



CDPP

Australia's Federal Prosecution Service

COUNSEL eNEWSLETTER

Issue 1—July 2018

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WELCOME TO THE CDPP's COUNSEL eNEWSLETTER

The Commonwealth Director of Public Prosecutions (CDPP) is very pleased to launch a new initiative which will enable us to communicate, from time to time, with counsel undertaking our work.

This eNewsletter is designed to provide information that is relevant and informative and will keep counsel up-to-date with what is happening within the CDPP's practice.

I hope you find it of assistance.

Andrea Pavleka
Commonwealth Solicitor for Public Prosecutions

EXTERNAL JUNIOR COUNSEL PANEL

As you may know, the CDPP is now into the second year of the operation of our External Junior Counsel Panel. The CDPP is committed to supporting the private bar, which provides important and skilled support to our solicitors in the prosecution of federal criminal matters. In February 2017 the CDPP launched its inaugural External Junior Counsel Panel and in February 2018 the CDPP increased the number of counsel on that panel to 489.

In addition, we have 53 silks that we brief for our more complex work.

This panel approach has allowed the CDPP to increase the number of junior counsel it briefs, improve gender equity in our briefing practices and to create an internally vetted application process for counsel seeking to work with the CDPP. The panel is refreshed every year and will be reviewed on a four-yearly basis.

Expertise of counsel

The CDPP is currently exploring some digital solutions to help us keep abreast of the expertise of the counsel that it briefs.

In the meantime, the office is interested in finding out which counsel might possess particular digital literacy skills and/or have a current security clearance (and its level). Pending a release of a more sophisticated platform for obtaining this type of information, if you have these attributes, please email our Legal Business Improvement area on counselpanel@cdpp.gov.au with that information.


COUNSEL SURVEY

In February 2018 the CDPP conducted a survey of counsel that it regularly briefs to ascertain their views regarding the service provided to them by CDPP solicitors. The survey was anonymous in order to ensure the feedback was candid. Ninety-six (96) responses were received.

By way of summary, the vast majority of counsel clearly felt well supported by CDPP staff. The office is pleased to be able to provide a high level of assistance to counsel, ensuring, for example, that counsel has thoughtful and well-structured observations / memoranda, and that every trial counsel has a full time instructor available to them.


Coming out of the survey the CDPP was able to identify some particular areas for improvement in our service. The main areas include:

Estimates regarding preparation




Many counsel advised that estimates of preparation were often inaccurate. We have communicated this issue to our prosecutors and we have adopted a number of improvements to our internal processes, including recommending that our case officers touch base with counsel several days after delivery of a brief to canvas counsel's views on the adequacy of the preparation. This should mean that preparation can be sorted through at an early stage, and increased if needs be. Counsel should also feel free to contact instructors at an early stage should they feel that preparation has been underestimated. Junior staff have also been requested to consult with their supervisors in making an initial estimate of the amount of preparation needed. It is hoped that these simple processes will lead to more accurate estimates for preparation.

Level of Fees




The CDPP will be reviewing the fees of all counsel regularly briefed by us, on a biennial basis, with the first review to occur in December 2018. In addition, on 10 May 2018 the Director determined that Counsel who join the panel at Level 1 will now automatically transition to Level 2, with a commensurate rise in their fee to \$1100. That fee increase will take effect on the next occasion counsel in that category is briefed by us, following their third anniversary at the bar. Some counsel will already have received this fee increase.

Invoicing



Some counsel raised an issue about waiting 30 days for payment following the rendering of an invoice. Whilst this has been our longstanding practice, from next week our practices will change to ensure more timely payment of invoices.

Uncertainty over briefing



A number of counsel indicated that they were sometimes left in an uncertain state as to whether they had been engaged or not by representatives of the CDPP. Staff have been reminded that as a professional courtesy, it is important they be clear about whether they are engaging counsel, or merely enquiring as to availability.

RESOURCES FOR COUNSEL

The CDPP has moved to a standard format for observations to counsel, which will lead to a consistency in the layout and content of the observations you receive from us. Whilst the particular content of observations / memoranda will clearly be dependent on the facts of any given case, the template really serves as a prompt to CDPP solicitors to turn their minds to particular issues which might assist counsel.

We recently launched two new resources for reference and guidance to the entire profession.



Sentencing of Federal Offenders in Australia— a Guide for Practitioners

This comprehensive new sentencing Guide builds on and updates content from an earlier CDPP publication, Federal Sentencing in Victoria. It is now almost twice the length of the Victorian version and includes new and substantially revised content with a truly national focus. A substantial part of the reworking of the earlier publication was undertaken by Mr Des Lane, of the Victorian bar.

[Click here to view the guide](#)



A new National Legal Direction (NLD)—Duties and Role of the Prosecution in a Sentencing Hearing

The Director uses the mechanism of NLDs to communicate to the CDPP's legal practice, her expectation regarding how federal criminal matters should be prosecuted. This practical and comprehensive NLD covers Disclosure, Fact Finding, Submissions, Comparable Cases and Sentencing Dispositions. The NLD combines content authored by Mr Des Lane and from Mr Lester Fernandez, of the NSW bar, with input from this office.

[Click here to view the NLD](#)

NEW NATIONAL LETTER OF ENGAGEMENT

In March the CDPP introduced a standard National Letter of Engagement.

By way of background, prior to the adoption of our new National Letter of Engagement, counsel in different States and Territories were being engaged by the CDPP on slightly different terms and conditions. As a national organisation, the CDPP is striving to ensure consistency, equity and transparency in our work, including in our dealings with counsel. The existence of different terms and conditions across jurisdictions was at odds with that objective. In addition, it has become increasingly common for counsel based in one region to conduct work in other regions. This has served to highlight the inconsistency in our practice, and to strengthen the case for change.

One of the terms that we adjusted related to jury deliberations. On 11 June 2018 we wrote to the Law Council of Australia regarding the CDPP's position. Our national position of not paying counsel for time spent out of court awaiting a jury verdict is consistent with the longstanding practice the CDPP has had in New South Wales where that practice has been in place for well over a decade. NSW is, by far, our biggest trial practice, with approximately 61% of all CDPP in trials during 2016/17 being undertaken in the courts of NSW.

The National Letter of Engagement contains a variety of exceptions to that general position. Whilst shorter appearances during deliberations attract a flat fee, appearances of greater than an hour will attract the full daily fee, and special arrangements are contemplated in exceptional cases where lengthy deliberations occur. Counsel may also charge for preparation work done in that particular matter, and for work done in other matters, while in chambers awaiting a verdict (including other matters that they hold for the CDPP).