
GUIDELINES FOR RESPONDING TO REQUESTS FROM SURVIVORS OF CHILD SEXUAL ABUSE WHOSE CLAIMS HAVE BEEN SUBJECT TO SETTLEMENTS

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. Some have had recourse to the Church's pastoral response programs, *Towards Healing* and the *Melbourne Response*, to obtain some measure of redress. Others have taken civil action to obtain redress.

However, several in both categories say that the redress provided to them has been insufficient having regard to the severity of the abuse they suffered and the effect it has had upon them. They have requested Church authorities to review the settlements arrived at in their cases.

Purpose of the guidelines

The guidelines set out below have been prepared by the Truth Justice and Healing Council (***the Council***) and endorsed by the Supervisory Group to assist dioceses and religious orders respond to any requests by individuals to review settlements previously made with them.

The guidelines do not cover cases where compensation has been paid under the *Melbourne Response*. The issue of how those cases should be reviewed is under consideration in the review of the *Melbourne Response* presently being undertaken by the Hon Donnell Ryan QC.

Context in which the guidelines have been prepared

In submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse, the Church has, through the Council, publicly supported the establishment of an independent national redress scheme funded by both government and non-government institutions to deliver redress to survivors of child sexual abuse. The Council has recommended that the scheme make provision for the amount of any prior settlement to be set off against the amount of any redress which the applicant receives under the scheme.

However, it may be some years before any recommendation by the Royal Commission for the establishment of a redress scheme is implemented.

The Council recognises that the needs of some individuals who were abused are such that their requests for review of settlements require a more immediate response by Church authorities. The guidelines set out below are intended to assist that response.

Guidelines

- 1 A claimant who made a previous claim under *Towards Healing* that was not accepted should be directed to the relevant Professional Standards Office for the claim to be considered again under *Towards Healing*.

- 2 A previous claim under *Towards Healing* or at common law that was determined or settled, whether or not a deed of release was entered into, may be re-opened if:
 - (a) the Church authority considers that the process in which the determination was made or the settlement was reached was inadequate or unfair, whether because of the process followed at the assessment or determination stage or the lack of opportunity given to the claimant to obtain advice before the claim was determined or settled or for any other reason; or
 - (b) the Church authority considers that the amount or amounts paid to, or on behalf of, the claimant was not, or were not, fair and reasonable having regard to the severity of the abuse and its effects on the claimant.

- 3 Matters which the Church authority may take into account in making an assessment pursuant to guideline 2(b) include:
 - (a) the value of any support and assistance which, in addition to any lump sum payment or payments, the Church authority provided or funded for the claimant or members of his or her family; and
 - (b) the amount of any reasonable legal costs incurred by the claimant in pursuing the claim for which the claimant was not reimbursed.

Note: Monetary amounts considered under these guidelines should be adjusted to their present-day value using the inflation calculator of the Reserve Bank of Australia at www.rba.gov.au/calculator.

Exclusions

The guidelines are not intended to operate if the claimant's previous claim was determined by a court or if the settlement of the claim was approved by a court.

The guidelines are not intended to operate if the claimant's previous claim was dealt with under *Towards Healing* and the Church authority is satisfied that the claimant had available to him or her a relevant process for seeking review under that protocol but did not do so.¹

Insurance

In applying the guidelines, a Church authority should be aware that indemnity may not be available from its insurer to cover any further payment to a claimant and therefore the payment would be at the expense of the Church authority. The insurer is likely to take the view that, if there has been a prior settlement and a deed of release has been signed, the Church authority has no right to further indemnity.

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¹ A review of process, not subject to any time limitation, was available under *Towards Healing* 1996. A review of process, subject to a 3-month time limitation, was available under *Towards Healing* 2000. Since 2007, a review of process and findings, subject to a 3-month time limitation, has been available under *Towards Healing*.