

Terms of Engagement

Effective: 1 April 2024

Private Legal Practitioner (Solicitor)

These Terms of Engagement as amended from time to time apply to all engagements of private solicitor legal practitioners (the Contractor) to provide legal services (Services) authorised by the Crown Solicitor under Treasurer's Instruction 10, unless otherwise agreed in writing by the Crown Solicitor.

1. Instructions and communications

While the Contractor is being engaged by the South Australian Government Agency to which it is providing Services, unless otherwise approved in writing by the Crown Solicitor:

- 1.1. the Contractor will take instructions only from the Crown Solicitor;
- 1.2. the Contractor will promptly bring to the attention of the Crown Solicitor any actual or attempted communications with any other SA Government department or agency in relation to the Services; and
- 1.3. the Contractor's point of contact with the Crown Solicitor is the solicitor nominated for that purpose in the letter from the Crown Solicitor recording the approval of the engagement.

2. Standard of services

The Contractor will perform all Services:

- 2.1. where specific personnel have been nominated or approved by the Crown Solicitor, using only those personnel;
- 2.2. professionally, carefully, skilfully and competently;
- 2.3. in a timely and efficient manner; and
- 2.4. in the interests of the State of South Australia without favour to any other person.

3. Probity

- 3.1. The Contractor must not do anything which is prejudicial to the goodwill, reputation or overall public image of the State of South Australia or puts at risk the probity of any transaction or agreement related to the Services.
- 3.2. In addition, the Contractor must at all times act in accordance with the "Model Litigant" principles.
- 3.3. The duties of the model litigant are set out in Legal Bulletin No. 2, which is published on the Crown Solicitor's Office website as amended from time to time (at www.agd.sa.gov.au).

4. Conflict of interest

- 4.1. The Contractor warrants that neither it nor any of its staff has any conflict of interest or potential conflict of interest in relation to the subject matter of the Services.
- 4.2. If the Contractor becomes aware that it or any of its staff have or may have a conflict of interest or potential conflict of interest, the Contractor must immediately inform the Crown Solicitor, in writing, with full details of that conflict of interest or potential conflict of interest.
- 4.3. The Contractor will comply with all directions of the Crown Solicitor in relation to any conflict of interest or potential conflict of interest.

5. No exclusivity of engagement

- 5.1. The Contractor acknowledges that service providers other than the Contractor may also be engaged by the Crown Solicitor in relation to the Services.
- 5.2. The provision of legal services by any party other than the Contractor (including by the Crown Solicitor's Office) does not reduce any liability that the Contractor may have in relation to or arising out of the Contractor's performance or non-performance of the Services.
- 5.3. The Crown Solicitor does not make any representation as to any minimum level of work under this engagement.

6. Engagement of counsel

- 6.1. The Contractor must not retain counsel without first obtaining the approval of the Crown Solicitor to engage counsel pursuant to Treasurer's Instruction 10.
- 6.2. In seeking approval for the retainer of counsel, the Contractor must provide sufficient information and supporting documentation to assist the Crown Solicitor with the engagement of appropriate counsel.
- 6.3. The Crown Solicitor may approve the retainer of counsel from the external Bar or from the Crown Solicitor's Office Crown Counsel Section.
- 6.4. Retainer of counsel must be on the standard Private Legal Practitioner (Independent Counsel) Terms of Engagement. Any variations to those Terms must be approved in writing by the Crown Solicitor.
- 6.5. The Contractor must not pay any invoice raised by counsel engaged unless the invoice has been certified as reasonable by the Crown Solicitor (or authorised representative) pursuant to paragraph 10.5 of Treasurer's Instruction 10.
- 6.6. The Contractor must confirm in writing to the Crown Solicitor if the services set out in a tax invoice rendered by external Counsel were reasonably required.

7. Rates

- 7.1. The fees payable to the Contractor for the Services will be calculated:
 - 7.1.1. at a rate or rates that are no higher than the maximum rate specified in the Schedule of Rates published on the Crown Solicitor's Office website as amended from time to time (which maximum rate is for time spent on professional legal work only, noting that separate rates apply for law clerks and conveyancers); and
 - 7.1.2. by reference to units of 6 minutes each.
- 7.2. The web address at which the Schedule of Rates is published at the time of issue of these terms of engagement is www.agd.sa.gov.au.

8. External fees and disbursements

- 8.1. The Contractor may charge for the following disbursements:
 - 8.1.1. external search fees, registration fees and stamp duty at cost; and

- 8.1.2. court and transcript fees at cost (but not in jurisdictions where such costs do not apply to the State of South Australia, such as State Courts pursuant to section 15 of the *Crown Proceedings Act 1992*).
- 8.2. The Contractor may charge for external Counsel fees, but only where the Crown Solicitor has given prior Treasurer's Instruction 10 approval for the engagement of each particular counsel (including the rate of the fees to be charged), and where Counsel fees have been certified in accordance with clause 6.5.
- 8.3. The Contractor must not charge for typing, secretarial services, administrative services, telephone services, rounds services, fax, e-mail, printing, photocopying, car parking, travel and accommodation, data storage software licencing or other overhead costs.

