

STANDARD TERMS OF ENGAGEMENT

My office is committed to providing you with the highest quality legal services in a cost-effective manner. These are my standard terms of engagement and information on costs which apply from **3 November 2021**. They should be read subject to any other disclosure or agreement between us relating to costs, and in the context of the laws of New South Wales, which apply to legal costs in relation to your matter.

1. Who will work on your matter?

I will nominate a solicitor whom I consider suitable to handle your matter. I will also nominate a supervising solicitor to have overall responsibility for your matter. From time to time, I may involve other solicitors or paralegals or, in some matters, in hour experts (e.g. anthropologist, historian, genealogist) where required. I will notify you of any change to the solicitor nominated to handle your matter.

2. My Costs

Unless otherwise agreed, my professional fees will be calculated on minimum units of 6 minutes at the hourly rates applicable to your matter. Rates for core legal work paid from the Attorney General's Legal Fund (AGLF) are set on a cost recovery basis and are reviewed annually.

My rates for areas of law covered by the NSW Government Legal Services (GLS) panel apply, unless otherwise agreed with you. The rates may change from time to time in accordance with panel arrangements, where applicable. If they do, I will notify you of the new rates and the date from which they are effective.

When undertaking GLS work, the CSO will follow the charging disciplines that apply under the 2021 GLS Panel arrangements.

I will also charge you for expenses disbursed by me on your behalf for services supplied by other parties, such as barristers, experts and witnesses ("disbursements"). Should you wish, you may directly enter into a costs agreement with a barrister or legal agent.

Where practicable, I will provide you with an estimate of the likely costs and disbursements which you will have to pay. The actual costs may differ from the estimate if the scope or nature of the matter changes or if my role changes or unforeseen circumstances arise. Therefore, please view my estimate as my best guess at the time it is given, based on my experience in similar matters. You will be provided with a revised estimate as soon as it becomes apparent that an update is necessary.

These standard terms of engagement are a costs agreement for the purposes of Division 4 of Part 4.3 Legal Costs of Chapter 4 of the *Legal Profession Uniform Law* (NSW). I also note that, in relation to personal injury damages proceedings falling within the provisions of Schedule 1 to the *Legal Profession*

Uniform Law Application Act 2014, I will charge you for all costs and disbursements incurred in the course of acting for you, in accordance with this agreement. In this regard, I refer you to Clause 4 Schedule 1 to the *Legal Profession Uniform Law Application Act 2014*.

Where a matter is funded from the AGLF, I may require you to pay some or all of the costs of experts (other than court-appointed experts) in the matter. My decision will be based on consultation with you, and consideration of whether it is in the best interests of government as a whole for those costs to be met from the AGLF, having regard to the nature and conduct of the proceedings, and any other relevant matter.

I will also keep you apprised of current costs, and the general progress of matters.

3. Method of billing

Usually, I will send you an interim bill each time my accrued costs reach \$1,000 or more, or every three months, whichever comes first. I will send you a final bill when the work is completed.

Generally, I will pay disbursements on your behalf and send you an invoice for reimbursement of those disbursements as soon as practicable.

If you have concerns or queries about your bill, please do not hesitate to raise them with the solicitor nominated to handle your matter or their supervising solicitor. Although I expect any difficulty will be resolved in accordance with the Premier's memorandum regarding disputes involving Government authorities, I note that the *Legal Profession Uniform Law* (NSW) and the *Legal Profession Uniform Law Application Act 2014* may give you the right to have charges made in a bill of costs assessed for fairness and reasonableness by a Costs Assessor appointed by the Supreme Court, and a determination made by the Assessor as to whether the costs agreement is just or can be set aside.

4. Your rights

The *Legal Profession Uniform Law* (NSW) sets out in detail your rights in relation to costs for legal matters covered by the jurisdiction of New South Wales. Under the *Legal Profession Uniform Law* (NSW), you have the right to:

- negotiate a costs agreement with the Crown Solicitor, and/or seek independent advice about costs agreements

- receive a bill, and request an itemised bill (within 30 days of receiving a lump sum bill)
- be notified of any substantial change to the costs disclosed
- receive on request reports of the legal costs incurred to date or since the last bill.

I note that, under s. 170 of the *Legal Profession Uniform Law* (NSW), there is no requirement to disclose costs to "a government client". However, to ensure that you are kept fully informed regarding the conduct of your matter, I will continue to disclose costs to you unless you instruct me otherwise.

5. Litigation

Costs and damages

If your matter is, or becomes, litigious, a court order may be made requiring another party to pay your costs of the proceedings. The order will not affect your liability to pay my costs and disbursements, but the amount recovered (if any) may be applied towards satisfaction of my costs and disbursements under these standard terms.

It is possible that the Court may make an order that you pay another party's costs if you lose a case. These costs would be in addition to those payable to me under these standard terms. Where a matter is funded from the AGLF, I may require you to pay some or all of the costs which become payable to another party in the matter. My decision will be based on consultation with you, and consideration of whether it is in the best interests of government as a whole for those costs to be met from the AGLF, having regard to the nature and conduct of the proceedings, the impact of the costs order on the AGLF, the prospects of success of the litigation, and any other relevant matter.

In circumstances where the amount recovered by you in any settlement is in excess of \$500,000 you may be required to pay the amount of my costs and disbursements met from the AGLF within 21 days of receipt of the settlement monies, unless:

- such costs and disbursements are otherwise covered by the settlement; or
- an alternative arrangement is agreed.

In the case of prosecutions, in circumstances where a moiety is ordered, you may be required to pay a portion of my costs and disbursements met from the AGLF (not to exceed the amount of the moiety) within 21 days of receipt of the funds collected from the moiety, unless such costs and disbursements are otherwise covered by a costs order.

