



## **CROWN SOLICITOR'S Office**

### **Legal Practitioner (Independent Counsel) Terms of Engagement**

**Effective 1 May 2019**



**These Terms of Engagement as amended from time to time apply to all engagements of counsel from the independent Bar (“Counsel”) 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 Counsel is being engaged by or on behalf of the South Australian Government Agency for which it is providing Services, unless otherwise approved in writing by the Crown Solicitor:

- 1.1. Counsel will take instructions only from the Crown Solicitor, the Crown Advocate, Assistant Crown Advocate, an Assistant Crown Solicitor, an Executive Solicitor or Senior Legal Counsel; and
- 1.2. the Counsel 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.

#### **2. STANDARD OF SERVICES**

The Counsel will perform all Services:

- 2.1. personally;
- 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. Counsel 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 Counsel 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.
- 3.4 The web address at which Legal Bulletin No. 2 is published at the time of issue of these terms of engagement is [www.agd.sa.gov.au](http://www.agd.sa.gov.au).

4. **CONFLICT OF INTEREST**

- 4.1. The Counsel warrants that he/she does not have any conflict of interest or potential conflict of interest in relation to the subject matter of the Services.
- 4.2. If the Counsel becomes aware that he/she has or may have a conflict of interest or potential conflict of interest, the Counsel must immediately inform the Crown Solicitor, in writing, with full details of that conflict of interest or potential conflict of interest.
- 4.3. The Counsel 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 Counsel acknowledges that service providers other than the Counsel 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 Counsel (including by the Crown Solicitor’s Office) does not reduce any liability that the Counsel may have in relation to or arising out of the Counsel’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. **RATES**

- 6.1. The fees payable to the Counsel for the Services will be calculated 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).
- 6.2. The day rates for Senior Counsel and Junior Counsel specified in the Schedule of Rates represent the maximum amount which Counsel may charge for work performed in a day.
- 6.3. The day rates for Senior Counsel and Junior Counsel specified in the

Schedule of Rates will be applied in calculating the charges for work performed when Counsel has performed eight hours or more of work in a day. In all other cases the hourly rate will apply.

7. **EXTERNAL FEES AND DISBURSEMENTS**

- 7.1. The Counsel may charge for the following disbursements:
- 7.1.1. photocopying and printing at a rate of no more than 20c per page;
  - 7.1.2. external search fees, registration fees and stamp duty at cost;
  - 7.1.3. STD and ISD telephone calls at cost;
  - 7.1.4. 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* (SA)); and
  - 7.1.5. couriers at cost.
- 7.2 The Counsel must not charge for typing, secretarial services, administrative services, local telephone services, rounds services, fax, e-mail or other overhead costs.

8 **CANCELLATION FEES OF COUNSEL**

- 8.1 If a matter listed for trial settles six weeks or more before the first day of trial, no cancellation fee applies; and
- 8.2 If a matter with a trial listed for five days or more is settled less than six weeks prior to the first hearing day of the listing, then a cancellation fee may be paid of up to a maximum of one day for every week for which the trial had been listed for hearing.

9 **VARIATION TO STANDARD TERMS**

Any departure from any of these terms of engagement, including allowing extra reading time over and above the day rate and /or a different cancellation fee regime, must have prior TI 10 approval from the Crown Solicitor.

10. **TAX INVOICES**

- 10.1. The Counsel must submit tax invoices for Services on a monthly basis to the Crown Solicitor or to the Private Legal Practitioner who engaged the Counsel with the approval of the Crown Solicitor pursuant to Treasurer's Instruction 10.
- 10.2. Tax invoices must:
- 10.2.1. be addressed to the SA Government entity that requested the work;
  - 10.2.2. identify the particular matter by name and file number;
  - 10.2.3. contain an entry for each separate cost and/or time record identifying

- the date, time incurred, item cost and a sufficient description of the work item to allow assessment of the reasonableness of the work item and associated charge;
- 10.2.4. contain details of disbursements, photocopying and printing charges, including the number of pages charged;
- 10.2.5. attach copies of accounts for disbursements paid to third parties; and
- 10.2.6. provide the bank details for electronic payment.
- 10.3. The SA Government's standard payment terms are 30 days from date of invoice. Subject to certification by the Crown Solicitor under Treasurer's Instruction 10 that a valid tax invoice is reasonable having reference to the terms of the original engagement and the Schedule of Rates, the Crown Solicitor will use best endeavours to ensure that the relevant SA Government entity pays the tax invoice within 30 days of its receipt.
- 10.4. The Counsel acknowledges that it is the relevant SA Government entity as identified by the Crown Solicitor that is responsible for payment of tax invoices, not the Crown Solicitor.

## 11. **GST**

- 11.1. The rates specified in the Schedule of Rates are exclusive of GST (unless specified otherwise).
- 11.2. The Counsel represents and acknowledges that:
- 11.2.1. he/she is registered under the A New Tax System (Goods and Services Tax) Act 1999 (GST Act);
- 11.2.2. he/she is registered under the A New Tax System (Australian Business Number) Act 1999 and the ABN notified on each tax invoice is the Counsel's ABN;
- 11.2.3. the supply of Services will be a taxable supply within the meaning of the GST Act; and
- 11.2.4. no tax invoice is payable unless it is a valid tax invoice for the purposes of the GST Act.

## 12. **RECORDS AND AUDIT**

- 12.1. The Counsel will keep proper records in relation to performance of the Services ("Records") and, promptly upon request, supply them to the Crown Solicitor.
- 12.2. The Counsel 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 Counsel 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 Counsel arising out of or in connection with the Services and the Counsel must upon request deliver them to the Crown Solicitor in such form as the Crown Solicitor requests.

14. **INSURANCE**

- 14.1. The Counsel must effect and maintain professional indemnity insurance in his/her 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 Counsel will ensure that the policy is renewed and maintained for a period of 6 years after the expiration or termination of the engagement.
- 14.2. The Counsel 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.

15. **LIABILITY**

Where a scheme approved under the *Professional Standards Act 2004 (SA)* applies, the Counsel’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 Counsel of an obligation of confidentiality to the Crown Solicitor or State of South Australia.

- 16.2. The Counsel 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 Counsel is legally compelled to disclose the Confidential Information; or
  - 16.2.3. to the Counsel's instructing solicitor or a member of staff of the instructing solicitor, 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 Counsel without cause at any time. The Counsel will be entitled to payment for any Services authorised by the Crown Solicitor and performed by the Counsel 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 Counsel 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 Counsel 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, the Federal Court of Australia (Adelaide Registry) and the courts exercising appellate jurisdiction over them have non-exclusive jurisdiction in relation to these terms of engagement and any dispute under them.

8. **DISCLOSURE**

8.1. The State of South Australia may disclose these Terms of Engagement and/or information in relation to the engagement of Counsel (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.

8.2. Nothing in this clause derogates from:

8.2.1. Counsel's obligations under any provisions of these Terms of Engagement; or

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

9. **AUDITOR GENERAL**

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