9. Tax invoices

- 9.1. Unless by agreement in special circumstances, the Contractor will submit tax invoices for Services as follows:
 - 9.1.1. at the end of the month where work in progress is \$1000 or more in value;
 - 9.1.2. for matters which are finalised, regardless of the value of work in progress;
 - 9.1.3. for all work, regardless of the value of work in progress, at the end of each quarter (September, December, March and June); or
 - 9.1.4. where the agreed fixed fee for work is less than \$1000.
- 9.2. Tax invoices must:
 - 9.2.1. be addressed and sent to the South Australian Government Agency that requested the Services;
 - 9.2.2. identify the particular matter by name and file number;
 - 9.2.3. contain an entry for each separate cost and/or time record identifying the date, units or time incurred, item cost and approved hourly rate, fee earner and a sufficient description of the work item to allow assessment of the reasonableness of the work item and associated charge, consistent with the requirements in Attachment 1;
 - 9.2.4. contain details of disbursements and attach copies of accounts for disbursements paid to third parties, including counsel;
 - 9.2.5. attach the report in the form required under clause 11;

9.2.6. provide the bank details for electronic payment.

9.3. The South Australian Government's standard payment terms are 30 days from date of invoice. The Crown Solicitor's Office will use best endeavours to promptly certify invoices to enable payment by the South Australian Government Agency within 30 days. Certification will be delayed in respect of invoices which do not comply with these terms, or which do not include the report required under clause 11.

9.4. The Contractor acknowledges that it is the relevant South Australian Government Agency as identified by the Crown Solicitor that is responsible for payment of tax invoices, not the Crown Solicitor.

10. GST

10.1. The rates specified in the Schedule of Rates are exclusive of GST (unless specified otherwise).

10.2. The Contractor represents and acknowledges that:

10.2.1. it is registered under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act);

10.2.2. it is registered under the *A New Tax System (Australian Business Number) Act 1999* and the ABN notified on each tax invoice is the Contractor's ABN;

10.2.3. the supply of Services will be a taxable supply within the meaning of the GST Act; and

10.2.4. no tax invoice is payable unless it is a valid tax invoice for the purposes of the GST Act.

11. Management of whole of government issues and reporting

11.1. Although the Services being provided may be referable to the operations of a specific South Australian Government Agency, the Contractor must provide the Services in a manner which takes into account and does not compromise the interests of other South Australia Government Agencies and the State of South Australia as a whole.

11.2. From time to time it will be necessary for the Crown Solicitor to brief the Attorney-General and/or other officers within the South Australian public sector on issues

relating to or arising in the course of providing the Services including where the Services involve Significant Issues.

- 11.3. The Contractor must at all times in providing the Services, consider whether the Services or their subject matter raise any Significant Issue and:
 - 11.3.1. provide a report, in the format set out in Attachment 2, each month in which Services are billed, detailing whether any Significant Issue has arisen and setting out details of the Significant Issue;
 - 11.3.2. include the report with the invoice for the Services issued to the Crown Solicitor's Office and the relevant South Australian Government Agency under clause 9; and
 - 11.3.3. in addition to the report provided when an invoice is issued, provide further reports and updates to the Crown Solicitor's Office immediately upon the Contractor becoming aware of any Significant Issue which could require urgent action by the State of South Australia.
- 11.4. For the purposes of this clause "Significant Issue" means an issue arising in the course of providing, or which relates to, the Services which:
 - 11.4.1. raises whole of government concerns (for example, an issue which will or is likely to involve or impact more than one South Australian Government Agency);
 - 11.4.2. requires advice to be provided or submissions to be made on a question of statutory construction, the constitution Acts of Australia or South Australia and/or the jurisdiction of a court or tribunal; or
 - 11.4.3. otherwise is of significant public interest (for example, an issue which has or is likely to have a significant financial or other impact on the State of South Australia or its citizens) or which raises or is likely to raise media interest.

12. Records, file-sharing and audit

- 12.1. The Contractor will keep proper records in relation to performance of the Services, including the provision of written or oral advice, (Records) and, promptly upon request, supply a copy of any requested Record to the Crown Solicitor.
- 12.2. To facilitate compliance with the *State Records Act 1997 (SA)*, the Contractor will keep the Records for a minimum of seven years from the date of closure of the

file or for the period of time specified by the Crown Solicitor at the time of engagement.

