

# OPP & VICTORIAN BAR•

## STANDARD BRIEFING TERMS

### 1 Effective Date

- 1.1 This document is effective from 1 October 2017.

### 2 Purpose

- 2.1 This document sets out the standard terms that apply to all briefing costs agreements with the Office of Public Prosecutions Victoria (**OPP**). Unless otherwise agreed in writing, the terms of this document are incorporated by reference into all costs agreements entered into by the OPP on and from the effective date of this document.
- 2.2 Nothing in this document affects any obligations and duties that a person may have at law or under legal profession rules. To the extent that any legal profession rules are inconsistent with this document, the legal profession rules will prevail.

### 3 Costs Agreements and Brief Details

- 3.1 Unless otherwise agreed in writing by the OPP, each costs agreement (**Costs Agreement**) consists of the terms set out in this document, the [OPP Briefing Fee Schedule](#) and the document entitled "**Costs Agreement and Payment Claim**" prepared by the OPP and containing the "**Brief Details**" section setting out the variable terms of the Costs Agreement that are specific to the relevant brief.
- 3.2 A barrister (**Counsel**) or Counsel's representative may expressly accept or decline a brief on the terms set out in this document by notifying **OPP Briefing Services** upon receiving a Costs Agreement document.
- 3.3 If Counsel or Counsel's representative do not notify OPP Briefing Services that Counsel accepts or declines the brief, but Counsel commences the services detailed in the Costs Agreement document, then Counsel is deemed to have accepted the brief and a Costs Agreement is formed.

### 4 Work to be Undertaken

#### 4.1 *Scope of Work*

Counsel is engaged to undertake the work and services described in any memorandum to Counsel and the Costs Agreement. Unless otherwise set out in writing in the memorandum to Counsel or the Costs Agreement, the work and services include:

- (1) preparing to prosecute the matter (including legal research and the drafting or settlement of documents required by the court or by legislation);
- (2) conferring and engaging with the victims, witnesses and informant(s) for the hearing briefed;
- (3) discussions with defence including settlement negotiations;
- (4) appearances at the nominated daily rate;
- (5) in the case of a trial or plea, drafting the prosecution opening (if specified in the Brief Details) to enable the OPP to file by the due date as ordered by the court or required by a practice direction of the court;
- (6) in the case of a trial, appearance at the plea hearing following conviction;
- (7) in the case of a committal, appearance at the initial directions hearing the following day or such date fixed by the court (for which the Directions Hearing fee specified in the OPP Briefing Fee Schedule will be payable)

and completion of the Prosecutor's Report which should be returned to the OPP with the brief; and

- (8) any other service required to prosecute the matter in an efficient, economical and effective manner.

#### 4.2 **Estimated Period of Brief**

The period of brief specified in the Costs Agreement is an estimate only. If the actual duration is shorter than that estimate then, at the request by Counsel to OPP Briefing Services, the OPP will use reasonable endeavours to brief Counsel in other matters for the days that remain. However, if that is not possible, Counsel will not be remunerated for days where there has been no appearance. If the period of brief exceeds the estimate, Counsel agrees to stay in the matter until it is completed at the contracted Appearance Fee (as defined below).

