



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions

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Your Reference:

Our Reference:

7 December 2018

By email: enquiries@nswbar.asn.au

Mr Tim Game SC
President, Bar Council
New South Wales Bar Association

Dear Mr Game

Revised CDPP National Letter of Engagement to Counsel

I refer to the meeting attended by the Commonwealth DPP, Ms Sarah McNaughton SC, myself and your predecessor, Mr Arthur Moses, QC in August this year and to Mr Moses' letter to the Director dated 30 October 2018. In his letter Mr Moses raised concerns regarding some of the CDPP's terms and conditions for engaging counsel, including the level of remuneration paid, and in particular, the CDPP's policy on payment of fees during jury deliberations.

I have since discussed those concerns with the Director and this letter is by way of response to the Association and to you, as incoming President, regarding the matters raised.

At our recent meeting with Mr Moses we advised him that we had committed to a biennial review of counsel's fees (which is currently underway) and to changing the CDPP's practices to ensure that appropriate preparation was provided for.

In light of the concerns expressed by Mr Moses and by other members of the profession, we have reconsidered our policy in relation to the payment of fees during jury deliberations and propose to adjust our National Letter of Engagement. Counsel will now be remunerated by way of a full daily fee throughout jury deliberations, for each day of deliberations, regardless of whether counsel attends court (clause 10). This decision is effective immediately.

This revised policy will apply to all new briefs from this date, but will also apply to existing briefs where the trial has not yet concluded.

Other changes to our terms and conditions include clarifying the position in relation to the sharing of materials in the brief with third parties, and remuneration where more than one CDPP matter is being worked on by counsel (whether by way of appearance or preparation) on the one day.

The letter of 30 October 2018 also raised the issue of Cancellation Fees. The office does not propose to vary its position in relation to this particular matter, but we have taken the opportunity to strengthen clause 12 to ensure that counsel are immediately notified of a trial resolving.

A copy of our new National Letter of Engagement is attached, for your information. This week we will be communicating these changes, by way of the CDPP's eNewsletter, to all of the counsel on our Junior Counsel Panel, as well as to the silks that we regularly brief.

Thank you for raising your concerns with us. If you have any queries regarding the above, please do not hesitate to contact me on 03 9605 4342 or Lisa West, Assistant Director, Legal Business Improvement branch on (03) 96054460.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Andrea Pavleka'.

Andrea Pavleka
Commonwealth Solicitor for Public Prosecutions



CDPP

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Commonwealth Director
of Public Prosecutions

Telephone
Facsimile
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Your Reference:

Our Reference: [insert NOC number]

PROSECUTION OF

This Office's standard terms for briefing and background information for counsel is contained in the attached document titled "*General terms and conditions upon which the CDPP briefs counsel*". If the proposed terms of this appointment are acceptable to you, can you please sign the section at the bottom of this letter and return it to my office immediately.

If counsel has any queries in relation to the conditions upon which counsel is briefed or in relation to the brief generally, please contact the undersigned.

Yours faithfully

I, _____

accept this appointment.

Signed: _____

Date: _____

GENERAL TERMS AND CONDITIONS UPON WHICH THE CDPP BRIEFS COUNSEL

Fees

1. Fees will be agreed with counsel prior to work being commenced.
2. Agreement on fees to be paid is reached by:
 - the CDPP marking a brief following discussion with counsel or the barrister's clerk;
 - the CDPP sending a letter to counsel confirming the terms of engagement;
 - counsel signing and returning to the CDPP a copy of the letter, acknowledging the terms of engagement.
3. Fees are paid on either:
 - a daily and an hourly rate (to a maximum daily rate), based on a formula of 1/7th of the applicable maximum daily rate; or
 - a flat fee basis of \$250 for junior counsel and \$500 for senior counsel for short appearances, typically taking an hour or less, in the nature of mentions, directions or taking sentence; or
 - an 'all in' fee on the brief (inclusive of preparation time and conferences) calculated using counsel's rates and an estimate of the time required.

Preparation and Conference Fees

4. Preparation fees, if agreed to be paid, are paid at the hourly rate up to a maximum daily rate. Preparation fees are not open ended and a maximum period of preparation time will be specified. It may also be specified what amount is for preparation prior to the trial and what amount, if any, is for preparation to be undertaken during the course of the trial.
5. Conference fees, if agreed to be paid, are paid at the hourly rate up to a maximum daily rate.
6. Preparation and conference fees are not paid during a hearing day if a daily fee is claimed. Preparation and conference fees can only be paid during a hearing day if the hearing proceeds for only part of the day and the preparation or conference takes place during the remainder of the day, and the maximum fee that can be claimed for work done on that day on the matter is the daily fee.
7. The CDPP will not be liable for preparation and conferences conducted by counsel which is in excess of the amount agreed unless prior to such work being carried out counsel has sought and obtained approval from the CDPP.

Briefs in Multiple CDPP Matters

8. Where counsel appears in two or more separate CDPP matters on the same day, a flat fee may be charged for each (if, in combination, the appearances total less than an hour) up to a maximum of counsel's single daily rate. Where the appearances, in combination, are longer than an hour, a single daily fee is payable and should be billed against the matter which had

the lengthiest appearance. Counsel may only charge a maximum of one daily fee and may not charge two or more daily fees for the appearances.

9. With prior approval counsel may claim for preparation fees in one CDPP matter where the preparation occurs outside of court hours on the same day that a maximum daily fee is charged in another CDPP matter.

