
HISTORICAL ABUSE IN CARE

Best Practice Guide



ParryField
Lawyers

To the heart of what matters.



”

***Nā tō rourou, nā
taku rourou ka
ora ai te iwi.***

***With your food
basket and
my food basket
the people will
thrive.***

”

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About Parry Field Lawyers

We are a New Zealand owned company that has been serving our clients since 1948. Our aim is not only to provide sound legal advice, but to also find solutions which deliver the best practical outcome for those we represent.

Our History

In 2023 we celebrated 75 years in practice. Our founder, Glynn Parry was joined in partnership by Brian Field in the early 1950s. Since the later 1970s, Peter van Rij, Ken Lord, and Grant Adams have each led the firm into a new period of growth. Today we have grown to 11 partners, around 100 staff and operate from five locations. Parry Field Lawyers incorporated as a company under the Companies Act 1993 on 1 July 2021.

To The Heart Of What Matters

We see our clients in a rounded way and wanted to help them with 'what really matters', for legal services and beyond, where appropriate. With our growing team, we are excited by what the future holds and look forward to continuing to provide exceptional legal services to our valued clients.

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HISTORICAL ABUSE IN CARE

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Historical abuse in care is a saddening part of the story of some state and faith-based care institutions. The Royal Commission of Inquiry into Abuse in Care has been working hard to investigate what happened between 1950-1999 in order to inform how state and faith-based care can be improved.

Some faith-based institutions are now grappling with how to address claims of historical abuse in care, which may have even taken place at a time when the organisation addressing the claim didn't exist or wasn't in charge of the care institution.

This Guide is intended to explain what best practice looks like for faith-based institutions looking to address claims of historical abuse in care. This Guide is not intended to be a substitute for legal advice, so please feel free to get in touch with us if you have any questions about the specific situation of your faith-based organisation.

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BACKGROUND

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the “**Royal Commission**”) was established on 1 February 2018 to investigate what happened to children, young people and adults in state and faith-based care institutions between 1950-1999.

On 25 June 2024, the Royal Commission released their final report Whanaketia – Through Pain and Trauma, from Darkness to Light.¹ This report included a number of recommendations on how New Zealand can better care for children, young people and adults in state and faith-based care. To quote the report:

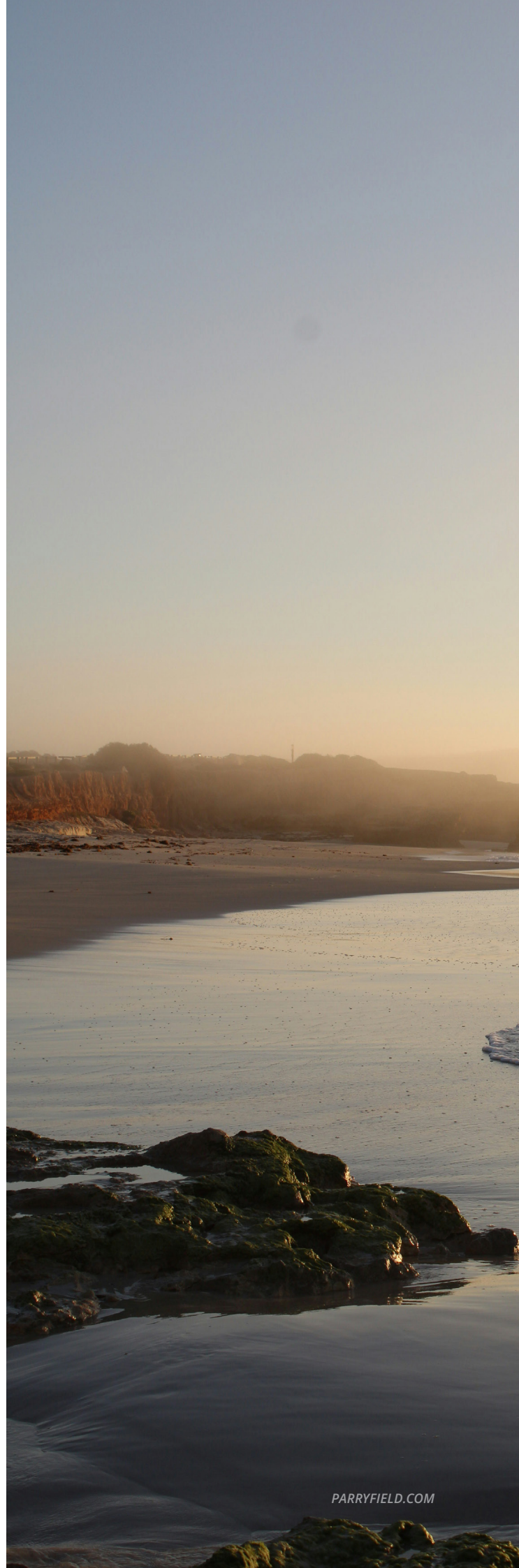
“State and faith-based institutions were entrusted to care for many children, young people and adults. New Zealanders held the leaders of these institutions in the highest esteem. These leaders had a duty to nurture, protect and help people flourish. They failed in their duty.

