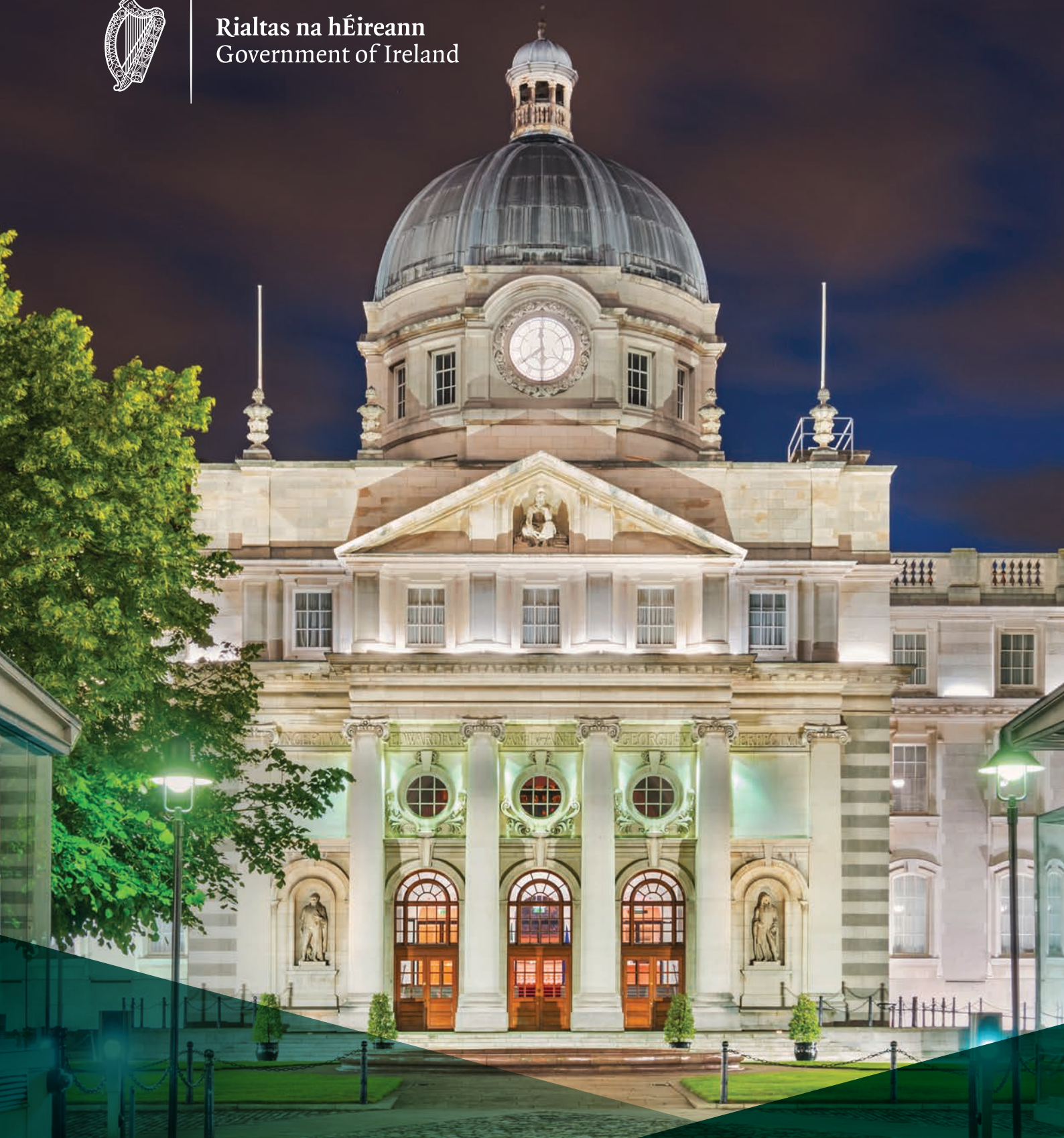




Rialtas na hÉireann  
Government of Ireland



# STATE LITIGATION PRINCIPLES



## INTRODUCTION

Article 30 of the Constitution provides that the Attorney General shall be the adviser to the Government in matters of law and legal opinion.

The role of the Attorney General is to act as litigator for the Government but it is the Government who is the litigant.

When the State engages in litigation, the Government and the Attorney General (through the Office of the Attorney General and the Office of the Chief State Solicitor) shall endeavour to act in accordance with these Principles.

These Principles shall serve as guidelines to assist the State in maintaining high standards of ethics and integrity in the conduct of litigation. It is also hoped that they will serve as a positive example to other litigants.

