



MODEL LITIGANT POLICY

Purpose 1.1 The Legal Profession Board of Tasmania ('the Board') is committed to ensuring high professional standards, transparency and accountability in the execution of its functions.

Policy

2.1 The Legal Profession Board of Tasmania (the Board'), its Officers, Solicitors and Counsel acting on behalf of the Board must act as a model litigant in the execution of its functions and in litigation.¹

2.2 The Model Litigant Policy has been adopted to maintain consistent and high professional standards in litigation and associated legal services provided by the Board. It assists in outlining behaviour which is transparent and consistent with the trust and confidence of the community.

2.3 The Model Litigant Policy is intended to reflect existing common law principles and does not intend to impose further obligations on the Board or individuals acting on behalf of the Board.

2.4 The Model Litigant Policy sets standards of how the Board should behave as a party to legal proceedings including: litigation before courts, tribunals and in all alternative dispute resolution processes.

2.5 All practitioners and associated individuals acting on behalf of the Board must be made aware of the Model Litigant Policy.

2.6 Concerns relating to the compliance or non-compliance with the Model Litigant Policy should be directed in writing to the CEO of the Board.

2.7 The Model Litigant Guidelines referred to in this Policy are attached as an annexure to this Policy.

2.8 The obligation to act as a model litigant does not prevent the Board from pursuing a legitimate claim in the Board's interest or in the public interest, relying on legitimate claims of legal professional privilege or pleading limitation periods.

2.9 The Model Litigant Policy may be reviewed and amended from time to time with the approval of the Board.

¹ The Legal Profession Board engages in litigation in accordance with its statutory obligations under the *Legal Profession Act 2007*, s.450 (e). The Courts have recognised an expectation that States and agencies act as model litigants in litigation and may take relevant conduct into account in exercising procedural discretions. See, for example, *Melbourne Steamship Co Ltd v Moorehead* (1912) 15 CLR 333, *Kenny v South Australia* (1987) 46 SASR 268, *Yong Jun Qin v minister for Immigration and Multicultural Affairs* (1997) 75 FCR 155, *ASIC v Hellicar* [2011] HCATrans 293.

GUIDELINES

- Guidelines** 3.1 The Board must maintain a high standard of fairness and honesty in the handling of complaints and in litigation by:
- a. dealing with complaints efficiently and expeditiously²
 - b. acting consistently in the handling of complaints and litigation³
 - c. maintaining a respectful, supportive and informative approach in the execution of their functions and in litigation
 - d. making all attempts to avoid, prevent and limit the scope of legal proceedings, wherever possible by:
 - i. making an assessment as to the prospects of success of a complaint at an early stage
 - ii. acting with care and due diligence to assess the suitability of a complaint for mediation or other alternative dispute resolution (ADR) processes
 - iii. participating fully and effectively in ADR processes, where permissible by the Act and where determined by the Board as appropriate, including, as far as practicable, having authority to settle the matter
 - iv. making an assessment as to the prospects of success in litigation
 - v. not undertaking or pursuing appeals unless the Board believes that it has a reasonable chance of success or so doing is in the public interest
 - e. where it is not possible to avoid legal proceedings, undertaking all efforts to keep the costs of litigation to a minimum by:
 - i. not requiring a party to prove a matter which the Board knows to be true
 - ii. not relying on technical arguments where the Board or its agencies will suffer no prejudice by not doing so⁴
 - f. not taking advantage of any party who lacks the resources to litigate a legitimate claim
 - g. apologising where the Board has failed to comply with the Model Litigant Policy.

² *Legal Profession Act 2007*, s.461; See also *Melbourne Steamship Co Ltd v Moorehead* (1912) 15 CLR 333, *Kenny v South Australia* (1987) 46 SASR 268.

³ *Hughes Aircraft Systems International v Airservices Australia* (1997) 76 FCR 151, 196.

⁴ *Melbourne Steamship Co Ltd v Moorehead* (1912) 15 CLR 333, 342.