible
- n. (n) if there is a need for expert evidence, co-operating with claimants about choice of expert, to facilitate agreement on the use of a single expert if practicable
- o. (o) not undertaking and pursuing appeals unless the Church authority believes that it has reasonable prospects for success
- p. (p) apologising if the Church authority is aware that it or its representatives or lawyers have acted wrongfully, improperly or in breach of these guidelines.

Explanatory notes

1. The guidelines draw upon the model litigant rules of the Commonwealth of Australia and the Council acknowledges the assistance which those rules have provided in the preparation of the guidelines.

2. Any Church entity which has adopted guiding principles dealing with the same subject matters as the guidelines should ensure that there is no inconsistency between those guiding principles and the guidelines and should not act inconsistently with the guidelines.