

MODEL LITIGANT PRINCIPLES

(revised as at 4 October 2010)

These principles have been issued at the direction of Cabinet. The power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation. However, the community also expects the State to properly use taxpayers' money and, in particular, not to spend it without due cause and due process. This means that demands on the State for compensation for injury or damages should be carefully scrutinised to ensure that they are justified.

The principles will be kept under review and amended from time to time with the approval of the Premier and the Attorney-General or, if significant amendments to the principles are proposed, with the approval of Cabinet.

It should also be noted that the principles are not intended to be applied rigidly and do not override any legislative requirement or authority concerning an agency's functions.

1. The State and all agencies must conduct themselves as model litigants in the conduct of all litigation by adhering to the following principles of fairness:

- acting consistently in the handling of claims and litigation
- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum
- paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear that the State's liability is at least as much as the amount to be paid
- not seeking to take advantage of an impecunious opponent
- not contesting matters which it accepts as correct, in particular by:
 - not requiring a party to prove a matter which the State knows to be true
 - not relying on purely technical defences where the State will suffer no prejudice by not doing so
 - not contesting liability if the State knows that the dispute is really about quantum
- not instituting and pursuing appeals unless the State believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.

2. The State must behave as a model litigant in the conduct of all litigation, including significant litigation, by adhering to the following principles of firmness:

- appropriately testing all claims
- contesting all spurious or vexatious claims
- claiming legal professional privilege where appropriate
- claiming public interest immunity to protect confidential information such as Cabinet papers in appropriate cases
- seeking security for costs where appropriate and pursuing costs when it is successful in litigation, which will assist in deterring vexatious proceedings from being instituted against it
- not seeking to take advantage of an impecunious opponent
- relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice
- acting properly to protect the State's interests.

3. Alternative dispute resolution

- The State is only to start court proceedings if it has considered other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations).
- When participating in alternative dispute resolution, the State must ensure that its representatives:
 - (a) participate fully and effectively, and
 - (b) have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.