



CROWN SOLICITOR'S Office

Private Legal Practitioner (Solicitors) Terms of Engagement

Effective 1 May 2019



These Terms of Engagement as amended from time to time apply to all engagements of private solicitor legal practitioners (“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, the Crown Advocate, Assistant Crown Advocate, an Assistant Crown Solicitor, an Executive Solicitor or Senior Legal Counsel; and
- 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.

2. STANDARD OF SERVICES

The Contractor will perform all Services:

- 2.1. using only those personnel nominated or approved by the Crown Solicitor;
- 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.
- 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.

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 the engagement of counsel pursuant to Treasurer’s Instruction 10.
- 6.2. The Crown Solicitor may approve the retainer of counsel from the external Bar or from the Crown Solicitor’s Office Crown Counsel Section.
- 6.3. 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.

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, whether such work is performed by a lawyer, a land broker or a para-legal acting under supervision); 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. photocopying and printing at a rate of no more than 20c per page;

8.1.2. external search fees, registration fees and stamp duty at cost;

8.1.3. STD and ISD telephone calls at cost;

8.1.4. 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

8.1.5. couriers at cost.

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 and approval of the rate of the fees to be charged. The Contractor must confirm if the services set out in a tax invoice rendered by external Counsel were reasonably required.

8.3. The Contractor must not charge for typing, secretarial services, administrative services, local telephone services, rounds services, fax, e-mail or other overhead costs.

9. **TAX INVOICES**

9.1. The Contractor must submit tax invoices for Services other than Workers Compensation Services to the Crown Solicitor on a monthly basis.

9.2. The Contractor must submit tax invoices for Workers Compensation Services to the Government Entity that requested the Services on a monthly basis. The

Government Entity will confirm if the Services set out in the tax invoice were reasonably required and refer the tax invoice to the Crown Solicitor.

9.3. Tax invoices must:

9.3.1. be addressed to the SA Government entity that requested the work;

9.3.2. identify the particular matter by name and file number;

9.3.3. contain an entry for each separate cost and/or time record identifying the date, units or time incurred, item cost, fee earner and a sufficient description of the work item to allow assessment of the reasonableness of the work item and associated charge;

9.3.4. contain details of disbursements including photocopying and printing charges (including the number of pages charged);

9.3.5. attach copies of accounts for disbursements paid to third parties, including counsel; and

9.3.6. provide the bank details for electronic payment.

9.4. 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.

9.5. The Contractor 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.

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. **RECORDS AND AUDIT**

- 11.1. The Contractor will keep proper records in relation to performance of the Services (“Records”) and, promptly upon request, supply them to the Crown Solicitor.
- 11.2. 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.
- 11.3. 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.
- 11.4. 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.

12. **INTELLECTUAL PROPERTY RIGHTS**

- 12.1. 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.
- 12.2. 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.

13. **INSURANCE**

- 13.1. 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 6 years after the expiration or termination of the engagement.
- 13.2. 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. **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.

15. **CONFIDENTIALITY**

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

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

15.1.2. 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.

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

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

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

15.2.3. 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.

16. **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.

17. **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.

18. **MODIFICATION**

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

19. **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.

20. **DISCLOSURE**

20.1. 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.

20.2. Nothing in this clause derogates from:

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

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

21. **AUDITOR GENERAL**

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