Instead of receiving care and support, children, young people and adults in care were exposed to unimaginable physical, emotional, mental and sexual abuse, severe exploitation and neglect...”²

The Royal Commission’s inquiry has helped conversations on historical abuse in care and given some survivors the confidence to step forward and share their story.

¹Royal Commission of Inquiry into Historical Abuse in State Care and in Care of Faith-based Institutions Whanaketia – Through Pain and Trauma, from Darkness to Light (25 June 2024).

²At [1]-[2].



LEGAL POSITION

New Zealand law currently largely prevents claims for historical abuse in care being brought. The Limitation Act 1950 applies to claims based on acts or omissions before 1 January 2011, and gives a defence against any action brought more than six years from the date on which the act or omission took place.³ The Limitation Act 2010, which applies to claims based on acts or omissions after 1 January 2011, gives an equivalent defence in most cases against claims for compensation brought more than six years from the date on which the act or omission took place.⁴ In some scenarios these time periods can be extended by a short amount, but most historical abuse claims, which are likely to be for a “tort” like assault, negligence or false imprisonment, are impacted by these limitation defences.

The Accident Compensation Act 2001 includes a bar on claims for personal injury, which means that persons who are able to make a claim under the accident compensation scheme cannot make a claim for the same through the courts.⁵

This legal landscape means that more often than not, faith-based institutions won’t have legal liability for a historical abuse in care claim.

³Limitation Act 1950, s 4.

⁴Limitation Act 2010, s 11.

⁵Accident Compensation Act 2001, s 317.

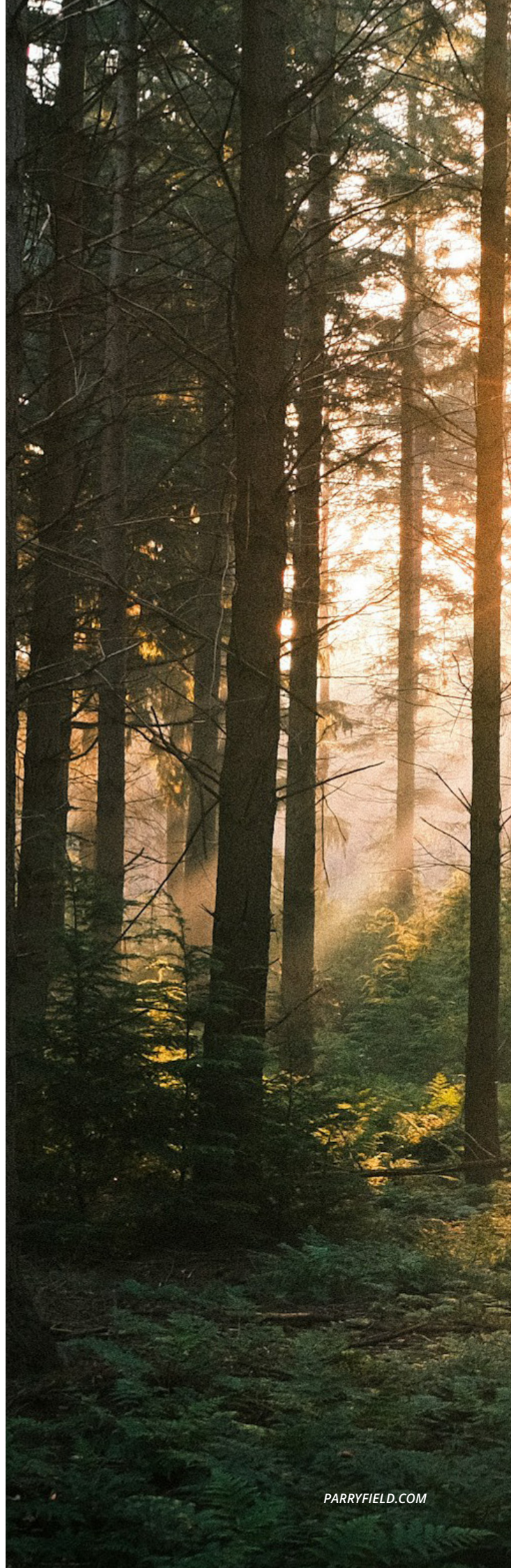
FUTURE LEGAL POSITION

The legal position noted may change in the future. The Royal Commission gave a number of recommendations as part of their work, one of which was to amend the Limitation Acts so that survivors abused in care when they were under the age of 20 are not subject to the six year limitation period noted in the previous section.⁶ In conjunction with this, the Royal Commission also recommended the courts retain discretion to stop a case from going ahead where the court considers a fair trial will not be possible, owing to the impacts of the passage of time.⁷

The above is only a brief summary of the key recommendations as to legal liability that faith-based institutions should be aware of – you can find out more detail on the Royal Commission's website. These are recommendations only, so they are still waiting for the Government to make decisions on any implementation. It is important to stay up to date on the progress of any law changes that might impact your faith-based institution.

