NSW GOVERNMENT GUIDING PRINCIPLES FOR GOVERNMENT AGENCIES
RESPONDING TO CIVIL CLAIMS FOR CHILD SEXUAL ABUSE

These principles will promote cultural change across NSW Government agencies.

The 18 Guiding Principles will make litigation a less traumatic experience for victims and ensure a compassionate and consistent approach across NSW Government when dealing with civil claims for child sex abuse.

These principles apply to current and future claims.

The principles are as follows:

1. Agencies should be mindful of the potential for litigation to be a traumatic experience for claimants who have suffered sexual abuse.
2. Agencies will regularly make training available to lawyers who deal with child sexual assault matters. This training will address, for example, 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.
3. Agencies will consider resolving matters without a formal Statement of Claim.
4. Agencies will consider any requests from victims for alternative forms of acknowledgment or redress, in addition to monetary claims (for example, this could include requests for site visits).
5. Agencies should provide early acknowledgement of claims, including:
    - information about initial steps needed to resolve the claim (such as the estimated time for any necessary historical investigations by agencies) and where possible, potential timing (noting that for litigated matters timing will be governed by the court timetable); and
    - Information about services and supports available to claimants.
6. Agencies will communicate regularly with claimants (or their legal representatives) about the progress of their claim.
7. Agencies will facilitate access to free counselling for victims.
8. Agencies should facilitate access to records relating to the claimant and the alleged abuse to the claimant, subject to others' privacy and legal professional privilege.
9. In accordance with the Model Litigant Policy, agencies should consider paying legitimate claims without litigation. Agencies should consider facilitating an early settlement and should generally be willing to enter into negotiations to achieve this.
10. State agencies should not generally rely on a statutory limitation period as a defence;

    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 whole liability owed to the plaintiffs.

    Principle 10 applies to defences under the *Limitation Act 1969* (NSW), ad does not affect any other applications that a defendant may make at common law (for example, an application that a court strike out or stay proceedings that are an abuse of process).
11. Agencies will resolve all claims as quickly as possible, and will seek to resolve the majority of claims within two years, or for matters proceeding to hearing, to have the matter set down for hearing within two years. Progress may depend on the conduct of plaintiffs' lawyers and police investigations.

12. To reduce trauma to victims and to reduce unnecessary cost and delay, agencies will suggest to claimants a range of potential experts, being both acceptable to agencies and providing genuine choice to claimants, to facilitate agreement on the use of a single expert where practicable.
13. Agencies will, in accordance with the Model Litigant Policy, act consistently in the handling of claims and litigation. In particular, agencies will consider verdicts and settlements in other cases involving similar harm to victims of child sexual assault, both within and across agencies. Agencies will also take account of the individual circumstances of each case.
14. 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
    - 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.
15. Agencies should pursue alleged abusers for a contribution to any settlement amount where this is practical and where a perpetrator is clearly culpable.
16. In accordance with the Model Litigant Policy, agencies should offer an apology in all cases where they are aware the State has acted improperly.
17. Agencies acknowledge they are required to report claims of any serious indictable offence to the NSW Police Force.
18. Compliance with this policy and the Model Litigant Policy will be overseen through annual reports to the Senior Management Council or Social Policy Cabinet Committee (subject to the need to protect privacy and legal professional privilege) outlining:
    - the progress of civil matters involving child sexual assault
    - explanations for any significant delay in resolving matters
    - statements of compliance with Model Litigant Policy and these Principles.

These principles:

A. Apply to all NSW Government agencies that deal with civil claims involving child sexual abuse.
B. Apply to current and future claims from the date the principles are published, but should not apply to any claim that has been judicially determined or settled by the State.
C. Complement the Model Litigant Policy and Premier's Memorandum *M1997-26 Litigation Involving Government Authorities* (which obliges agencies to be model litigants).
D. Are binding but, as a policy document, are to be applied flexibly according to the circumstances of the case. They do not prevent NSW Government agencies from protecting the proper and legitimate interests of the State, which include legitimate steps to defend claims, including where a claim is vexatious, unmeritorious or an abuse of process.
E. Are to be reviewed in light of any relevant recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.