

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

1. The Department of Human Services (DHS) and the Department of Education and Early Childhood Development (DEECD) 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 victims/survivors of child sexual abuse.
2. DHS and DEECD 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 ordinarily not rely on a defence that the limitation period has expired, either formally (for example in pleadings) or informally (for example in the course of settlement negotiations). If a limitation defence is relied on, careful consideration should be given as to whether it is appropriate to oppose an application for extension of the relevant period.
 - 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 Common Guiding Principles are designed to ensure that DHS and DEECD respond appropriately to civil child sexual abuse claims in a manner that:
 - a. minimises potential further trauma to victims/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.
5. 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.
6. 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.
7. 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.
8. The Common Guiding Principles apply to DHS and DEECD, but may be adopted by other 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.