- 12.3. The Contractor will return original source documents, original evidence and original settlement documents in relation to the Services to the relevant SA Government Entity prior to or within 3 months of closure of the file.
- 12.4. Should the Contractor wish to use an online mechanism for collaboration on documents and file-sharing, the Contractor must liaise in advance with the Crown Solicitor as to the mechanism proposed. The Attorney-General's Department may not be able to support the Contractor's product of choice.
- 12.5. The Contractor will, promptly on request, permit the Crown Solicitor (or his or her agent) to carry out an audit of the Services and provide the Crown Solicitor (or his or her agent) with reasonable assistance in this regard.

13. Intellectual property rights

- 13.1. The State of South Australia owns all intellectual property rights in all things produced by the Contractor in the course of performance of the Services. For the purposes of this clause "intellectual property rights" means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of intellectual property right whether arising before or after commencement of the Services and the right to registration of these rights.
- 13.2. The State of South Australia owns all documents including electronic records produced by or for the Contractor arising out of or in connection with the Services and the Contractor must upon request deliver them to the Crown Solicitor in such form as the Crown Solicitor requests.

14. Insurance

- 14.1. Subject to subclause 14.3, the Contractor must effect and maintain professional indemnity insurance in its name for the term of its engagement for an amount not less than \$20 million for any one event and in the aggregate in any one policy period or such other amount as the Crown Solicitor may require. The Contractor will ensure that the policy is renewed and maintained for a period of six years after the expiration or termination of the engagement.
- 14.2. Subject to subclause 14.3, the Contractor must effect and maintain public liability insurance in its name for not less than \$20 million for any one event or such other amount as the Crown Solicitor may reasonably require.

14.3. Where the Contractor is a sole practitioner, the Contractor is not required to comply with subclauses 14.1 or 14.2 where, for the term of the engagement, the Contractor:

14.3.1. is a participant of the Legal Practitioners Professional Indemnity Insurance Scheme operated by the Law Society of South Australia; and

14.3.2. does not, in the provision of services pursuant to the engagement, employ any staff or allow others on to the Contractor's premises.

15. Liability

Where a scheme approved under the *Professional Standards Act 2004 (SA)* applies, the Contractor's liability to the South Australian Government for any loss or causes of action arising in relation to the provision of Services, including for negligence and any indemnity, is limited in the manner provided by that scheme.

16. Confidentiality

16.1. In this clause "Confidential Information" means information disclosed by or on behalf of the State of South Australia that:

16.1.1. is confidential by its nature or by the circumstances in which it is disclosed; or

16.1.2. is designated by the Crown Solicitor as confidential or identified in terms connoting its confidentiality, but does not include information which is or becomes public knowledge other than by a breach by the Contractor of an obligation of confidentiality to the Crown Solicitor or State of South Australia.

16.2. The Contractor may only disclose Confidential Information in the following circumstances:

16.2.1. with the prior written consent of the Crown Solicitor or the client agency;

16.2.2. if and to the extent that the Contractor is legally compelled to disclose the Confidential Information; or

16.2.3. to a member of the Contractor's partnership or staff, but only if that person:

a) needs the Confidential Information to perform the Services; and

- b) if required by the Crown Solicitor, has first signed a confidentiality undertaking in the form required by the Crown Solicitor.

17. Termination of engagement

The Crown Solicitor may terminate the engagement of the Contractor without cause at any time. The Contractor will be entitled to payment for any Services authorised by the Crown Solicitor and performed by the Contractor up to the date of termination, subject to the certification of those Services as reasonable by the Crown Solicitor under Treasurer's Instruction 10.

18. Publicity

The Contractor must not make or permit to be made a public announcement (other than in the course of submissions in a court) or media release about any aspect of the Services or their subject matter unless the Crown Solicitor has informed the Contractor that approval has been given in accordance with SA Government policy.

19. Modification

Any modification of these terms of engagement can only be effected with the written approval of the Crown Solicitor.

20. Jurisdiction

These terms of engagement are governed by the laws of South Australia. The courts of South Australia and the courts exercising appellate jurisdiction over them have non-exclusive jurisdiction in relation to these terms of engagement and any dispute under them.

21. Disclosure

21.1. The State of South Australia may disclose these Terms of Engagement and/or information in relation to the engagement of the Contractor (including any letter of engagement and details of fees paid under the engagement) in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

21.2. Nothing in this clause derogates from:

21.2.1. the Contractor's obligations under any provisions of these Terms of Engagement; or

21.2.2. the provisions of the *Freedom of Information Act 1991 (SA)*.

22. Auditor general

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

23. National Model Framework Addressing Sexual Harassment for the Australian Legal Profession

The Contractor commits to adhere to the principles underpinning the Law Council of Australia National Model Framework Addressing Sexual Harassment for the Australian Legal Profession (the National Model Framework) and has a sexual harassment policy in place which:

- a. fully adopts the National Model Framework and its appendices; or
- b. has been reviewed and amended as required in accordance with the National Model Framework in order to implement that Framework as far as practicable within their particular legal practice, in accordance with the Law Council of Australia Guidance Note 1: Information for organisations implementing the Model Framework.

