

# Model Litigant for Civil Litigation Council Policy

## Responsible directorate: Governance and Strategy

**Objective:** This Policy is a statement of principles and assists in maintaining proper standards in litigation. It is intended to reflect the existing law and is not intended to amend the law or impose additional legal or professional obligations upon legal practitioners or other individuals.

### 1. Application:

- a. This Policy applies to civil claims and civil litigation (referred to in this Policy as litigation), involving the City of Joondalup.
- b. Ensuring compliance with this Policy is primarily the responsibility of the Chief Executive Officer of the City of Joondalup, in consultation with the City's lawyers. In addition, lawyers, whether in-house or private, are to be made aware of this Policy and its obligations.
- c. Issues relating to compliance or non-compliance with this Policy are to be referred to the Chief Executive Officer.
- d. The Chief Executive Officer may issue guidelines relating to the interpretation and implementation of this Policy.
- e. This Policy applies to the Council, Elected Members and all Directorates of the City of Joondalup.

### 2. Definitions:

Definitions are taken as those detailed in the *Local Government Act 1995* and associated legislation.

### 3. Statement:

The purpose of this Policy is to ensure that the City of Joondalup applies proper standards to civil claims and civil litigation, involving the City, including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes.

#### **4. Details:**

##### **4.1. The obligation:**

The City of Joondalup must act as a model litigant in the conduct of litigation.

##### **4.2. Nature of the obligation:**

- a. The obligation to act as a model litigant requires more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations. Essentially it requires that the City of Joondalup act with complete propriety, fairly and in accordance with the highest professional standards.
- b. The obligation requires that the City of Joondalup act honestly and fairly in handling claims and litigation by:
  - i. dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
  - ii. paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;
  - iii. acting consistently in the handling of claims and litigation;
  - iv. endeavouring to avoid litigation, wherever possible;
  - v. where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
    - not requiring the other party to prove a matter which the City of Joondalup knows to be true; and
    - not contesting liability if the City of Joondalup knows that the dispute is really about quantum;
  - vi. considering the use of confidentiality clauses in relation to settlements on a case by case basis when settling civil claims;
  - vii. not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
  - viii. not relying on technical defences unless the interests of the City of Joondalup would be prejudiced by the failure to comply with a particular requirement;
  - ix. only undertaking and pursuing appeals where the City of Joondalup believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interest of the City of Joondalup pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable; and
  - x. apologising where the City of Joondalup is aware that it or its lawyers have acted wrongfully or improperly.

- c. The obligation does not require that the City of Joondalup be prevented from acting firmly and properly to protect its interests. It does not prevent all legitimate steps being taken in pursuing litigation, or from testing or defending claims made.
- d. In particular, the obligation does not prevent the City of Joondalup from:
  - i. enforcing costs orders or seeking to recover costs;
  - ii. relying on claims of legal professional privilege or other forms of privilege and claims for public interest immunity;
  - iii. pleading limitation periods;
  - iv. seeking security for costs;
  - v. opposing unreasonable or oppressive claims or processes;
  - vi. requiring opposing litigants to comply with procedural obligations; or
  - vii. moving to strike out untenable claims or proceedings.

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**Creation date:** 13 December 2022 (CJ221-12/22)

**Formerly:**

**Amendments:**

**Last reviewed:**

**Related documentation:** Nil

**File reference:** 110640