

Litigation, Claims and Disputes Policy

Section 1 - Purpose and Context

(1) The University or a University controlled entity may become involved in disputes or claims involving third parties, which can sometimes escalate into litigation.

(2) This policy outlines the principles and procedures to be followed when this occurs.

(3) This policy applies to civil disputes, claims or litigation to which the University or a University controlled entity is a party (including inquiries by or disputes with external regulatory authorities) except:

- a. disputes or litigation involving the University or a University controlled entity that are handled by the University's insurers (for example, worker's compensation, public liability claims); or
- b. matters under investigation for the purposes of the [Independent Commission Against Corruption Act 1988](#), which are handled by Office of Audit and Risk Assessment; or
- c. complaints or disputes that are covered by other processes under other statutory or policy frameworks (such as student or staff misconduct) except where these escalate to action through a court, tribunal or regulatory authority.

Section 2 - Definitions

(4) For the purposes of this policy, the following definitions apply:

- a. OGC means the Office of General Counsel;
- b. GC means the person appointed as the General Counsel (including any person acting in that position).

Section 3 - Policy Statement

(5) All claims and litigation will be managed honestly, lawfully and fairly, but without compromising organisational integrity and interests.

(6) The following principles apply:

- a. claims (including appeals) that have no reasonable prospects of success will not be pursued;
- b. claims and litigation will be managed and resolved promptly and efficiently, without unnecessary delays;
- c. claims or litigation will be managed consistently, taking into account individual merits and circumstances;
- d. where appropriate, suitable alternative dispute resolution methods (such as mediation) will be used to try and resolve claims as quickly as possible;
- e. except to the extent this compromises the University's legitimate interests, legal costs will be kept to a minimum.

(7) Where the University or a controlled entity is a party to any litigation, then it will act firmly to protect its legitimate

interests by assessing and testing claims according to their individual merits and circumstances.

(8) Where reasonable and appropriate, the following will be sought and enforced:

- a. costs orders and orders for security costs;
- b. claims for legal professional privilege or other forms of protections or immunities;
- c. orders to dismiss or strike out;
- d. claims or proceedings that are unreasonable, oppressive, untenable, vexatious or an abuse of process;
- e. orders requiring opposing litigants and their lawyers to comply with their obligations to a court or tribunal, including directions and other procedural obligations;
- f. orders for contempt of court;
- g. orders to have proceedings or litigants declared vexatious.

Section 4 - Procedures

Notifying a Dispute or Claim Against the University

(9) Any officer or employee who becomes aware of any actual or potential claim against the University or a controlled entity should contact OGC immediately to discuss it and at that time provide to OGC all information and documents about the claim then available.

(10) A claim can be in a number of forms, including:

- a. a letter of demand from an individual or an organisation, or their lawyer;
- b. a letter from a regulatory authority, including a court or a tribunal;
- c. a statement of claim or summons issued by a court.

Notifying Claims by the University

(11) Officers or employees who believe that the University or a controlled entity has or may have a claim against or a dispute with a third party relating to its business (for example a breach of contract) should contact OGC as soon as possible and provide all information and documents. OGC will then assess the merits of the claim (which may include obtaining external legal advice) and then prepare a report and recommendation to the Senior Deputy Vice-Chancellor (or appropriate officer of the controlled entity) for instructions.

(12) Only the Vice-Chancellor and President or the Senior Deputy Vice-Chancellor have delegated authority to instruct OGC to commence legal action on behalf of the University against another person (refer [Schedule HH19](#) of the [Delegations of Authority Policy](#)).

(13) In the case of a University controlled entity, the person with delegated authority to instruct OGC to commence legal action is either the Board of the controlled entity or a delegate authorised by the Board.

Section 5 - Guidelines

When to Contact OGC

(14) Officers or employees should contact OGC as soon as they become aware of an actual or a potential claim by or against the University or a controlled entity. This will provide a good opportunity to make an initial assessment of the merits of the claim and, where appropriate, try to resolve it without resort to litigation. Delay in notifying OGC could result in the claim escalating unnecessarily.

Role of OGC and External Lawyers

(15) OGC lawyers and any external lawyers engaged on behalf of the University or a controlled entity provide independent advice that takes into account the overall interests of the organisation - not just the specific interests of the officer, employee or academic or business unit concerned.

(16) Before making a recommendation about whether to commence or defend a claim or try to settle it, OGC will carefully consider the University's or controlled entity's interests and risks and including the capacity of the opposing litigant to satisfy any judgment to pay money, and any ongoing relationship between the University or controlled entity and opposing litigant).

