Managing Complaints and Claims of Past Abuse

Considerations for CEO's and Boards

Kevin Zibell, May 1, 2013

The Changed and Changing Environment

- Claims and complaints have been around for a long time
- Managed mainly in secret or confidence until recently
- Interest from plaintiff law firms and active recruitment of plaintiffs
- Senate Inquiry and first Forgotten Australians Report, 2004
- National Apology 2008
- State Inquiry into sexual abuse, mainly focused on churches to date
- National Inquiry into sexual abuse commencing

What are the implications for CSOs?

- Change in community understanding, now accepting that abuse was common and frequent in church-based institutions, and probably in secular organisations
- No generally accepted explanation as to why that was the case, especially sexual abuse (Inquiries will most likely address this)
- CSOs and faith-based organisations will be judged not only on their histories of abuse but on the way abuse has been and is being responded to and the way compensation claims are managed

Ethical Principles, Practice Issues and the Dilemmas Inherent

Principles and Practice Issues	Associated Dilemmas
Congruence with Vision, Purpose and Values	Do we treat potential and actual claimants in a way that is consistent with our vision, purpose and values, or do we regard them as a threat to the organisation achieving these?
Acceptance of a divergence of experience of care leavers, and the need to validate each unique experience	Can we validate each different account of experiences in institutions, or do we promote a view of the institution that may invalidate some stories? How can we meet our obligations to care leavers when they might be involved in an adversarial process with the organisation?
State Government view is that providing funding for support and counselling services and facilitating legal settlements is preferable to establishing a redress scheme	Loss of autonomy in managing claims when co-defending with the State vs the risk of facing a claim without State support Sympathy with the view of care leavers that a redress scheme is preferable to legal remedies for most people
Acceptance of responsibility for the actions of predecessor organisations	Legal position as “successor at law” vs distancing from predecessors

Ethical Principles, Practice Issues and the Dilemmas Inherent (2)

Principles and Practice Issues	Associated Dilemmas
Insurance and managing claims	Absence of State-managed insurance before 1987, and obligations to insurer for claims rising under insurance cover
Risk management approach	Expressing a risk management approach, as required to fulfil governance requirements in a way that is congruent per above. Devising risk management strategies that are also congruent
Disclosure and managing publicity	Dilemmas inherent in being open and honest, respecting privacy and confidentiality clauses and validating divergent views per above
Requirements re notification of complaints	Whose responsibility? Can an organisation say this is the responsibility of the victim, and what should guide decisions to notify?

Checklist for Boards and CEOs (handout)