### **5 Fees and Payment**

#### 5.1 *Basis for Calculation*

- (1) Subject to clause 6.1 the fee for the work undertaken in respect of each Costs Agreement is the sum of the following:
  - (a) in respect of all advice and preparation work – the amount set out in the Brief Details section of the Costs Agreement under the heading "Advice/Preparation" (**Preparation Fee**);
  - (b) in respect of all hearing and appearance work – the amount calculated by reference to applicable rate set out in the OPP Briefing Fee Schedule, based on the actual number and duration of hearings and appearances attended by Counsel (**Appearance Fee**). The Brief Details will set out the estimated number and duration of hearings or appearances and the estimated Appearance Fee, but the Appearance Fee payable will be calculated by reference to the actual number and duration of hearings or appearances;
  - (c) all applicable circuit and accommodation allowances, calculated in accordance with the OPP Briefing Fee Schedule (**Allowances**); and
  - (d) any other fees specified to be payable in the Brief Details.
- (2) For the purposes of calculating the Appearance Fee payable, if Counsel are notified of any non-sitting days or adjournments then, subject to clause 5.1(3) below, no Appearance Fee is payable in respect of such non-sitting or adjourned period. However, the OPP will use reasonable endeavours to brief Counsel in other matters for any such days or periods if requested by Counsel (requests to be made to OPP Briefing Services).
- (3) If Counsel receive notice of non-sitting days or adjournments after 12:00 noon of the business day immediately prior to the non-sitting or adjourned period, and make a request to OPP Briefing Services to be briefed on other matters, if the OPP is unable to brief Counsel on other matters for the following day the OPP will pay the Appearance Fee for one day in respect of the non-sitting day or adjourned period.
- (4) Each daily rate specified in the OPP Briefing Fee Schedule refers to the maximum amount that may be charged by Counsel in respect of work performed in one day.
- (5) Except as set out in clause 5.1(1)(a), no additional fee is payable by the OPP for preparation work. Payment for any preparation work additional to that specified in the Brief Details will only be paid by the OPP if the Costs Agreement is varied in accordance with clause 6.1. Any additional fee for preparation work should be requested and approval obtained from OPP Briefing Services prior to the commencement of the work that is the subject of the additional fee request. The OPP reserves the right to refuse requests for additional fees not part of the Costs Agreement whether or not the work that is the subject of the request has been commenced or completed.

## 5.2 **GST**

Unless otherwise stated expressly, all rates, estimates, fees and charges set out in the OPP Briefing Fee Schedule and Costs Agreements are inclusive of GST.

## 5.3 **Disbursements**

The Allowance(s) specified to be payable in the Brief Details covers all expenses and disbursements (including travel, accommodation and incidental expenses) that may be incurred by Counsel in providing the services. Unless otherwise expressly set out in the Costs Agreement, no additional disbursements and expenses may be claimed or charged.

## 5.4 **Payment Claims and Invoices**

- (1) Unless otherwise set out in the Brief Details or agreed with OPP Briefing Services, accounts for the Costs Agreement may only be rendered at the completion of all of the services the subject of the Costs Agreement, or on early termination of the Costs Agreement.
- (2) At the completion of the services or termination of the Costs Agreement, Counsel or their representatives will:
  - (a) complete the following details in the area marked "Payment Claim for Services Delivered" of the Brief Details (**Payment Claim**):
    - (i) the dates of the appearances;
    - (ii) appearance cost breakdown (including daily fee and accommodation and circuit fee, if relevant);
    - (iii) the tax invoice number; and
    - (iv) the date of the invoice;
  - (b) submit to the OPP the completed Payment Claim, together with a valid tax invoice for the fees claimed by Counsel.
- (3) Payment Claims and invoices forwarded for payment to the OPP may be emailed to OPP Briefing Services at: [opp.briefings@opp.vic.gov.au](mailto:opp.briefings@opp.vic.gov.au).
- (4) Invoices will not be processed without the completed Payment Claim.

## **6 Variations**

### 6.1 **Process for Variation to Costs Agreement**

- (1) Either the OPP or Counsel may request variation to the Costs Agreement. If Counsel request variations, the proposed variations must be submitted to OPP Briefing Services for review and approval.
- (2) If the proposed variation is authorised by the OPP then OPP Briefing Services will provide a new Costs Agreement to Counsel incorporating the agreed variation. This new costs agreement will replace all older versions of the Costs Agreement).
- (3) Only variations set out in a Costs Agreement issued by OPP Briefing Services are effective.

### 6.2 **Variation to this Document**

The OPP may from time to time vary this document at its discretion. Variation to this document does not affect the terms of any Costs Agreement entered into prior to the effective date of the variation. The variation will be applicable to all Costs Agreements entered into after the effective date of the variation.

## **7 Standards and Service Levels**

### **7.1 Conflicts**

By accepting a brief, Counsel certify that there is no conflict, or any real possibility of conflict, between the interests of the OPP and the interests of Counsel or other clients of Counsel.

### **7.2 Compliance with Policies**

By accepting a brief to prosecute, Counsel agree to comply with all DPP policies as published on the OPP website at [www.opp.vic.gov.au](http://www.opp.vic.gov.au).