These Principles do not have, and are not intended to have, any binding legal effect. In particular, a failure to comply with these Principles cannot in itself defeat a claim or defence advanced by the State in any set of legal proceedings.



**The State shall endeavour to conduct litigation in accordance with the following principles:**

**1. Avoid legal proceedings where possible**

While the State may institute proceedings, it is more frequently the defendant or respondent in proceedings.

Nonetheless, the State will endeavour to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings, in line with the provisions of Section 14(1) of the Mediation Act, 2017 and in other cases, by participating in alternative dispute resolution processes where appropriate.

**2. Deal with claims promptly**

In order to facilitate the proper administration of justice, the State will seek to avoid any unnecessary delay in the management of claims and litigation.

Where possible the State will take a pragmatic approach to procedural applications and will use all reasonable endeavours to ensure that timelines imposed by legislation, rules of court, court orders or court directions are complied with.

**3. Deal with litigation efficiently**

The State will endeavour to conduct litigation efficiently, with an emphasis on narrowing the issues truly in controversy between the parties, and not requiring unnecessary proofs or evidence.

The State will support case management procedures that assist with the efficient progress of litigation.

**4. Identify lead cases when multiple sets of proceedings on same legal issue**

When defending mass claims or multiple sets of legal proceedings on the same or similar questions, the State will endeavour to assist the court and litigants by identifying appropriate lead cases with a view to facilitating the efficient and effective administration of justice.



### **5. Minimise legal costs for all parties**

The State will seek to reduce the legal costs incurred by all parties to litigation by streamlining processes, narrowing the issues in proceedings and settling proceedings at an early stage where appropriate.

### **6. Make settlement offers, tenders or lodgments**

Where appropriate, the State will encourage the settlement or compromise of proceedings by the making of settlement offers, tenders or lodgments.

### **7. Act honestly**

The State will act honestly and will seek to assist the court by providing full and accurate explanations of all relevant matters of which the court requires to be aware, on affidavit, in witness statements, and in oral evidence as appropriate, depending on the nature of the proceedings.

### **8. Make discovery in compliance with best practice**

Once ordered by a court, or once agreed by the parties, the State will seek to comply with best practice in how it makes and manages discovery.

### **9. Be consistent across claims**

With due regard for differences between individual cases, or classes of cases, the State shall endeavour to be consistent in how similar proceedings are managed and settled.

### **10. Not to take advantage of the less well-resourced litigant**

The State shall be conscious of the difficulties faced by under-resourced and lay litigants and shall endeavour to assist the court to manage these types of cases as fairly and expeditiously as possible.



### **11. Defend proceedings in accordance with the interests of justice**

The State is entitled to rely on the same defences as any other litigant, but where consideration of different defences arises, the State shall consider where the interests of justice lie for all parties before relying on the defence.

### **12. Not to appeal unless there is a reasonable prospect of success or in the public interest**

The State should not ordinarily appeal against adverse decisions unless there are valid legal or policy reasons for doing so.

The State may appeal where it is considered that the appeal has a reasonable prospect of success; clarification of the law or legal certainty is required; the appeal is supported by valid legal or policy reasons or the appeal is otherwise in the public interest.

### **13. Avoid bringing proceedings against another State Department or State body**

Where legal issues arise between public bodies, the State will endeavour where possible to resolve such disputes without recourse to litigation. This may not apply where the State has a right of appeal under Statute against a decision of an independent agency or authority.

### **14. Seek to agree claimant's costs without the requirement for formal adjudication**

Where a litigant has obtained a costs order against the State (that is not stayed pending an appeal or pending the conclusion of the proceedings), or the State has agreed as part of a settlement to discharge a claimant's costs, the State will seek to engage constructively on the issue with a view to consensually agreeing the legal costs, without the requirement for the costs to be formally adjudicated.



### **15. Apologise where the State has acted unlawfully**

The State should apologise in appropriate cases and, in particular, where (a) the court has found that the State has acted unlawfully, or (b) prior to any such judicial finding, it has emerged in the course of litigation that the State has acted unlawfully.

For the avoidance of doubt, these Principles do not preclude the State from, in an appropriate case:

- (a) Contesting litigation;
- (b) Appealing a decision;
- (c) Settling proceedings, with or without admission of liability;
- (d) Relying on the entitlement to assert legal professional privilege; and
- (e) Applying, where appropriate, for recovery of the State's legal costs.

**21 June 2023**  
**ROSSA FANNING**  
**ATTORNEY GENERAL**