In any personal injuries matter falling within the provisions of Chapter 6 of the *Motor Accidents Compensation Act 1999* and/or the *Motor Accidents Compensation Regulation 2020* or Part 8 of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998* and/or the *Workers*

Compensation Regulation 2016 (including Part 17 "Costs"), I will charge you for all costs and disbursements incurred in the course of acting for you, in accordance with this agreement. If costs are awarded in your favour in such matters, you will still need to pay my costs even though they may exceed amounts payable under the legislation cited above (and regardless of whether such costs are able to be recovered from the other party). In this regard, I refer you to Clause 8 of the *Motor Accidents Compensation Regulation 2020* and Clause 93 of the *Workers Compensation Regulation 2016*.

Prospects

Where your matter is a claim for damages, and falls within the provisions of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*, I shall initially act on your behalf on a preliminary basis for the purpose of considering whether your claim or defence has reasonable prospects of success. In the event I form a belief that your claim or defence has reasonable prospects of success, I shall be in a position to provide legal services in respect of that claim or defence. If at any point I decide to cease providing legal services to you on the basis that I do not believe your claim or defence has a reasonable prospects of success, you will be charged for all costs and disbursements incurred up to that point (i.e. the date my decision is communicated to you) in accordance with clause 12 of this agreement.

Model litigant

The handling of litigation is subject to the NSW Government Model Litigant Policy. I will assume that the requirements of the NSW Government Model Litigant Policy have been complied with prior to my engagement in litigation matters. Where I identify an issue in relation to the application of the NSW Government Model Litigant Policy, I will refer it to you for instructions, and will require that I be given prompt and appropriate instructions to ensure compliance.

In the case of claims arising in respect of child sexual abuse, similar regard will be given to the NSW Government Guiding Principles for agencies responding to such claims.

6. Copyright

Most documents and material prepared by me ("my work") in the course of performing your instructions are protected by Crown copyright under the *Copyright Act 1968* (Cth).

You may freely copy and distribute my work for your agency's internal purposes, or for the purposes for which it is provided to you, or if required by law to do so. Please refer to paragraph 7 below as to confidentiality and client legal privilege in my work. You are not permitted to otherwise deal with any my work or to provide any my work to any person outside your agency for any other purposes. You are also not permitted to

remove any copyright symbol or copyright notice from my work.

If you wish to use my work in any way not permitted by these terms, or wish to deal with any third party material that may be included in my work, please first contact me through the solicitor or supervisor assigned to handle your matter.

7. Confidentiality

Any confidential documents you provide to me in the course of performing your instructions will be kept confidential by me, unless required to be disclosed pursuant to law. I will, however, make and retain copies of documents prepared or received in the course of performing your instructions in accordance with the *State Records Act 1998* and associated policies and my standard procedures.

Similarly, advices, letters and other documents I provide you in the course of performing your instructions will be protected by confidentiality and client legal privilege in many cases. To avoid inappropriate waiver of confidentiality or privilege, I recommend that you first discuss disclosure of my work to any other government agency or person with the solicitor or supervisor assigned to handle your matter to ensure your agency's rights are appropriately protected.

8. Use of my work

Advice, letters, transactional and other documents I prepare for you are prepared in the context of your instructions and will, to the best of my knowledge, be current at the time provided and be appropriate for your agency's requirements based on the facts provided to me.

Please note that it may become necessary for you to seek my further advice if circumstances, legislative or policy requirements change or if further information becomes available.

Please also note that my work should not be amended, used or relied upon for any other circumstance or by any other agency or person without further legal advice and without my prior consent. Please refer to paragraph 7 above about the circumstances in which my work may be shared with other government agencies or persons.

9. Costs relating to official inquiries and subpoenas

In the event that, as a result of my performance of your instructions or in relation to the subject matter of your instructions, I am required to:

- participate in any judicial or parliamentary or other inquiry, commission or proceedings, or
- respond to any call by Parliament for production of documents, or
- respond to a subpoena to produce documents or to give evidence,

you agree to reimburse me for my costs and disbursements in responding to and complying with such a requirement at my then current rates. Such disbursements may include file retrieval costs.

10. Electronic mail

All client correspondence and advices of an unclassified security level are transmitted by electronic means unless hard copies or secure transmission are specifically requested. The documents and records of transmission are retained in my records management system according to my standard disposal schedules approved under the *State Records Act 1998*.

Where your matter has been classified at a higher security level for the purposes of the NSW Government Information Classification Labelling and Handling Guidelines, communication will be managed according to the relevant handling protocols.

11. Files

Following completion of a matter, I will retain the file in our document management system for a minimum period of seven years, after which it will be destroyed (unless it is required to be archived).

12. Termination

At law, you may terminate my engagement at any time. I also may terminate, for just cause, after giving you reasonable notice. Should my engagement be terminated, you agree to pay my costs incurred up to termination and the cost of any work I am required to do in relation to the matter after termination.

Government policy dictates that legal matters classified as "Core Legal Work" (see Premier's Memorandum M2016-04) must be referred to me. You are at liberty in all other legal matters to exercise your rights at law.

13. Goods and Services Tax

My costs attract GST, except for AGLF work, and agency work for agencies grouped as part of the Department of Communities and Justice GST Group.

Disbursements will be incurred by me as principal, unless otherwise agreed with you. You will be invoiced by me for these services, and (with the above exceptions) this will include an amount for GST.

14. Acceptance

You do not need to sign any document to indicate your agreement to these standard terms. Your continued instructions in respect of each matter will confirm your acceptance of them.

If you have any queries about your rights under the *Legal Profession Uniform Law* (NSW), or about my Terms of Engagement, please do not hesitate to contact me through the solicitor or supervisor assigned to handle your matter.