

Our Vision

Nambucca Valley ~ Living at its best

Our Mission Statement

'The Nambucca Valley will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

1.0 Policy objective

The Model Litigant Policy is designed to provide guidelines for Council to apply best practice in civil litigation matters. It is founded upon the concepts of behaving ethically, fairly and honestly to model best practice in litigation. Under the policy, Council is required to:

- Deal with claims promptly
- Not take advantage of a claimant who lacks the resources to litigate a legitimate claim
- Pay legitimate claims
- Avoid litigation
- Keep costs to a minimum, and
- Apologise where the Council has acted inappropriately.

This Policy applies to council operations.

2.0 Related Legislation/Policies/Procedures

This policy is to be read in conjunction with Council's claim for compensation procedure and form.

The NSW *Civil Procedure Act 2005*.

3.0 Definitions

"Litigant" Is a person or entity involved in a lawsuit.

4.0 Policy Content

4.1 Background

4.1.1 The Model Litigant Policy has been adopted to assist in maintaining proper standards in litigation. The Model Litigant Policy is a statement of principles. 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. The policy is based on the NSW Government's Model Litigant Policy for Civil Litigation.

- 4.1.2 The Model Litigant Policy applies to civil claims and civil litigation (referred to in the Policy as litigation), involving the Council including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes.
- 4.1.3 Lawyers acting on behalf of Council are to be made aware of the Model Litigant Policy and its obligation.
- 4.1.4 Issues relating to compliance or non-compliance with the Model Litigant Policy should attempt to be resolved between the parties in the first instance.

4.2 Principles

- 4.2.1 The Council must act as a model litigant in the conduct of litigation.
- 4.2.2 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 Council act with complete propriety, fairly and in accordance with the highest professional standards.
- 4.2.3 The obligation requires that Council will act honestly and fairly in handling claims and litigation by:
- a) dealing with claims promptly and not causing unnecessary delay in handling of claims and litigation;
 - b) 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;
 - c) acting consistently in the handling of claims and litigation;
 - d) endeavouring to avoid litigation, wherever possible. In particular regard should be had to the *NSW Civil Procedure Act 2005* which provides that the overriding purpose of the Act is to facilitate the just, quick and cheap resolution of the real issues in civil proceedings;
 - e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by
 - I. not requiring the other party to prove a matter which the Council knows to be true; and
 - II. not contesting liability if the Council knows that the dispute is really about quantum;
 - f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
 - g) not relying on technical defences unless the interests of the Council would be prejudiced by the failure to comply with a particular requirement;
 - h) in accordance with Principle 10 of the *NSW Government Guiding Principles for Government Agencies Responding to the Civil Claims for Child Sex Abuse*, Council may not rely on a statutory limitation period as a defence in civil claims for child abuse;
 - i) when settling civil claims Council should consider the use of confidentiality clauses in relation to settlements on a case by case basis;
 - j) only undertaking and pursuing appeals where the Council believes 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 Council pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable;

- k) apologising where the Council is aware that it has acted wrongfully or improperly; and
- l) providing reasonable assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.

4.2.4 The Council is not prevented from acting firmly and properly to protect its interests. The obligation does not prevent all legitimate steps being taken in pursuing litigation, or from testing or defending claims made.

4.2.5 In particular, the obligation does not prevent the Council from:

- a) enforcing costs orders or seeking to recover costs;
- b) relying on claims of legal professional privilege or other forms of privilege and claims for public interest immunity;
- c) pleading limitation periods (other than in child abuse actions);
- d) seeking security for costs;
- e) opposing unreasonable or oppressive claims or processes;
- f) requiring opposing litigants to comply with procedural obligations; or
- g) moving to strike out or otherwise oppose untenable claims or claims which are an abuse of process.

4.3 Roles and Responsibilities

The following Council officers are responsible for the implementation and the adherence to this policy:

- General Manager
- Assistant General Managers
- Manager Information and Communication Technology
- Authorised users

4.4 Communication

This Policy will be communicated to staff after adoption by Council in accordance with Council's Policy and Procedures Framework.

5.0 History

New Policy

Department:	GM	Last Reviewed	Resolution Number
Policy Category	Council		
Endorsed By:	General Manager		
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