### **7.3 Disclosure of certain events**

Counsel accepting briefs from the OPP agree to notify the OPP as soon as practicable of any matter that has been or is required to be notified to the designated local regulatory authority under section 51 or section 88 of the Legal Profession Uniform Law.

## **8 Early Termination**

### **8.1 Inability to deliver services**

- (1) Counsel agree to immediately notify OPP Briefing Services, if and when Counsel reasonably form the view that Counsel cannot deliver the services in the matter for which they have been contracted under the Costs Agreement.
- (2) This clause 8.1 does not constitute consent or permission by the OPP for Counsel to return a brief for the purposes of the legal profession rules.

### **8.2 Early Termination by the OPP**

The OPP may terminate the Costs Agreement or require Counsel to return the brief at any time for any reason by giving Counsel notice of the termination. If appropriate, the OPP will use reasonable endeavours to re-engage Counsel on other matters for the expected duration of the brief.

### **8.3 Consequences of Early Termination**

- (1) If a brief is returned, or the Costs Agreement is terminated by Counsel then Counsel are only entitled to claim the Appearance Fee and Allowances in respect of any hearings and days on which Counsel appeared (if any). Counsel are not entitled to claim any Preparation Fee unless the OPP determines that in the circumstances it is reasonable to pay for some or all preparation or advice work actually performed.
- (2) If the Costs Agreement is terminated by the OPP, then Counsel are entitled to claim:
  - (a) the Preparation Fee in respect of any preparation and advice work actually undertaken by Counsel, calculated on an hourly basis, up to the amount that would have been paid had the Costs Agreement not been terminated;
  - (b) the Appearance Fee and Allowances in respect of any hearings and days on which Counsel appeared (if any); and
  - (c) if the OPP terminates the Costs Agreement after midday on the business day before a scheduled hearing or appearance, an amount equal to the Appearance Fee for the first day of the hearing or appearance.
- (3) Except as stated in this clause 8.3, the OPP is not liable to Counsel for any loss, cost, expense or any payment arising from or in connection with the termination of the Costs Agreement.

## 9 Confidentiality

### 9.1 Brief materials and other related materials

Without limiting Counsel's obligations and duties at law or under legal profession rules, Counsel must take all necessary steps to keep all information relating to the matter the subject of the Costs Agreement confidential, and must:

- (1) only use such information for the purposes of providing the services to the OPP under the Costs Agreement; and
- (2) not otherwise communicate or disclose such information to any person other than as expressly agreed by the OPP or required by law or court order.
- (3) not print any materials provided or stored electronically, in uncontrolled or public environments other than as expressly agreed by the OPP.

### 9.2 Training and educational materials

The OPP may from time to time provide Counsel with training and other educational materials (whether in the context of a specific matter or more generally). Such materials are provided for the personal use of Counsel must not be disseminated to any person without the OPP's express consent. While the OPP takes reasonable care in preparing these materials, they are provided on an as is basis for general information only, and the OPP disclaims all warranties, representations and liability relating to such information to the extent permitted by law. Counsel should independently verify the accuracy of such materials and their content before relying on them.

### 9.3 Work Experience and Other External Assistance

If any person is providing assistance to, or undertaking any form of work experience with, Counsel during the period of the Costs Agreement, Counsel must ensure that the person does not become privy to any confidential information relating to the matter the subject of the Costs Agreement (including by reviewing the brief of evidence or attending meetings with the OPP, police informants or witnesses) without the prior consent of the OPP.

### 9.4 Return of Materials to the OPP

- (1) On completion of the matter and in the absence of the brief and materials being required by Counsel for an adjourned hearing, Counsel must return the brief and any associated materials including any **electronic storage media**\* to the OPP.
- (2) Unless otherwise notified by OPP Briefing Services, all briefs and associated materials including any electronic storage media should be returned within the following timeframes:
  - (a) for sex offence briefs, within 2 working days of completion of the matter; and
  - (b) for all other briefs, within 7 working days of completion of the matter.
- (3) **electronic storage media** includes any lap top computers or tablets provided by the OPP, external hard drives, USB flash drive/card, CD, DVD or other disc or data storage device.

## 10 Contact details

10.1 The contact details for OPP Briefing Services are:

- (1) Telephone: 9603 2523
- (2) E-mail Address: opp.briefings@opp.vic.gov.au