



Model Litigant Guidelines			
Body adopting policy:	Diocesan Council	Date of adoption or last review:	14 th September 2022
Related Documents:		Review schedule:	5 yearly

The Synod will:

- 1) provide a copy of these Guidelines to all lawyers engaged by the Synod from time to time; and
- 2) require all lawyers engaged by the Synod to comply with these Guidelines.

When selecting lawyers to act on its behalf, the Synod will have regard to the culture of the proposed law firm and practitioners and to the likelihood that the lawyers will comply with these Guidelines.

1 PRINCIPLES APPLICABLE TO ALL CIVIL LITIGATION

Where the Synod is involved in civil litigation, it is committed to acting as a model litigant including (but not limited to):

- (a) acting consistently in the handling of like claims and litigation;
- (b) paying legitimate claims without contested adjudication or litigation;
- (c) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
- (d) assisting the claimant to identify the correct defendant to respond to the legal proceedings;
- (e) seeking to avoid litigation and to limit the scope of proceedings by taking such steps as are reasonable having regard to the nature of the dispute, including participating in appropriate alternative dispute resolution processes or settlement negotiations in good faith;
- (f) keeping the costs of litigation to a minimum, including by:
 - 1) not requiring the other party to prove a matter which the Synod knows to be true;
 - 2) not contesting liability if the Synod knows that the dispute is really about quantum; and
 - 3) monitoring the progress of the litigation and, where appropriate, attempting to resolve the litigation, including by settlement offers, offers of compromise and alternative dispute resolution.
- (g) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
- (h) not relying on technical defences unless the Synod's interests would be prejudiced by the failure to comply with a particular requirement;
- (i) not undertaking and pursuing appeals unless the Synod believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest;
- (j) assisting the Court and opposing parties to understand the current state of the law by drawing the Court's attention to binding and persuasive relevant case-law and other aids to statutory interpretation;



- (k) being courteous and professional when dealing with witnesses, parties and their representatives;
and
- (l) apologising where the Synod is aware that it or its lawyers have acted wrongfully or improperly.

These guidelines do not prevent the Synod from acting appropriately to protect its interests nor from seeking to recover costs or enforcing costs orders.

These guidelines and the guiding principles at section 2 will be publicised on the Diocesan website and made available to claimants/litigants on initial contact with the Synod.

2 GUIDING PRINCIPLES FOR RESPONDING TO CIVIL CLAIMS INVOLVING ABUSE

2.1 Introduction

The Synod acknowledges the vulnerable status of survivors of abuse in our society. In this context, abuse is taken to include child sexual abuse, sexual assault, sexual harassment and other forms of physical abuse. The Synod recognises that the legal processes involved in claims and civil litigation may be a traumatic experience, particularly for survivors of child abuse.

Historically the Synod was slow to recognise that abuse was being perpetrated by members of the Church and/or at activities organised under the auspices of the Church. The Synod is committed to engaging with survivors and their families with empathy, support and compassion, having regard to each survivor's individual circumstances. Synod's approach to survivors is to be underpinned by an understanding of the nature and impacts of sexual harm.

These principles:

- (a) Are intended to promote cultural change.
- (b) Apply to all civil claims involving abuse
- (c) Are intended to inform responses to all civil claims involving abuse.
- (d) Apply to current and future claims.

2.2 The Principles

The principles are:

- (a) Synod and its lawyers and other advisors are to be mindful of the potential for litigation to be a traumatic experience for claimants who are survivors of abuse and are to seek to avoid, as far as possible, further harm or re-traumatization;
- (b) Synod will facilitate access to records relating to the claimant, subject to the consideration of the privacy entitlements of third parties and documents that are legally professionally privileged;
- (c) Synod is to consider attempting an early settlement and will generally be willing to enter into negotiations to achieve a settlement;
- (d) Synod will consider the claimant's request for additional forms of redress, such as an apology;
- (e) Synod will respond to the claimant or (where the claimant has a lawyer) to the claimant's lawyer promptly at each stage of litigation;
- (f) Synod will consider the use of confidentiality clauses in relation to settlements on a case-by-case basis, taking into consideration the claimant's preference and whether there are any related



- proceedings. In the event that 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;
- (g) Upon receipt of a claim, the Synod will provide the claimant with information about local support services; and
 - (h) Where appropriate, the Synod will offer a written and/or verbal apology to survivors of abuse.

The Diocesan Council of the Synod is responsible for overseeing that the model litigant guidelines and guiding principles for claims involving abuse are being adhered to. Where a claimant believes the guidelines or the principles are not being followed, the claimant should notify the Chair of the Diocesan Council at archbishop@adelaideanglicans.com