



MODEL LITIGANT POLICY



Policy

Purpose of the policy

- 1 This Policy has been developed by the Commerce Commission (the Commission). This 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.
- 2 The Commission considers that it is important, as a public enforcement agency and regulator, to have a clear Model Litigant Policy and to commit to acting as a model litigant. The phrase 'model litigant' is often used but can have varying meanings. This policy sets out the Commission's application of that phrase.
- 3 Ensuring compliance with this policy is primarily the responsibility of the General Counsel of the Commission and issues relating to compliance with this policy are to be referred to the General Counsel. Lawyers engaged in litigation on behalf of the Commission, whether in-house or external, are expected to act in accordance with the principles stated in the policy and to assist the Commission to comply.
- 4 The Commission may issue further guidelines relating to the interpretation or implementation of the policy.

Application of the Policy

- 5 This policy applies to all civil litigation conducted by or involving the Commission (referred to in this policy as litigation).¹



The Policy

- 6 The Commission will act as a model litigant in the conduct of litigation.

Meaning of 'model litigant'

- 7 The model litigant policy means more than that the Commission merely acts honestly and in accordance with the law and the court rules. It also goes beyond the requirement for Commission counsel to act in accordance with their ethical obligations. It requires the Commission to act with complete propriety, fairly and in accordance with the highest professional standards.
- 8 The policy requires the Commission to, specifically:
 - 8.1 Take and defend litigation in accordance with the Commission's statutory functions arising under a range of statutes, and at all times to act according to the Commission's purpose of promoting dynamic and responsive markets so that New Zealanders benefit from competitive prices, better quality and greater choice.
 - 8.2 Deal with litigation promptly and efficiently and without causing unnecessary delays or expense, and to seek to have cases resolved as early as is appropriate and on such terms as are appropriate.
 - 8.3 Apply an even-handed approach in the handling of litigation.
 - 8.4 Consider the possibilities for, and initiate where appropriate, alternative means of avoiding or resolving litigation, including by cooperation or other agreed resolution.
 - 8.5 Responsibly spend public funds in relation to litigation.
 - 8.6 Not seek to take inappropriate advantage of an impecunious opponent.
 - 8.7 Not seek to contest matters which it accepts as correct and not seek to take unmeritorious points for tactical reasons.

1. Principles governing the Commission's conduct of criminal litigation are contained within the Solicitor-General's Prosecution Guidelines. Those guidelines apply to the Commission.

- 8.8 Not pursue appeals unless the Commission considers that it has reasonable prospects of success and /or the appeal is otherwise justified in the public interest. The filing of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the Commission pending the receipt of proper consideration of legal advice, provided that a decision whether to pursue the appeal is made as soon as is practicable.
- 9 The policy permits the Commission to act decisively and properly to protect and advance its interests as a regulator and enforcement agency. It allows all legitimate steps to be taken in pursuing litigation, or in testing claims and defending against claims made by others.
- 10 In particular, as a model litigant the Commission may:
- 10.1 Enforce costs orders and seek to recover costs.
 - 10.2 Rely on legal professional privilege and other forms of privilege and claims for public interest immunity.
 - 10.3 Plead limitation and other defences.
 - 10.4 Seek security for costs.
 - 10.5 Oppose unreasonable, oppressive or vexatious claims or processes.
 - 10.6 Oppose applications for leave to appeal, or leave applications arising from a party's failure to comply with the Court's rules or directions.
 - 10.7 Require opposing litigants to comply with procedural obligations.
 - 10.8 Decline to settle litigation when settlement will not satisfy the Commission's goals.
 - 10.9 Move to strike out untenable causes of action, defences or proceedings.

Status of the policy

- This policy was developed by the Legal Services Branch. It was approved and adopted by the Commission on 12 February 2009.
- This policy will be formally reviewed by the Commerce Commission as required.

Further information

For further information about this policy please contact the Commerce Commission Enquiries Team.

References

The following sources were referred to in the development of this policy:

- The Solicitor-General's Prosecution Guidelines – available online <http://www.crownlaw.govt.nz>.
- International model litigant policy precedents.



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