⁶*Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions He Purapura Ora, he Māra Tipu from Redress to Puretumu Torowhānui (Volume One, December 2021) at 336.*

⁷At 347.



WHEN A CLAIM IS RECEIVED

In the meantime, and while we wait for law reform, there are still historical abuse in care claims being brought against faith-based institutions in the current legal landscape. The remainder of this Guide sets out what the best practice response to these claims might look like.

When a faith-based institution receives a claim of historical abuse, there are a few different questions that should be considered:

- (a) Is the institution who received the claim the right organisation to respond? With historical abuse in care claims having taken place years ago, it might be that the institution in question was run by a different organisation at the time the abuse occurred.
- (b) Does the faith-based institution have insurance, and if so, has the insurer been notified of the claim?
- (c) Does the faith-based institution have a complaints policy, and if so, has this been followed?

The answers to these questions will help to inform next steps for the organisation who received the claim.

ASSESSING CLAIMS

Once a faith-based institution has determined it is the right organisation to respond to the complaint, notified its insurer (if any), and followed any internal complaints process, the next step is to assess the claim. As discussed earlier in our Guide, faith-based institutions are most often not legally liable for historical abuse in care because of the existing legal framework, however many faith-based institutions still choose to respond to claims.

Investigation

Part of the claim assessment involves a consideration of whether or not the claim needs to be investigated further. Investigations are a helpful way to corroborate some of the key facts in the claim to determine whether it's likely or at least plausible that the abuse took place, for example, whether the alleged abuser worked at the institution at the time the abuse occurred.

This could be undertaken by an internal or external person, who could, for example, search the records to see if the claimant was in the care of the faith-based institution during the period in question or interview relevant parties. Sometimes the claimant may not wish to participate in a further interview process due to concerns that doing so

may cause further trauma for the claimant. Depending on the specific circumstances and the length of time since the time period the claim concerns, there may be significant limits on what can actually be investigated.

In completing the investigation it is important that the investigator is given clear terms of reference. These terms of reference should set out matters such as the scope of the investigation, the process that will be followed, timeframes, and how the investigator should report back on their findings.

The usual standard of proof for historical abuse in care is whether it is "more likely than not" the abuse occurred. Some state agencies, when considering historical abuse claims, limit their investigation process to assessing whether the claim is plausible and do not seek to establish whether it is more likely than not the abuse occurred.

It is also important to bear in mind the privacy of both the complainant and the individual/s complained against and comply with the Privacy Act 2020. For example, it will usually be helpful to obtain express consent from the complainant before interviewing other individuals about the complainant's allegations.



Redress

In the event it is determined more likely than not that the abuse occurred, or alternatively (if full investigation is not practicable) that it is plausible that the abuse may have occurred, the next step is to consider the most appropriate redress under the circumstances. Because faith-based institutions are not liable for historical abuse in care under the current framework, redress does not need to be given. However if an institution has chosen to respond to a claim then they would also likely want to offer some form of redress for the abuse.

When considering what redress might look like, it's important to consider what meaningful redress may be in the eyes of the survivor. Options include monetary compensation by way of an ex gratia payment, payment for a certain number of counselling sessions, and/or payment of legal costs in relation to the claim, and/or an apology letter.

Natural Justice

Natural justice is a legal principle that in essence means all parties to a dispute have the right to be treated fairly. If your organisation wishes to investigate a complaint to the level of assessing whether it is more likely than not that alleged abuse occurred, and if the alleged abuser is alive when the claim is brought, then it will generally be appropriate to give the alleged abuser a right to give you their perspective on the allegations. Again, the privacy and well-being of the complainant should also be considered when considering how to respond to and investigate a complaint, so this may require careful discussion with the complainant or their representatives to reach a mutual understanding on the extent to which the allegations will be investigated.

DEEDS OF SETTLEMENT

A deed of settlement is a legally binding document between the claimant and the faith-based institution that acknowledges the abuse that has taken place or may have taken place and that often offers redress. They generally also record that the redress offered is a full and final payment by the faith-based institution. The Royal Commission recommended that any such deed of settlement should not prevent the claimant from seeking redress under the Pūretumu Torowhānui scheme should such a scheme be created by the Government following the Royal Commission's recommendations. It is possible that this recommendation will be reflected in any legislation the Government introduces in connection with the Pūretumu Torowhānui scheme.