Support and Assistance

(17) Where individual officers or employees are named as defendants or respondents in any litigation commenced by a third party that relates to their conduct as an officer or employee of the University or controlled entity, the University or controlled entity may, if it considers it appropriate to do so, provide assistance or support to that officer or employee in accordance with its [Discretionary Scheme for Provision of Legal Assistance and Indemnities for University Officers and Employees](#).

(18) Inquiries about the Scheme may be made through the General Counsel.

Evidence and Records

(19) Officers and employees must disclose all information and copies of all documents (including emails) relating to the claim to OGC even if these do not reflect favourably on the University or controlled entity, or individual officers or employees concerned. Selectivity could result in action being taken, or legal advice being given, on the basis of incorrect or misleading information about the facts and circumstances of the case.

(20) All documents and communications relating to a claim or litigation must be preserved and maintained in accordance with the University's [Records and Archives Management Policy](#) to ensure the integrity of University and controlled entity records and compliance with any rules or orders of courts or tribunals relating to discovery or production of documents.

(21) If a claim involves damage to property owned by the University or controlled entity, that property should be preserved and secured to avoid evidence being tainted or tampered with. Wherever possible, a physical record (such as a photograph or video) should be taken of the damaged property, together with a note of who made or took it, when and where it was made.

Contractual Disputes

(22) If the claim or dispute involves possible termination of or other action under a contract by the University or controlled entity for breach by the other party, it is essential to first obtain advice from OGC.

(23) The purpose of this is to ensure that:

- a. all potential commercial and other risks and benefits of termination (including disengagement) have been properly identified and assessed;
- b. the University or controlled entity does in fact have proper reasons for terminating; and
- c. notice of termination is given correctly in accordance with the process described in the contract.

Communications and Confidentiality

(24) Records or information about a claim or litigation should not be discussed with any person outside the University

or controlled entity under any circumstances. These should also not be discussed with any person inside the University or controlled entity unless they are directly involved and have an absolute "need to know". This is important for two reasons:

- a. to enable the University or controlled entity to maintain any claim it might have for legal professional privilege (see clauses (30) to (32) below); and
- b. to ensure that the University's and controlled entity's interests are not compromised through inadvertent disclosure or admission of liability.

(25) Officers and employees should exercise caution and be circumspect in all communications (especially emails) about a claim or a dispute to minimise the risk of compromising the University's or controlled entity's interests. These communications are potentially discoverable in any litigation, or else could be subject to disclosure under the [Government Information \(Public Access\) Act 2009](#).

Media and Publicity

(26) Disputes and litigation involving universities often attract media attention, particularly if the complainant tries to agitate their claim through a media campaign.

(27) In accordance with the [Media, Social Media and Public Commentary Policy](#) regarding corporate comment, the Vice-Chancellor and President is the only person authorised to contact the media, or issue media statements, about any claims, disputes or litigation involving the University. All media requests must be referred to the University's Office of Marketing and Communication.

Unreasonable or Threatening Behaviour

(28) In some cases, a complainant against the University or controlled entity may behave unreasonably towards officers or employees, for instance by being abusive or making threats, including through the use of social networks such as Facebook.

(29) Any officer or employee who feels harassed or threatened by or in danger from a complainant should contact OGC or the University's Campus Safety and Security unit immediately to discuss their concerns.

Legal Professional Privilege

(30) As a general rule, the University or controlled entity is entitled to claim legal professional privilege for any communications between lawyers (including OGC lawyers) and officers and staff, provided those communications are for the dominant purpose of seeking or receiving legal advice or services, or where those communications relate to litigation that has already commenced or is anticipated. For more information about legal professional privilege, visit the [Office of General Counsel website](#).

(31) All officers and staff must treat all communications between them and OGC (and any external lawyers) as strictly confidential, and only disclose them to others within the University or controlled entity on a "strictly need to know" basis. This is to ensure that the University or controlled entity can maintain any claim for legal professional privilege to which it may be entitled. This is particularly important in any disputes or litigation involving the University or controlled entity in order to minimise the risk of inadvertent waiver of legal professional privilege.

(32) Under no circumstances should any communications from or to OGC or external lawyers be disclosed to anyone outside the University or controlled entity, without first obtaining the approval of the US&GC.

Status and Details

Status	Historic
Effective Date	2nd December 2021
Review Date	1st December 2025
Approval Authority	Director, Governance Services
Approval Date	2nd December 2021
Expiry Date	8th April 2024
Unit Head	Philip Maloney General Counsel p.maloney@westernsydney.edu.au
Author	Nicole Bannerman General Counsel
Enquiries Contact	Philip Maloney General Counsel p.maloney@westernsydney.edu.au