

Council Policy

Council Policy Name: Model Litigant
Responsible Directorate: Corporate Strategy and Performance
Version: Adopted

1. PURPOSE

1.1. The purpose of this Policy is to ensure the City acts honestly and fairly in the conduct of litigation.

2. SCOPE

2.1. This Policy applies to litigation where the City is a party to the proceedings, including litigation before courts, tribunals, panel hearings, other legal proceedings and includes alternative dispute resolution related to such litigation.

3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council policy titled "Model Litigant Policy"
City	City of Busselton

4. STRATEGIC CONTEXT

Strategic Theme	Strategic Priority
Key Theme 4: LEADERSHIP	4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. The City must act as a model litigant in the conduct of litigation.
- 5.2. The obligation to act as a model litigant requires more than merely acting honestly and in accordance with the law and court rules.
- 5.3. The obligation requires that the City act honestly and fairly in handling claims and litigation by:
- dealing with claims promptly and not causing unnecessary delay;
 - 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;
 - acting consistently in the handling of claims and litigation;
 - endeavouring to avoid litigation, wherever possible;
 - 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 knows to be true; and
 - not contesting liability if the City knows that the dispute is really about quantum;
 - when settling civil claims, the City should consider the use of confidentiality clauses in relation to settlements on a case by case basis;
 - not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
 - not relying on technical defences unless the interests of the City would be prejudiced by the failure to comply with a particular requirement;

- i. only undertaking and pursuing appeals where the City believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest.
- 5.4. The obligation does not require that the City 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.
- 5.5. In particular, the obligation does not prevent the City 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;
 - 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 untenable claims or proceedings.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	19 June 2024	Resolution #	C2406/157
Previous Adoption	DATE		Resolution #	