24. Pro Bono Obligations

- 24.1. The Contractor must be a signatory to the Australian National Pro Bono Centre's aspirational "National Pro Bono Target" of 35 hours of pro bono legal services per lawyer per year, unless otherwise agreed in writing by the Crown Solicitor.
- 24.2. Subject to the Contractor's compliance with its conflict of interest obligations set out in clause 4, the Contractor may act against the State of South Australia in pro bono matters.
- 24.3. For the purposes of this clause, "pro bono legal services" has the meaning as defined by the Australian Pro Bono Centre (for the purposes of the National Pro Bono Target).
- 24.4. The Contractor must confirm to the Crown Solicitor that it is a signatory to the National Pro Bono Target in any report of Significant Issues provided in accordance with subclause 11.3.1.

Attachment 1 - Invoice requirements

1. Invoices should identify the fee earners who provided the services and set out the charge out rate charged for each fee earner.
2. Each time entry should record the fee earner conducting the service, the time spent and the charge for that item.
3. Entries relating to telephone attendances should contain a description of the person involved in the call and sufficient details of the topic of the conversation. For example, *Telephone attendance on Mr Smith re medical reports of Dr X.*
4. Entries relating to drafting or perusing emails should contain a description of the person to whom the email is sent or from whom the email is received and sufficient details of the topic of the email.

For example, *Perusing email from Mr Smith re draft submissions.*
5. Entries relating to drafting should contain a sufficient description of the document drafted. For example, *Drafting statement of Mr Smith.*
6. Entries relating to meetings and personal attendances should contain a description of the person(s) attending the meeting/personal attendance and sufficient detail of the subject matter of the meeting/personal attendance.

For example, *Meeting with Mr Smith re amendments to draft statement.*
7. Where multiple emails are sent to different people on the same topic (for example, email to Mr Smith re-trial date; email to Mr John re trial date; email to Ms Jane re trial date) the total time spent should be charged rather than charging one unit for each individual email.

For example, *Emails to Mr Smith, Mr John and Ms Jane re trial date.*
8. In general, where an email is received and then a response sent, the charge rendered should not be for more than the actual time spent in reading the email and responding to it. For short emails, charging one unit for perusal and then one unit for responding to the same email is not considered reasonable.

For example, *Perusing and responding to email from Mr Smith re-draft statement.*
9. It is acceptable to record a number of separate items in one block entry (for example, Perusing medical reports; perusing pleadings; drafting submissions). However, where block entries contain multiple different kinds of work such as telephone attendances, drafting and perusing, it may be appropriate to include a notation next to each individual item to show the time spent on that item.

For example, *Telephone attendance on Mr Smith re medical reports (1); perusing medical reports (20); drafting letter to Mr John re-medical reports (5).*

10. The description of “attending file” or “preparing for hearing” is not sufficient to enable the assessment of the reasonableness of the entry.
11. Administrative work such as file opening and time spent on printing/photocopying/collating/binding documents or rounds/filing documents should not be charged.

Attachment 2 - Reporting template

Private Legal Practitioner Details		
Firm/Business/Practitioner Name:		
Practitioner phone:	Ref:	
Practitioner email:		
SA Government Client Agency Details		
Agency Name:		
Client contact:		
CSO Details		
Matter number:		
Matter description:		
CSO contact:		
Invoice Details		
Invoice date:		
Invoice number:		
Invoice total:	\$	
Total of invoices to date:	\$	(incl. disbursements, GST)
Monthly Report Details		
Have any Significant Issues ¹ arisen?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

<p><i>If yes, please provide a <u>paragraph summarising the Significant Issue</u> and, if not already provided, attach a <u>copy of any advice provided on any Significant Issue.</u></i></p>	
<p>Has there been any media interest in the matter?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><i>If yes, please provide details, including copies of any relevant articles.</i></p>	
<p>Has your involvement in the matter concluded (i.e. is this the final invoice)?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Is your firm a signatory to the National Pro Bono Target?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

¹ A **Significant Issue** means an issue arising in the course of providing, or which relates to, the Services that (i) raises whole of government concerns (for example, an issue which will or is likely to involve or impact more than one South Australian Government Agency); (ii) requires advice to be provided or submissions to be made on a question of statutory construction, the constitution Acts of Australia or South Australia and/or the jurisdiction of a court or tribunal; or (iii) otherwise is of significant public interest (for example, an issue which has or is likely to have a significant financial or other impact on the State of South Australia or its citizens) or which raises or is likely to raise media interest.