

Whole-of-Government Guidelines for responding to civil litigation involving child sexual abuse

Purpose

1. These guidelines set out how the State of Queensland and all agencies should respond to civil litigation against the State brought by claimants who have been sexually abused as children and are intended to ensure a compassionate and consistent approach by government and to make civil litigation less traumatic for victims.

Background

2. The State and its agencies act as model litigants under the Model Litigant Principles, but the Model Litigant Principles do not address how the State and its agencies will handle civil litigation in relation to child sexual abuse claims. These guidelines have been developed in response to recommendations 96 – 99¹ of the Royal Commission into Institutional Responses to Child Sexual Abuse – Redress and Civil Litigation Report 2015.

Minimise potential re-traumatisation of claimants

3. The State and all agencies should be mindful of the potential for litigation to be a traumatic experience for claimants who have suffered sexual abuse.
4. The State and all agencies must conduct themselves as model litigants in the conduct of the litigation. The State and all agencies must be consistent in responding to claimants in similar circumstances in civil litigation involving child sexual abuse claims. The State and all agencies must communicate regularly with claimants (or their legal representatives) about the progress of their claim.
5. The State and all agencies should consider any requests from claimants for alternative forms of acknowledgement or redress, in addition to monetary claims (e.g. site visits).

96 ¹ Government and non-government institutions that receive, or expect to receive, civil claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse.

97 The guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily adversarial responses to claims.

98 The guidelines should include an obligation on the institution to provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.

99 Government and non-government institutions should publish the guidelines they adopt or otherwise make them available to claimants and their legal representatives

6. Agencies should provide regular training to lawyers who deal with child sexual abuse matters. This training could include the effects of child sexual assault and the use of a trauma-informed framework when working on matters involving adult survivors of child sexual assault.

Easing legal processes

7. The State and all agencies should consider resolving matters without a formal statement of claim.
8. The State and all agencies should ordinarily not rely on a defence that a limitation period has expired, either formally (in pleadings) or informally (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. State agencies can rely on a statutory limitation period as a defence in matters involving multiple defendants, where there is a risk that the State could bear a disproportionate share of the liability owed to the claimant.
9. The State and all agencies should ordinarily not rely on a release or discharge from liability under a deed of release pursuant to the Redress scheme in response to the Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde inquiry). However, the terms of such a deed may be taken into account in any litigation or settlement negotiations. For example, adjudicated or negotiated damages may take account of any payment under such a deed.
10. The State and all agencies should consider paying legitimate claims without litigation. The State and all agencies should consider facilitating early settlements and should be willing to enter into negotiations to achieve early settlements.
11. The State and all agencies should consider the use of confidentiality clauses in relation to settlements on a case by case basis, taking into consideration the claimant's preference and whether there is a cross claim or other related proceedings. In the event a confidentiality clause is used, it should not restrict a claimant from discussing the circumstances of their claim and their experience of the claims process.
12. The State and all agencies should develop guidance material, including pro forma letters that acknowledge claims, information about the initial steps needed to resolve the claim (such as the estimated time for any necessary historical investigations by agencies), information about the potential timing for resolving matters and information about services and support available to claimants.
13. To reduce trauma to victims and to reduce unnecessary cost and delay, agencies will suggest a range of potential experts (providing genuine choice) to claimants to facilitate agreement on the use of a single expert where practicable.

14. The State and all agencies should offer a written apology where the State has acted improperly. Ordinarily it will be appropriate for the apology to be signed by a senior executive officer, however this will depend on the circumstances.
15. These guidelines do not bind the State and they must be applied flexibly and depending on the circumstances of each claim. These guidelines and the Model Litigant Principles do not prevent the State and all 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 which are vexatious or unmeritorious.

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