



Litigation Guidelines and Policy

A/1.9

Purpose

These guidelines and policy sets out how the Uniting Church in Australia Queensland Synod ('UCAQ') should respond to civil litigation against the UCAQ, including claims brought by claimants who have been sexually abused as children, and are intended to ensure a compassionate and consistent approach by the church to make civil litigation less traumatic for claimants.

Scope

This guideline and policy apply to all entities across the Uniting Church in Australia Queensland Synod and their respective employees, volunteers and contractors.

Policy

Historical Abuse Claims

1. Minimise potential re-traumatisation of claimants

- 1.1. The UCAQ and its agencies should be mindful of the potential for litigation to be a traumatic experience for claimants who have suffered sexual abuse.
- 1.2. The UCAQ and its agencies must conduct themselves as model litigants in the conduct of litigation. The UCAQ and its agencies should be consistent in responding to claimants in similar circumstances in civil litigation involving child sexual abuse claims. The UCAQ and all agencies should communicate regularly with claimants (or their legal representatives) about the progress of their claim.
- 1.3. The UCAQ and its agencies should consider any requests from claimants for alternative forms of acknowledgement or redress, in addition to monetary claims (e.g. site visits).
- 1.4. The UCAQ and its agencies should provide regular training to employees who deal with child sexual abuse matters. This training could include the effects of child sexual assault and the use of a trauma-informed framework when working on matters involving adult survivors of child sexual assault.

2. Easing legal processes

- 2.1. The UCAQ and its agencies should consider resolving matters without a formal statement of claim. The claimant should, however, clearly articulate their claim, including the basis on which they assert the UCAQ is liable, and provide sufficient particulars in support of their claim to enable the UCAQ to properly assess the claim.
- 2.2. The UCAQ and its agencies should ordinarily not rely on a release or discharge under a deed of release pursuant to or in connection with: (a) the Redress scheme in response to the Commission of Inquiry into Abuse of Children in Queensland (the Forde inquiry), (b) the UCAQ's Interim Redress Scheme, or (c) the UCAQ's ex-gratia process. However, the terms of such a deed may, and any prior payment made to the claimant will, be taken into account in any litigation or settlement negotiations.



- 2.3. The UCAQ and its agencies should consider paying legitimate claims without litigation. Likewise, the UCAQ and all agencies should consider facilitating early settlements and should be willing to enter into negotiations to achieve early settlements. Again, the claimant should clearly articulate their claim, including the basis on which they assert the UCAQ is liable, and provide sufficient particulars in support of their claim to enable the UCAQ to properly assess the claim
- 2.4. The UCAQ and its agencies should consider the use of confidentiality and non-disparagement clauses in relation to settlements on a case-by-case basis, taking into consideration the claimant's preference and whether there is a cross claim or other related proceedings. In the event a confidentiality clause is used it should not restrict a claimant from discussing the circumstances of their claim and their experience of the claims process in accordance with any non-disparagement provision.
- 2.5. The UCAQ and its agencies should develop guidance material, including pro-forma letters that acknowledge claims, information about the initial steps needed to resolve the claim (such as the estimated time for any necessary historical investigations by agencies), information about the potential timing for resolving matters and information about services and support available to claimants.
- 2.6. To reduce trauma to claimants and to reduce unnecessary cost and delay, agencies will suggest a range of potential experts (providing genuine choice) to facilitate agreement on the use of a single expert where practicable.
- 2.7. The UCQ and its agencies should offer an apology where the UCAQ has acted improperly. Ordinarily it will be appropriate for the apology to be delivered by a senior representative of the UCAQ (e.g. Moderator), however this will depend on the circumstances.
- 2.8. This policy does not bind the UCAQ and must be applied flexibly and having regard to the circumstances of each claim. This policy does not prevent the UCAQ and its agencies from acting to protect the proper and legitimate interests of the UCAQ. It does not therefore preclude all legitimate steps being taken to defend claims which are vexatious or unmeritorious or prevent the UCAQ from applying to the Court for a stay of proceedings if the lapse of time has a burdensome effect on the UCAQ that is so serious that a fair trial is not possible.
- 2.9. The UCQ and its agencies will provide assistance whenever possible to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.

All Litigation

3. **The UCA must conduct itself as a model litigant in the conduct of all litigation by adhering to the following principles of fairness:**
 - 3.1. acting consistently in the handling of claims and litigation.
 - 3.2. dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation.
 - 3.3. endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate.
 - 3.4. where it is not possible to avoid litigation, keeping the costs of litigation to a minimum.



- 3.5. paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear the UCA's liability is at least as much as the amount to be paid.
 - 3.6. not seeking to take advantage of an impecunious opponent.
 - 3.7. not contesting matters which it accepts as correct, in particular by:
 - not requiring a party to prove a matter which the UCA knows to be true;
 - not relying on purely technical defences where the UCA will suffer no prejudice by not doing so;
 - not contesting liability if the UCA knows that the dispute is really about quantum.
 - 3.8. not instituting and pursuing appeals unless the UCA believes that it has reasonable prospects for success, or the appeal is otherwise justified in the particular interest of the Church.
4. **The UCA must behave as a model litigant in the conduct of all litigation, including significant litigation, by adhering to the following principles of firmness:**
- 4.1. appropriately testing all claims.
 - 4.2. contesting all spurious or vexatious claims.
 - 4.3. claiming legal professional privilege where appropriate.
 - 4.4. claiming public interest immunity to protect confidential information in appropriate cases.
 - 4.5. seeking security for costs where appropriate and pursuing costs when it is successful in litigation, which will assist in deterring vexatious proceedings from being instituted against it.
 - 4.6. not seeking to take advantage of an impecunious opponent.
 - 4.7. relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice.
 - 4.8. acting properly to protect the UCA's interests.
5. **Alternative dispute resolution**
- 5.1. The UCA is only to start court proceedings if it has considered other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations).
 - 5.2. When participating in alternative dispute resolution, the UCA must ensure that its representatives:
 - (a) participate fully and effectively, and
 - (b) have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

Related documents

This policy has been developed in response to recommendations 96-99 of the Royal Commission into Institutional Responses to Child Sexual Abuse – Redress and Civil Litigation Report 2015

<https://www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>

This policy also adopts the State government's Model Litigant Principles -

<https://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>



Definitions

Term	Meaning
Agencies	All agencies that fall within the boundaries of the Queensland Synod – Qld Synod Office, Wesley Mission Qld and UnitingCare
Claim	Any claim brought under the <i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i> , or <i>Personal Injuries Proceedings Act 2002</i>
Employee	Means a personal or individual and refers to any lay staff, ministry agent, contractor or volunteer engaged in work or an activity within the bounds of the Queensland Synod office including Trinity College Queensland, Raymont Lodge Residential College and the Alexandra Park Conference Centre and any congregation or presbytery service

Revisions

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Version	Approval date	Approved by	Effective date	Policy owner	Policy contact
1.0	02.07.2020	Synod Standing Committee	03.07.2020	General Counsel	Legal Officer
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