

WESTERN AUSTRALIA GOVERNMENT WHOLE OF GOVERNMENT GUIDING PRINCIPLES FOR RESPONDING TO CIVIL LITIGATION INVOLVING CHILD SEXUAL ABUSE

PURPOSE

The State of Western Australia is required to act as a model litigant in all legal proceedings. However model litigant requirements do not specifically identify how the State and its agencies will handle civil litigation involving allegations of child sexual abuse. These guidelines are intended to do just that, so that the State and people involved in litigation against the State which involves allegations of child sexual abuse, are aware of the way in which the State and all of its agencies should respond to such litigation.

They intend to ensure a consistent and compassionate approach is taken by government. The guidelines have been developed in response to Recommendations 96- 99 of the Royal Commission into Institutional Responses to Child Sexual Abuse - Redress and Civil Litigation Report 2015.

MINIMISING POTENTIAL FOR RE-TRAUMATISATION OF VICTIMS AND EASING THE LEGAL PROCESS

The State and its agencies should at all stages of the litigation process be mindful that litigation can be a traumatic experience for persons who have suffered sexual abuse as children. In an effort to reduce that trauma and ease the burden of litigation the State and its agencies should:

1. provide regular training to lawyers and other officers who deal with victims of child sexual abuse so that they understand the effect of such abuse on victims;
2. be consistent in its responses to claims;
3. make available to claimants and potential claimants information about initial steps which need to be taken both by the Plaintiff and the State/agency to resolve a claim. This may include information about the claimant, the institution at which the alleged abuse occurred and the time that may be required by the State to undertake document searches needed in order to respond to the allegation(s);
4. communicate regularly with claimants and their legal representatives about the status of and progress of their claims;
5. consider whether a matter can be resolved without proceedings being issued;
6. make available to the Plaintiff access to records relating to the claimant and the alleged abuse, subject to others' privacy, legal professional privilege and any legal restrictions on the provision of such access to the Plaintiff;
7. assist claimants and their legal representatives to identify the proper defendant(s) if they have not already been identified;
8. consider paying claims without litigation and engage in settlement negotiations as early as reasonably possible in the process in circumstances

where the State considers it is arguable it bears some liability at law for the abuse;

9. where expert reports are required, nominate several relevant experts to whom it would agree to the claimant being referred so that, where possible, an agreement can be reached with the plaintiff as to the use of a single expert;
10. consider any requests for alternative forms of acknowledgement or redress that may be requested by a victim in the course of the litigation process.
11. offer to make a written or verbal apology by a sufficiently senior appropriate officer where the State has acted improperly.
12. consider the use of confidentiality clauses in relation to settlements on a case by case basis having regard to the wishes of the claimant and whether there is a cross claim or related claim. A confidentiality clause should not restrict the claimant from discussing the circumstances of their claim and their experience of the claim process.

ENSURING OTHER RESPONSIBLE PARTIES ARE HELD ACCOUNTABLE

In order to ensure that other responsible parties are held accountable for child sexual abuse, the State and its agencies will:

1. report claims of any serious indictable offence to the WA Police Force.
2. pursue alleged abusers for a contribution to any settlement amount where this is practical and where a perpetrator is clearly culpable.
3. join to any proceedings or involve in any settlement discussions any other entity, including the Commonwealth or any non-Government institution, which it considers bears liability for the child sexual abuse.

GUIDING PRINCIPLES ARE NOT BINDING ON THE STATE

These Guiding Principles do not bind the State or its agencies and must be applied flexibly depending on the circumstances of each claim. They do not prevent the State from acting to protect the proper and legitimate interests of the State. The State will defend claims where it does not consider it bears any liability at law for the abuse. Where matters are not capable of informal settlement, claimants will still have to prove their claims in court in the ordinary way to the civil standard, that is on the balance of probabilities.

These Guiding Principles also do not prevent the State from acting to defend claims which it regards as being vexatious, unmeritorious or where it believes that the circumstances are such that it would be impossible for the defendant to obtain a fair trial (eg. because of the passage of time, loss of documents, death of witnesses etc.) and which a court may stay as an abuse of process.

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