



GUIDING PRINCIPLES

Australian Province of the Society of Jesus

Child Sexual Abuse Civil Claims

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Written By	Province Director of Professional Standards
Approved By	Fr Brian F. McCoy SJ – Provincial

PREAMBLE

“I have come that they may have life and have it to the full.” John 10:10

1. BACKGROUND

The Australian Province of the Society of Jesus (**Province**) will always endeavor to pursue a compassionate and consistent approach towards people who have experienced institutional child sexual abuse. The Province acknowledges, in particular, the vulnerable status of children in our society and recognise that the process of civil litigation may be a traumatic experience, especially for people who have experienced childhood sexual abuse.

These Guiding Principles have been implemented to promote justice and consistency in the way the Province handles claims and conducts litigation in relation to child sexual abuse. These Guiding Principles are informed by the [Royal Commission into Institutional Responses to Child Sexual Abuse](#) and recommendations 96, 97, 98 and 99 in its [Redress and Civil Litigation Report](#).

The Province aims to be fair, reasonable and honest in its dealings with people who have experienced childhood sexual abuse. Respect and dignity will be afforded to them, their families and other third parties affected by the abuse. Every effort will be made to ensure people who have experienced childhood sexual abuse feel safe and secure, both in the telling of their stories and in the pursuit of justice. These Guiding Principles are intended as a resource for the Province in assisting it to respond to the circumstances of each case. Equally, however, they are not intended as legal constraints preventing the Province from acting properly as circumstances demand.

The Province recognises it cannot remove the pain and suffering of people who have been abused but it will strive, through kindness, understanding and hope, to support them emotionally, spiritually and financially in their rightful quest to live a richer and fuller life.

2. OBJECTIVE & SCOPE

The main objectives of these Guiding Principles are:

- To make litigation a less traumatic experience for people who have experienced sexual abuse and ensure a compassionate and consistent approach across the Province when dealing with civil claims for child sex abuse.
- To acknowledge that an adversarial civil litigation system is not an effective way of dealing sensitively or compassionately with people who have experienced sexual abuse.

- To promote cultural change across and within the Province.
- To finalise all claims as quickly as possible, and, where practicable, to agree to a single expert, which should reduce the necessity of plaintiffs having to repeat painful experiences to multiple people.

These Guiding Principles apply to all incorporated and unincorporated ministries in the Australian Province.

The Province makes financial provision for any accused Jesuit to receive independent legal representation. These guidelines apply to the Province and not to an individual Jesuit or Partner in Mission (as defined in the Province's Code of Conduct), who will receive independent legal advice.

3. GUIDING PRINCIPLES

When dealing with civil claims related to child sexual abuse, the Province should always act honestly, fairly and compassionately by:

- 3.1. listening to, respecting, and trying to understand a claimant's life journey;
- 3.2. being mindful of the potential for litigation to be a traumatic experience for claimants who have experienced child sexual abuse, endeavouring to avoid legal proceedings wherever possible or to confine the scope of the proceedings;
- 3.3. not ordinarily rely on the period of time between the incidents reported and the time of disclosure as a reason why a proceeding should be stayed. Noting that some Australian jurisdictions have removed the limitation period in relation to claims for damages arising from child sexual abuse
- 3.4. ordinarily not require a confidentiality clause in the terms of settlement but, in making a decision, taking into consideration:
 - 3.4.1. the claimant's preference;
 - 3.4.2. whether there is a cross claim or other related proceedings; and
 - 3.4.3. other circumstances relevant to the individual claim.

In the event a confidentiality clause is used, it should in no way restrict a claimant from discussing the circumstances of the abuse experienced which is the subject of the claim.

- 3.5. consider facilitating an early settlement and should generally be willing to enter into negotiations to achieve this;
- 3.6. offer a written apology in all cases where they consider it is appropriate. Ordinarily it will be appropriate for the apology to be signed by the Provincial or relevant head of ministry, however this will depend on the circumstances;
- 3.7. dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
- 3.8. assisting the claimant to identify the correct defendant to respond to the legal proceedings;
- 3.9. facilitating access to records relating to the claimant, subject to considering the privacy entitlements of third parties and documents that are legally professionally privileged or otherwise subject to obligations of confidentiality;
- 3.10. making an early assessment based on available evidence as to whether:
 - 3.10.1. the Province should defend the proceedings; and
 - 3.10.2. the Province's potential liability in the claim made against it.
- 3.11. acting consistently in the handling of claims and litigation;
- 3.12. paying legitimate claims without litigation;
- 3.13. considering resolving matters without the need for a claimant to take the formal step of filing a statement of claim;

- 3.14. providing information about services and supports available to claimants and considering any request from claimants for counselling, pastoral and psychological care assistance, and other kinds of acknowledgement or redress, including meetings with the Provincial, site visits, etc.;
- 3.15. offering, and participating fully and effectively in alternative dispute resolution processes wherever possible;
- 3.16. participating fully and effectively in any National Redress Scheme (www.nationalredress.gov.au) process;
- 3.17. if it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - 3.17.1. not requiring the claimant to prove a matter which is known to be true or has been accepted as true;
 - 3.17.2. not contesting liability if it is known the dispute is only about the amount of compensation;
 - 3.17.3. 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
 - 3.17.4. ensuring that arrangements are made so that a person participating in any alternative dispute resolution process or settlement negotiations on behalf of the Province can enter into a settlement of the claim or legal proceedings in the course of the process or the negotiations.
- 3.18. not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
- 3.19. 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;
- 3.20. not undertaking and pursuing appeals unless the Province believes it has a reasonable prospect for justice; and
- 3.21. apologising if the Province is aware that it or its representatives or lawyers have acted wrongfully, improperly or in breach of these guidelines.

4. REVIEW OF GUIDING PRINCIPLES

These Guiding Principles will be monitored for compliance and effectiveness by the Province's Professional Standards Consultative Panel. This document will follow an annual review cycle. Interim reviews will occur at any time as required in response to either feedback or changes in legislation, policy or practices to ensure the information is current, useful and easy to understand.

In addition, to assure the continued relevance of the Guiding Principles and objectives as established the Governance, Risk & Compliance Policy Reference Group will review these Guiding Principles in full once a year.

5. VERSION CONTROL AND CHANGE HISTORY

Version	Approved Date	Approved By	Short Description for Development or Review	Completed by
1.0	2 July 2020	Provincial	New Document	Director of Professional Standards