Deeds of settlement are often also confidential between the parties signing, other than for any Government-based redress initiative.

GOOD GOVERNANCE

In responding more generally to the risks of abuse in care, it is important for faith-based institutions to make sure they have good governance procedures in place. This includes, for example:

- (a) Having policies and procedures in place that will protect the young people in the organisation's care. These policies and procedures can be implemented even before any law reform in the area. This includes:
 - (i) health and safety procedures;
 - (ii) best practice procedures for volunteers and staff interacting with young people, for example, covering off issues such as ensuring that an adult isn't left alone with a young person;
 - (iii) police vetting volunteers/staff who will be caring for young people; and
 - (iv) upskilling volunteers/staff on what appropriate interactions with young people look like.
- (b) In the case of a denomination or faith-based institution that has oversight of other faith-based institutions, checking in with the organisation/s under their ambit and empowering them with helpful policies and procedures.
- (c) Regularly reviewing the rules and governing procedures of the faith-based institution to ensure they are fit for purpose – for registered charities, it is now a legal requirement to do this every three years.
- (d) Providing regular training to staff/volunteers on what best practice looks like, especially in dealing with young people.
- (e) Having a clear framework for dealing with complaints and disputes.

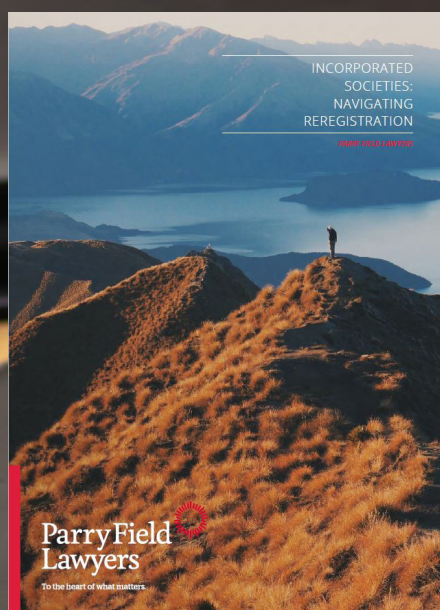
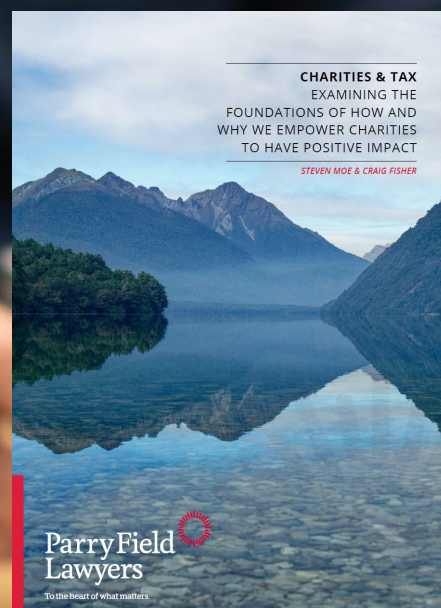
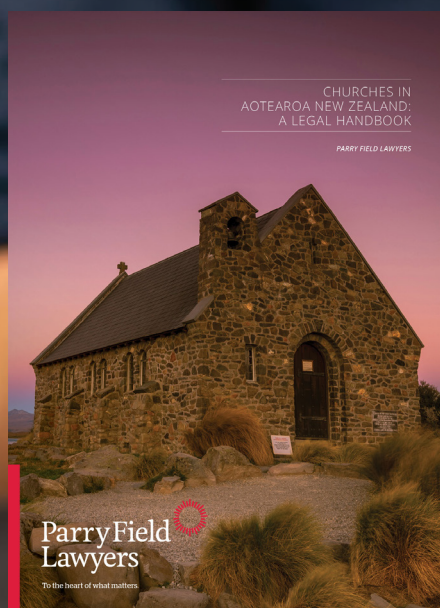
The matters listed above are only a few examples of what good governance looks like. We have more information available on good governance in the "[*Governance Essentials*](#)" section of our website.

CONCLUSION

We hope this has been a helpful overview of the legal framework and best practice for responding to historical abuse in care claims.

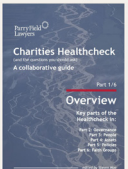
Should you have any questions or wish to receive legal support in responding to claims of historical abuse in care, please do not hesitate to get in touch.

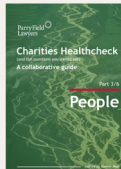
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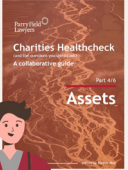


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