

Common Guiding Principles for responding to civil claims involving allegations of child sexual abuse

1. The State of Victoria and its departments and agencies acknowledge the vulnerable status of children in our society. The departments recognise that the process of civil litigation may be a traumatic experience, especially for victim-survivors of child sexual abuse.

2. Victorian Government departments and agencies have developed common non-binding and guiding principles (Common Guiding Principles) to inform their responses to civil claims involving allegations of child sexual abuse in connection with State institutions (civil child sexual abuse claims).

3. The Common Guiding Principles are:

- (a) Departments should be mindful of the potential for litigation to be a traumatic experience for claimants who have suffered sexual abuse.
- (b) Departments should not ordinarily rely on a claimant's delay or the effluxion of time as a reason why a proceeding should be stayed (noting that no limitation period applies — see note 4 below).
- (c) Departments should ordinarily not require confidentiality clauses in the terms of settlement.
- (d) Departments should ordinarily pursue a contribution to any settlement amount from alleged abusers.
- (e) Departments should consider facilitating an early settlement and should generally be willing to enter into negotiations to achieve this.
- (f) Departments should develop pastoral letters that acknowledge claims and provide information about services and supports available to claimants.
- (g) Departments should offer a written apology in all cases where they consider it is appropriate. Ordinarily it will be appropriate for the apology to be signed by a senior executive officer, however this will depend on the circumstances.

Notes

4. The *Limitation of Actions Amendment (Child Abuse) Act 2015*, removed the limitation period in relation to claims for damages arising from child sexual abuse, with the consequence that such claims are no longer statute barred by reason of the length of time between the abuse occurring and a claim being made. However, the removal of the limitation period does not limit a court's power, in an appropriate case, to stay a proceeding where the effluxion of time or other circumstances means that a fair trial is not possible.

5. The Common Guiding Principles are designed to ensure that Victorian Government departments and agencies respond appropriately to civil child sexual abuse claims in a manner that:

- (a) minimises potential further trauma to victim-survivors
- (b) is not unnecessarily adversarial
- (c) is consistent between claimants in similar circumstances, and
- (d) responds to the different circumstances of different claims brought against the State.

6. In order to maintain proper standards in litigation, the State of Victoria and its departments and agencies follow the Model Litigant Guidelines. The Common Guiding Principles are intended to complement the Model Litigant Guidelines as they apply in the specific context of responding to civil child sexual abuse claims.

7. The Common Guiding Principles do not bind the State of Victoria and they must be applied flexibly and depending on the circumstances of each particular claim. Accordingly, the State may sometimes act outside the general principles set out above.

8. The Common Guiding Principles, along with the Model Litigant Guidelines, do not prevent the State and its departments and agencies from acting to protect the proper and legitimate interests of the State. They do not therefore preclude all legitimate steps being taken to defend claims, including where a claim is vexatious or unmeritorious.

9. The Common Guiding Principles apply to Victorian Government departments and agencies. The Common Guiding Principles apply to litigation (including before courts, tribunals, inquiries and in arbitration and other appropriate dispute resolution processes such as mediation, expert determination and conciliation), as well as when responding to any non-litigated claims for compensation. Ensuring that the Common Guiding Principles are considered when responding to civil child sexual abuse claims is primarily the responsibility of the department which has the responsibility for the claim. In addition, lawyers engaged in responding to civil child sexual abuse claims, whether the Victorian Government Solicitor, in-house or private, should be provided with the Common Guiding Principles for consideration when assisting their client department.