



2 April 2015

## GUIDING PRINCIPLES FOR RESPONDING TO CIVIL CLAIMS INVOLVING ALLEGATIONS OF CHILD SEXUAL ABUSE

### **PREAMBLE.**

1. The Christian Brothers Oceania Province [**the Christian Brothers**] acknowledge the vulnerable position of those who have suffered abuse as children.
2. The Christian Brothers recognise that the process of proceeding with a civil claim, in whatever form, in relation to alleged sexual abuse is a difficult experience for survivors of child sexual abuse.
3. The Christian Brothers seek to minimise the potential of further trauma through these guiding principles [**Guiding Principles**] for civil claims.
4. Underpinning them is our commitment to work with all parties with care and compassion in an environment of dignity.

### **INTRODUCTION.**

5. These Guiding Principles inform the responses to civil claims involving allegations of child sexual abuse in connection with members of the Christian Brothers, persons for whom the Christian Brothers are responsible and institutions conducted by the Christian Brothers.
6. The Guiding Principles apply to litigation [including before courts, tribunals, inquiries and in arbitration and other appropriate dispute resolution processes such as mediation, expert determination, independent evaluation and conciliation]. They also apply to any non-litigated claims for compensation, including claims made as part of the Towards Healing process or any successor process.
7. The Guiding Principles are meant to be applied flexibly and to respond to the circumstances of each particular claim.
8. Lawyers instructed by the Christian Brothers in relation to civil claims are expected to act in accordance with the Guiding Principles. Some civil claims may be the subject of indemnity under Insurance Policies issued by Catholic Church Insurance Ltd [CCI] who are aware of these Guiding Principles. Where a civil claim is subject to such indemnity, the Christian Brothers will use their best endeavours to have CCI, and any lawyers instructed by them, act in accordance with the Guiding Principles in managing such a claim.

## ***THE GUIDING PRINCIPLES.***

- A. The Christian Brothers are mindful of the potential for pursuing a claim to be a further traumatic experience for claimants who have already suffered sexual abuse.
- B. A purpose of the Guiding Principles is to ensure that the Christian Brothers respond appropriately to child sexual abuse claims in a manner that minimises potential further trauma to victims/survivors, is not unnecessarily adversarial, is consistent between claimants in similar circumstances and takes account of the different circumstances of individual claims brought against the Christian Brothers.
- C. The Guiding Principles are that the Christian Brothers, their employees and lawyers instructed by them will:
  - 1. act fairly in handling claims and litigation brought against the Christian Brothers;
  - 2. act consistently in the handling of claims and litigation;
  - 3. deal with claims promptly and not cause unnecessary delay;
  - 4. endeavour to facilitate an early settlement and be willing to enter into negotiations to achieve this. This includes settling claims without litigation through participating in appropriate Alternative Dispute Resolution [ADR] processes or settlement negotiation. However, where it is not possible to avoid litigation, the Christian Brothers will take all reasonable steps to keep costs to a minimum;
  - 5. when participating in ADR or other settlement negotiations, participate fully and effectively;
  - 6. in historic sexual abuse cases, usually not rely on limitation of actions legislation to challenge a Claimant's explanation of why the Claimant did not proceed with a claim within the limitation period. They would only rely upon a limitation period in exceptional circumstances, such as where the particular circumstances of a case would result in unfair prejudice to them, which could not be remedied, and consequently would result in any trial being unfair;
  - 7. not take advantage of a claimant who lacks the resources to litigate a claim;
  - 8. encourage claimants who are not legally represented to seek such representation and provide advice on how to do so;
  - 9. ordinarily not require a claimant to sign a release unless legal advice has been obtained by the claimant and be prepared to pay the reasonable cost of such advice;
  - 10. not require any settlement be confidential; and
  - 11. where appropriate, provide a written apology to the claimant.

## ***REPARATION.***

Where a claim is accepted or established, reparation may include monetary compensation, the provision of counselling services or payment of the reasonable cost of such services.

Monetary compensation, where applicable, will be assessed in accordance with common law principles, the underlying principle being that it be fair and reasonable.

The Christian Brothers will also seek, where appropriate, to assist in the psychological and spiritual healing of those persons other than a claimant, such as parents, who have been seriously affected by the abuse suffered by the claimant.

### ***PREVIOUSLY SETTLED CLAIMS.***

The Christian Brothers will consider any request that a previously settled claim be re-examined.

The Christian Brothers will consider such a request on its merits on a case by case basis. The guiding principle will be what is fair and just in all the circumstances of the particular case.

Matters that will be taken into account include:

- (a) whether the claimant had been legally represented when the claim was resolved;
- (b) the availability now of information about the circumstances and effect of the abuse, the circumstances of the claimant and the history of the alleged perpetrator which was not known at the time of settlement;
- (c) the time that has elapsed since the claim was settled and the circumstances of its settlement; and
- (d) whether the settlement was consistent with settlements of other claims with similar circumstances.

If it is decided to re-examine a claim it will be considered as a new claim with any previous payment being taken into account.

### ***EXPLANATORY NOTES***

1. These Guiding Principles draw upon the Model Litigant Guidelines, and the Common Guiding Principles for responding to civil claims involving allegations of child sexual abuse, of the State of Victoria. The Christian Brothers acknowledge the assistance that the Victorian guidelines have provided in their determining these Guiding Principles, which they have based on them. Like the State of Victoria, the Christian Brothers' objective is to act as a model litigant in these difficult matters.
2. ADR means a process including, but not limited to, mediation, settlement conference, independent evaluation [binding or non-binding], judicial resolution conference, expert determination, conciliation and arbitration. It is desirable to have a wide range of ADR options.
3. As is the case with the State of Victoria, the Guiding Principles require the Christian Brothers to act with propriety, fairness and high professional standards.
4. As is the case with the State of Victoria, the Guiding Principles do not prevent the Christian Brothers from acting firmly and properly to protect their interests. They do not preclude the Christian Brothers from testing, disputing or defending, where appropriate, a claim made against them. This may involve considerations of whether there has been abuse as claimed, the effect of any such abuse, any loss or damage claimed to have been caused by

the alleged abuse and/or what, in all the circumstances, is fair and reasonable compensation.

5. The Christian Brothers accept that the Guiding Principles should be supported by transparent and independent monitoring of their application.

Therefore, the Christian Brothers have appointed Mr Brian Collis QC as independent monitor of the Guiding Principles [**the Monitor**].

Any person who considers that there has been a failure on the part of the Christian Brothers 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 a settlement amount.

If the Monitor finds that there has been a failure to act in accordance with the Guiding Principles, the Monitor will report that failure to the Christian Brothers' Leadership Team and may recommend corrective measures to rectify or mitigate any failure. The Monitor may monitor the implementation of any corrective measures recommended.

Generally, the Monitor may make such recommendations to the Leadership Team as the Monitor considers appropriate and will provide an annual review of the operation of the Guiding Principles to the Leadership Team.

Any enquiry or complaint to the Monitor should be forwarded to:  
Mr Brian Collis QC, Level 4, 550 Lonsdale Street, Melbourne, Victoria 3000.

### ***CONTACT***

For further information on the 'Guiding Principles', please contact our Professional Standards Office in Melbourne on (03) 8359 0134.

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