

Model Litigant Policy

The Model Litigant Policy requires state litigants such as the Department of Communities and Justice (DCJ) to adhere to the highest professional standards and legal best practice in child protection matters. As part of their work, Permanency Support Program (PSP) Service Providers are required to support and provide information to enable DCJ's role as a model litigant.

The Model Litigant Policy was issued in 2016 and is complemented by the Guiding Principles which seek to make litigation a less traumatic experience for victims and ensure a compassionate and consistent approach across NSW Government when dealing with child protection and abuse matters.

It is imperative that the Model Litigant fully understands the Child and Young Persons (Care and Protection) Act 1998 and uses it to uphold the overriding principle of the Act – that the safety, welfare and wellbeing of the child or young person (child) must be paramount in all decisions.

What the Model Litigant Policy means in Practice for DCJ

There is an expectation that DCJ staff will:

- act honestly and fairly in litigation
- not cause unnecessary delay in litigation
- avoid litigation wherever possible
- where it is not possible to avoid litigation, the cost of litigation will be kept to a minimum
- not take advantage of a party who lacks the resources to be properly represented
- not undertake and/or pursue appeals unless there are reasonable prospects for success, or the appeal is otherwise justified in the public interest.

The Model Litigant policy does not:

- prevent DCJ / PSP Service Providers from acting firmly or properly to protect children
- prevent DCJ / PSP Service Providers from requiring parties to comply with directions and procedural requirements
- require DCJ / PSP Service Providers to settle litigation where there is a reasonable case to argue and where it is not in the best interests of the child.

Power Imbalances In Court

The Model Litigant Policy requires us to be mindful of our power. In care and protection matters it is important to remember that parents and children in the care and protection system are often socially disadvantaged.

This contrasts with the resources of the Secretary (and PSP Service Providers). The Secretary has the resources of the State of NSW and must use that power with complete propriety when working with anyone.

More information about the Model Litigant Policy can be found at the following web address <https://arp.nsw.gov.au/m2016-03-model-litigant-policy-civil-litigation-and-guiding-principles-civil-claims-child-abuse>