

Australian Capital Territory

Law Officer (Model Litigant) Guidelines 2010 (No 1) *

Notifiable instrument NI2010–88

made under the

Law Officer Act 1992, section 5AA (Model litigant guidelines)

1 Name of instrument

This instrument is the *Law Officer (Model Litigant) Guidelines 2010 (No 1)*.

2 Commencement

These guidelines commence on the day after notification.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Model litigant guidelines – s 5AA

I issue the guidelines set out in the Schedule as model litigant guidelines under section 5AA of the Act.

Simon Corbell MLA
Attorney General
24 February 2010

*Name amended under Legislation Act, s 60

SCHEDULE

AUSTRALIAN CAPITAL TERRITORY

Model Litigant Guidelines

1. The Obligation

- 1.1. Consistently with the Attorney-General's responsibility for the maintenance of proper standards in litigation, the Territory and its agencies must behave as a model litigant in the conduct of litigation.

2. Application of the obligation

- 2.1. The Guidelines apply to civil claims and litigation including proceedings before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes involving the Territory and its agencies.
- 2.2. The administrative unit or agency involved in the litigation has the primary responsibility for compliance with the obligation. In addition, legal practitioners performing Territory legal work, must act in accordance with the obligation and assist their client to do so.

Note 1 For obligations of the Legal Aid Commission, see the *Legal Aid Act 1977*.

Note 2 Guidelines for prosecutions applying to the Director of Public Prosecutions are made under the *Director of Public Prosecutions Act 1990*, section 12.

3. Nature of the obligation

- 3.1. The obligation requires that the Territory and its agencies act honestly and fairly in handling claims and litigation brought by or against the Territory or an agency by:
 - (1) dealing with claims promptly and not causing unnecessary delays in the handling of claims and litigation;
 - (2) paying legitimate claims without litigation, including making partial settlements of claims or interim payments in appropriate circumstances, where it is clear that liability is at least as much as the amount to be paid;
 - (3) acting consistently in the handling of claims and litigation;
 - (4) where it is not possible to avoid the commencement of legal proceedings, keeping the costs of litigation to a minimum, including by:
 - (a) not requiring the other party to prove a matter if the Territory or its agency knows it to be true;

- (b) not contesting liability if there is no doubt concerning liability;
 - (c) use methods that it considers appropriate to resolve the litigation including alternative dispute resolution;
 - (d) ensuring that persons participating in settlement negotiations on behalf of the Territory or an agency have authority to settle a claim or legal proceedings in the course of the negotiations.
- (5) not taking unfair advantage of a claimant who lacks the resources to litigate a legitimate claim;
- (6) not relying on a technical defence which will delay or circumvent the resolution of the issues involved in litigation, unless the Territory's or the agency's interests would be prejudiced by the failure to rely on that defence;
- (7) not undertaking and pursuing appeals unless the Territory or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest; and
- (8) apologising where the Territory or the agency is aware that it or its lawyers have acted wrongfully or improperly.

4. What the obligation does not prevent

- 4.1. The obligation does not prevent the Territory and its agencies from acting firmly and properly to protect their interests. It does not prevent the Territory and its agencies from taking all legitimate steps in pursuing litigation, or from testing or defending claims made against them, including to test a significant point of law.
- 4.2. In particular, the obligation does not prevent a Territory and its agencies:
- enforcing costs orders or seeking to recover costs;
 - relying on claims of legal professional privilege or other forms of privilege;
 - pleading limitation periods;
 - seeking security for costs;
 - opposing unreasonable or oppressive claims or processes; or
 - requiring opposing litigants to comply with procedural obligations.
- 4.3. The obligation does not prevent the commencement of an appeal (pending the receipt or proper consideration of legal advice) that may be justified in the public interest where it is necessary to avoid prejudice to the interests of the Territory or an agency, provided that a decision to continue or withdraw the appeal is made as soon as practicable.

5. Interpretation

5.1. In these Guidelines:

- (1) “administrative unit” – see Dictionary to *Legislation Act 2001*.
- (2) “agency’ means:
 - (a) a body established by a law of the Territory; or
 - (b) a company in which the Territory has a controlling interest.
- (3) “Territory” means the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).
- (4) “Territory legal work” – see Dictionary to *Law Officer Act 1992*.

5.2. Issues relating to compliance with these Guidelines are matters for the Attorney-General and not for any court, tribunal or other body. If any part of the Territory or its agencies requires clarification on any matter relating to these Guidelines, a request for clarification should be directed to the Attorney-General through the Chief Executive of the Department of Justice and Community Safety.