

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

- (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