

# Revised Model Litigant Policy

The Northern Territory Government has a common law responsibility to act as a model litigant. To ensure proper standards in litigation, the Northern Territory of Australia, its agencies, employees, and all lawyers acting for the Northern Territory must behave as a model litigant in handling claims and conducting litigation.

## The obligation requires the Northern Territory to:

1. Act honestly, consistently and fairly when handling claims and litigation brought by or against the Northern Territory.
2. Act with complete propriety and in accordance with the highest professional standard, as recognised and expected by the courts.
3. Deal with claims promptly, avoid unnecessary delay and comply with all court orders and directions in a timely manner.
4. Make an early assessment of:
  - a. the Northern Territory's prospects of success in legal proceedings; and
  - b. the Northern Territory's potential liability in claims against the Northern Territory.
5. Pay 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.
6. Consider seeking to avoid or limit the scope of legal proceedings by taking such steps as are reasonable, including participating in appropriate alternative dispute resolution (ADR) processes or settlement negotiations in good faith.
7. Where it is not possible to avoid litigation, seek to keep the costs of litigation to a minimum, including:
  - a. not requiring the other party to prove a matter which the Northern Territory knows to be true;
  - b. not contesting liability if the Northern Territory believes that the main dispute is about quantum;
  - c. taking steps that are reasonable to resolve those matters which may be resolved by agreement and to clarify and narrow those which remain in dispute; and
  - d. monitoring the progress of the litigation and where appropriate, attempting to resolve the litigation.
8. Not rely on technical arguments unless the Northern Territory's interests would be prejudiced by a failure to comply with a particular requirement.
9. Not take advantage of a claimant who lacks the resources to litigate a legitimate claim.
10. Provide assistance to a claimant or their legal representative in identifying a proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.
11. Only pursue appeals appropriately where the Northern Territory believes it has reasonable prospects of success, or the appeal is otherwise in the public interest.
12. Apologise where the Northern Territory is aware that it or its representatives have acted wrongfully or improperly.

**EXPLANATORY NOTES:**

1. The obligation does not prevent the Northern Territory from acting firmly and properly to protect its interests. The Northern Territory should appropriately test claims, and claim privilege or public interest immunity where applicable.
2. The Northern Territory may rely on the Limitation Act where it is appropriate to do so. For claims alleging child abuse within the meaning of the Limitation Act, see Complementary Guiding Principles.
3. The obligation does not prevent the Northern Territory from seeking security for costs where appropriate.
4. The Northern Territory, where appropriate to do so, should oppose oppressive subpoenas and oppressive requests for disclosure, apply to strike out untenable claims, seek costs, and pursue the recovery of costs.

# NORTHERN TERRITORY GOVERNMENT GUIDING PRINCIPLES FOR RESPONDING TO CIVIL CLAIMS ALLEGING CHILD ABUSE

The Northern Territory Government acknowledges the vulnerable status of victims and survivors of child abuse in our society. The Northern Territory recognises that the legal process of claims and civil litigation may be a traumatic experience, particularly for victims and survivors of child abuse.

These principles are intended to promote cultural change across all

Northern Territory Government Agencies. The principles will apply to all Northern Territory Agencies that deal with civil claims involving child abuse and are intended to inform the responses of those Agencies to civil claims alleging child abuse. The principles will apply to current and future claims.

## The principles are as follows:

1. Agencies should be mindful of the potential for litigation to be a traumatic experience for claimants who are victims and survivors of child abuse.
2. Agencies should not ordinarily rely on a claimant's delay or the passage of time as a reason as to why a proceeding should be stayed (noting that no limitation period applies under section 5A of the Limitation Act).
3. Agencies should consider the use of confidentiality clauses in relation to settlements on a case by case basis, taking into consideration the claimant's preference and whether there is a cross claim or other related proceeding. In the event that a confidentiality clause is used, it should not restrict a claimant from discussing the circumstances of their claim and their experience of the claims process.
4. Agencies should ordinarily pursue obtaining a contribution to any settlement amount from alleged abusers.
5. Agencies should consider arranging an early settlement and should generally be willing to enter into negotiations to achieve a settlement.
6. Agencies should develop pastoral letters that acknowledge claims and provide information about local support services to claimants.
7. Where appropriate, Agencies should offer a written apology to victims and survivors of child abuse. It will usually be appropriate for the apology to be signed by a senior executive officer within the Agency, however the appropriate signatory should be considered on a case by case basis.