KOORYOORA INDEPENDENT REDRESS SCHEME

MODEL LITIGANT PRINCIPLES
FOR REDRESS APPLICATIONS

1. As a participating institution, you agree to act as a model litigant in the conduct of the application for redress against your institution, and to that end you agree to—
   (a) act consistently;
   (b) act promptly and not cause unnecessary delay;
   (c) make any early assessment of the prospects of success of the application and of your institution’s exposure to liability in the matter;
   (d) pay legitimate applications for redress without the need for any contested adjudication of the matter;
   (e) consider seeking to avoid and limit the scope of proceedings by taking such steps as are reasonable having regard to the nature of the dispute, to resolve the application by agreement;
   (f) where it is not possible to avoid adjudication of an application, keep the costs to a minimum, including by:
      (i) not requiring the other party to prove a matter which you know to be true;
      (ii) not contesting liability if you believe that the main dispute is about quantum;
      (iii) taking such steps, if any, as are reasonable to resolve such matters as may be resolved by agreement and to clarify and narrow the remaining issues in dispute; and
      (iv) monitoring and expediting the progress of the application and, where appropriate, attempting to resolve the matter, including by any alternate resolution process;
   (g) when participating in settlement negotiations or other alternative dispute process, ensure that as far as practicable the representatives of your institution:
      (i) have authority to settle the matter so as to facilitate appropriate and timely resolution; and
      (ii) participate fully and effectively.

2. The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and scheme Terms of Reference. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

3. The obligation does not prevent the participating institution from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to test or defend a claim against them.

4. As a participating institution, you will be proactive in resolving an application for redress as expeditiously as possible without resorting to unfair, oppressive or other questionable tactics or practices.
5. You will attend any settlement conference convened by the Redress Manager and engage in genuine negotiations to seek a resolution of the application.

6. You will when requested inform a potential claimant of the correct legal entity to nominate in an application for redress, if this is an issue in a particular case.

7. In most cases you will not require corroboration of the abuse having happened, that is, insisting on evidence of someone else having witnessed the abuse or there being other known claimants unless the governing criteria have not been met. You acknowledge that the requisite burden of proof under the Scheme is that there is a reasonable likelihood that the abuse occurred.

8. You will seek to identify and inform the applicant survivor of any potential co-respondents to an application for redress.

9. You agree to conduct the redress settlement negotiations in a culturally sensitive and survivor-centred manner, in collaboration with the claimant’s lawyers as they see fit, regardless of any other approach usually adopted by a co-respondent.

10. You accept that the survivor applicant is at liberty at any settlement conference to read a victim impact statement or otherwise to tell you their story, if they wish, for example, what life was like both before and after the alleged abuse.

11. You also accept that the survivor applicant will always be required to obtain independent legal advice before signing any acceptance of redress and giving any release from liability, whether as part of a settlement reached with the survivor or in connection with an offer of redress pursuant to a determination under the Scheme.

12. You will not request a confidentiality clause in any terms of settlement, and only agree to one if requested by the claimant.

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