

Irish State Litigation Principles

The Government of Ireland has recently approved the adoption of new State Litigation Principles (the “Principles”). These 15 Principles will serve as guidelines in the conduct of litigation by the State. The Principles apply where the State, through the Government, a Minister of the Government, a Department of State or an agency under its direct control engages in litigation.

Background

The Principles were prepared by the Attorney General, Rossa Fanning SC, in consultation with senior Advisory Counsel in the Office of the Attorney General, the Chief State Solicitor’s Office and the State Claims Agency. Under Article 30 of the Constitution, the Attorney General acts as litigator for the Government. The Government has now approved the principles.

The Principles

The Principles apply where litigation is engaged in by the State, through the Government, a Minister of the Government, a Department of State or an agency under its direct control.

The Principles are to:

1. Avoid legal proceedings where possible.
2. Deal with claims promptly.
3. Deal with litigation efficiently.
4. Identify lead cases when multiple sets of proceedings on same legal issue.
5. Minimise legal costs for all parties.
6. Make settlement offers, tenders or lodgements.
7. Act honestly.
8. Make discovery in compliance with best practice.
9. Be consistent across claims.
10. Not to take advantage of the less well-resourced litigant.
11. Defend proceedings in accordance with the interests of justice.

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

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

14. Seek to agree claimant’s costs without the requirement for formal adjudication.

15. Apologise where the State has acted unlawfully.

Legal Effect

The Principles are intended to act as guidelines to clarify and explain best practice for officials so that existing high standards are maintained. The Principles do not, however, contain rules of law, have any binding legal effect or alter the fact that the State has the same entitlements as any other party to litigation. The Principles are intended to lead to more efficient and less costly litigation process as well as enhancing transparency and assisting stakeholders and the wider public to better understand the State’s approach to conducting litigation.

How can Clerkin Lynch help

Clerkin Lynch have extensive experience in conducting litigation including in particular against the state on behalf of defendants. Please contact us for any queries on how we can assist you in relation to dispute resolution matters or to find out more about our team and services.



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