Jury Deliberations

10. Counsel will be paid their usual daily fee during jury deliberations.

Retainer and Cancellation Fees

11. The CDPP does not pay retainer fees.
12. The CDPP does not pay cancellation fees. If counsel is briefed for a matter that does not proceed, counsel is paid only for work performed, such as conferences and any agreed payments for preparation. If counsel has set aside a long period of time for a hearing that does not eventuate, the CDPP will endeavour to brief counsel in other matters to minimise inconvenience to counsel. Please note, in the event that the matter resolves via a guilty plea ahead of trial, the CDPP will immediately notify counsel and consider whether to retain counsel for sentencing submissions.

Billing and Payment Arrangements

13. Late invoicing causes significant budgeting difficulties for the CDPP. For that reason, counsel will invoice the CDPP on a monthly basis for work undertaken during the previous month.
14. Counsel may render a memorandum of fees (taxation invoice) at the completion of proceedings if the terms of the agreement are for less than 4 weeks' work.
15. An invoice for all work undertaken during the preceding financial year (that has not already been invoiced) must be rendered by 15 July. The Director's approval will be required for payment of any accounts for work done in the prior financial year received after 15 July.
16. The CDPP pays accounts as soon as is practicable following receipt and at the latest, within 30 days after the date of receipt of a memorandum of fees (taxation invoice), unless there is some dispute.
17. Invoices must be submitted to the following email address: Please include the CDPP reference number.

GST

18. The CDPP considers that the supply of counsel's service is a taxable supply. The rate quoted is inclusive of GST. Counsel must remit as GST one-eleventh of fees paid by the CDPP. If counsel does not provide a complying tax invoice the CDPP is obliged to withhold tax at the top marginal rate plus Medicare levy.
19. Counsel is not an employee, partner or agent of the Commonwealth by virtue of the agreement for the payment of counsel fees. Counsel should not represent himself/herself as being an employee, partner or agent of the Commonwealth.

Travel to Undertake CDPP work

Airfares

20. The CDPP books and pays for counsel's airfares when counsel is required to fly to or from counsel's home to another location to undertake work for the CDPP.
21. Domestic flights for counsel will generally be at the economy rate. The CDPP will provide business class travel for domestic flights for senior counsel. For junior counsel business class travel will apply only where the flight is over 4 hours in duration one way, and will otherwise be at the economy rate.
22. International flights for all counsel will be business class.
23. If, due to the length of the matter, counsel chooses to return home during the course of the matter, the CDPP will not pay for the cost of return flights unless otherwise agreed.

Taxis

24. Travel by taxis when counsel is travelling for the CDPP to and from airports will be paid by the CDPP.

Accommodation

25. When counsel has to stay away from home to undertake work for the CDPP, the CDPP books and pays for accommodation for counsel at a business standard hotel. Where counsel is staying away from home for extended periods, the CDPP will consider leasing long stay accommodation such as serviced apartments to reduce accommodation costs.

Meals and incidental expenses

26. Counsel pays for his/her own meals and incidental expenses such as laundry, telephone, bar or coffee shop accounts.
27. Subject to clause 29, where counsel stays overnight in order to undertake CDPP work, the CDPP pays counsel the equivalent of the SES travel allowance approved by the CDPP for its staff, for meals and incidental costs. GST is not applicable to travel allowance.
28. Subject to clause 29, for travel within or outside of Australia counsel will be paid for all the days between Monday to Friday when counsel is unable to undertake work in his/her Australian practice because of the travelling.
29. If counsel leaves his/her normal place of residence earlier than necessary or delays return to his/her normal place of residence for reasons unconnected with work being undertaken for the CDPP, the CDPP does not pay fees, accommodation or an allowance for meals or incidentals for those days.

Spouse and/or children accompanying counsel

30. The CDPP does not pay the costs of spouse and/or children accompanying counsel.

Documentation

Format of advice

31. Advice is to be provided both in electronic format, via email, as well as by hard copy.

Records Requirements

32. Counsel must comply with all applicable policies and procedures relating to records management. Counsel can access relevant documentation at <http://melsitdrweb/>. Login details are:

Username: *counsel*
Password: *cx5NeQR#FY2*

33. All material included in the brief to counsel or subsequently provided, irrespective of format (i.e. physical or electronic), remains the property of the CDPP and must be returned on a matter being finalised.

Information Security Requirements

34. Counsel must comply with all applicable policies and procedures in relation to Commonwealth Government Information Security Requirements. Counsel can access relevant documentation at <http://melsitdrweb/>. Login details are:

Username: *counsel*
Password: *cx5NeQR#FY2*

35. Should counsel require assistance with the preparation of the matter which would entail provision of a part of the CDPP brief to a third party, counsel should contact their instructing solicitor. In such circumstances, CDPP will consider formally briefing that person to assist counsel.
36. Counsel agrees to:
- a) immediately notify the CDPP upon discovery of any inadvertent or unauthorised access, use, modification or disclosure of information, data, documentary materials or records;
 - b) ensure that the appropriate personnel, technical and physical safeguards are established to ensure the security and confidentiality of information, data, records and/or equipment and the proper protection from loss and disaster; and
 - c) ensure that the transmission of electronic communications by email via Internet Service Providers is limited to material at the unclassified level.

Bankruptcy

36. In accepting the brief, counsel is taken to warrant that he or she has not, at any time, been declared bankrupt, unless counsel advises of any such bankruptcy.

Work Health and Safety

37. While performing duties under the agreement, counsel must:
- a) take reasonable care for their own health and safety; and
 - b) ensure they do not do anything that creates a risk, or increases an existing risk to health and safety of themselves and others; and

- c) comply, so far as reasonably able, with any reasonable instruction given by the CDPP that allow the CDPP to meet its legal obligations under the *Work Health and Safety Act 2011*; and
- d) co-operate with reasonable policies and procedures notified by the CDPP relating to work health and safety at the workplace.