

As described by the Crown solicitor, the 'model litigant' practices adopted by government law agencies in Queensland rest on the following principles.⁶⁷

It can be said in general that the model litigant principles require fairness, but do not preclude firmness.

As to fairness, the State:

- should act consistently in handling claims;
- should deal with claims promptly;
- should pay legitimate claims;
- should enter into reasonable settlements;
- should not seek to take advantage of an impecunious opponent;
- should not contest matters which it accepts as correct;
- should not rely on purely technical defences where it has suffered no prejudice; and
- should not pursue frivolous appeals.

As to firmness, the State:

- should not cave into spurious or vexatious claims;
- should appropriately test all claims;
- should claim legal professional privilege where appropriate;
- should claim public interest immunity to protect confidential information such as Cabinet papers in appropriate cases;
- is entitled to seek security for costs where appropriate;
- should oppose oppressive subpoenas/disclosure;
- should seek to strike out untenable claims; and
- should act properly to protect the States' interests.

In addition, although claimants and their solicitors sometimes urge the relevant Minister or Director-General to do otherwise:

- the State is entitled to rely on available statutes of limitation, which are designed to protect a defendant from unfair prejudice;
- the State will generally seek to pursue costs when it is successful in litigation, which will assist in reducing the potential for vexatious proceedings to be instituted against it.

Costs and standing

'Standing' means the right to commence legal proceedings in a court. It is also discussed below in section 9. Under the Judicial Review Act, 'a person who is aggrieved by a decision' to which the Judicial Review Act applies may apply for a relief,⁶⁸ and 'a person aggrieved' is defined, generally, as a person whose interests are, or would be, adversely affected by the decision in question.⁶⁹

In *Nth Qld Conservation Council Inc v Executive Director, Qld Parks & Wildlife Service*, Chesterman J stated:

The test for determining who has standing to challenge the decision of a government or public authority has been considered frequently in recent years. It is, I think, possible to discern some relaxation in the strictness with which the test was earlier applied. There appears to be a greater readiness on the part of courts to permit challenges to the decisions of executive government. A second general observation is that the formulation of the test does not allow any very precise understanding of what criteria confer standing. It is clear that if the

⁶⁷ Conrad Lohe, Crown Solicitor. The model litigant principles were presented at a Crown Briefing on 30 July 2003.

⁶⁸ Judicial Review Act, ss 20, 21, 22, 44.

⁶⁹ Judicial Review Act, s 7.