

A costs agreement in a direct access matter made pursuant to the Legal Profession Act 2004.

Between: Sean P. Hardy, Barrister, and

Client:

Of (address):
.....

Tel: Mobile:

Dated:

The client seeks legal advice relating to criminal matters ("The Matter") arising under the Magistrates Court Act, Road Safety Act, it's regulations and/or other Victorian legislation.

- A. The *Legal Profession Act 2004* (Vic) ("the Act") allows you (the client) and me (the barrister) to agree on how my legal costs are to be calculated and paid in relation to this Matter. Section 3.4.9 of the Act requires that I disclose certain information to you in this document regarding the work I will do in the Matter and the legal costs I will charge. Please read this document carefully.
- B. This document is an offer to enter into a costs agreement. If you accept the terms contained in the offer you can indicate your acceptance by:
 - (a) signing this document below and returning a signed copy to me; or
 - (b) continuing to provide me with instructions in the Matter; or
 - (c) paying the amounts specified in this agreement for the services provided to you.
- C. Once you have indicated your acceptance I will perform legal work at your request.
- D. This costs agreement may be enforced in the same way as any other contract.
- E. The rules of the Victorian Bar (as amended from time to time) which govern and regulate the conduct and practice of barristers shall apply to this costs agreement. These rules include, but are not limited to, the Direct Access Rules (a copy of which is attached to this costs agreement).
- F. You agree that you remain responsible for my fees even if you are retaining me on behalf of some other person.

AGREEMENT

1. YOUR INSTRUCTIONS

Unless we otherwise agree, I will deal with your instructions as soon as is reasonably practicable in the ordinary course of my work. Where the matter is urgent you must tell me or my clerk of the reasons for the urgency. I may decide in those circumstances, having regard to the reasons you give me, that I cannot accept your instructions.

You must allow me reasonable opportunity to consider your instructions after delivery of the brief or the giving of instructions. If, after considering your instructions and the brief I decide that the matter is not appropriate for direct access work, I will inform you as soon as practicable.

I am entitled at any time to require that a solicitor be retained to take over the instructions of the matter if it is in your interests or if I otherwise require the services of a solicitor for the future conduct of the matter. If I decide that I require the services of a solicitor it will become a condition of my continuing to act in the Matter. You may either agree to the condition or withdraw your instructions.

2. METHOD OF CHARGING LEGAL COSTS

I will charge a fixed sum of **\$250.00** to open a file and receive instructions from you. I will then provide the following services without charging any further fee: have a conference of up to one hour, either in person or by telephone; peruse any written instructions; peruse charges, summons and any other court papers; to give oral advice and where necessary to communicate with the court and the police.

Any work beyond that set out in the above paragraph (such as court appearances, written advice, drawing documents, research or preparation for any hearing) will be charged at an hourly rate or daily rate to be agreed between us and specified in writing. If after giving me instructions you decide you do not wish to pursue your case or you do not wish to engage me as your lawyer, your total expenditure will not exceed \$250.00 under this agreement.

If you decide to contest the case, your legal costs may fall within the range \$2,200.00 to \$4,000.00 depending on the nature of the litigation, and a plea of guilty can cost in the range \$700.00 to \$1,500.00. A further costs agreement will be entered into if that is the case. The sum of \$250.00 is payable and may be withdrawn from trust after you have provided instructions and/or court papers to me and requested me to do work on your behalf and I have commenced that work.

3. YOUR RIGHTS

Under the Act you have the following rights:

- (a) You have the right to negotiate the terms of your costs agreement with me including the method of charging and the rates set out above.
- (b) You will be notified by me of any substantial change to anything included in this agreement as soon as practicable;
- (c) You have the right to request progress reports in relation to:
 - i. The progress of the Matter; and
 - ii. The legal costs incurred by you since you last received a bill from me.

I have the right to charge you a reasonable amount for the preparation of a report under (i) above but I must not charge you for the preparation of a report under (ii) above.

- (d) You have the right to request an itemised bill of legal costs within 30 days of receiving a lump sum bill.

- (e) You have the right to sign a costs agreement under a corresponding law in another State or territory or to advise me that you require the law of another jurisdiction to apply (see paragraph 13 below).

4. BILLING DETAILS

I require payment to be made prior to me doing any work on your case. Please pay on the day when you attend for a conference, or make payment at the time you post papers to me. My clerk accepts cheque, money order, cash or direct debit. No credit cards or EFTPOS are accepted. A tax invoice will be issued by my clerk upon request.

5. RECOVERING YOUR LEGAL COSTS IF YOU ARE SUCCESSFUL

If you are successful in your case, an application can sometimes be made to the court for some or all of your legal costs to be reimbursed by the unsuccessful party. In some circumstances the court will order the other party to reimburse some or all of your legal costs. It is impossible to predict what amount of costs, if any, the court may allow you to be reimbursed in a criminal case where you are successful. If an order for costs is made in your favour, it usually takes about 6 months for those costs to be recovered from the other party. This agreement does not cover any work that may be required to be done to recover legal costs from the other party.

6. PAYING OTHER PARTY'S LEGAL COSTS IF YOU ARE NOT SUCCESSFUL

Defendant's are never required to pay legal costs to Victoria Police in criminal proceedings. If you lose your case you may be ordered to pay court costs of approximately \$35.00 to \$60.00, (and in some cases also witness expenses) on top of any fine that is imposed. In non-police matters (e.g. local government prosecutions, VicRoads prosecutions), the court may order that you pay some of the other party's legal costs. The amount ordered in such cases is commonly between \$1,000.00 and \$4,000.00 depending on how complicated and time consuming the prosecution case is. In addition to the payment of the successful party's costs as estimated above, you will also incur my legal costs.

7. TRUST MONEY

If I receive money from you in advance of performing legal work on your behalf it will be deposited into my clerk's trust account. Legal costs may be deducted from that trust account by my clerk under the following circumstances (a) OR (b):

- (a) Before withdrawing any money my clerk or I must send to you a request for payment referring to the proposed withdrawal of legal costs or a written notice of withdrawal. After this is done the money may be withdrawn:
 - i. in accordance with any conditions in this Costs agreement;
 - ii. in accordance with any instructions you give to my clerk which authorise the withdrawal; or
 - iii. in reimbursement for money paid by me on your behalf.

OR

- (b) Money may be withdrawn if my clerk or I have given you a bill relating to the legal costs and

- i. you have not objected to the withdrawal of money within 7 days of being given the bill;
- ii. you HAVE objected within 7 days of being given the bill BUT you have not applied for a review of the legal costs under the Act within 60 days of being given the bill; or
- iii. the money otherwise becomes legally payable.

8. CONTACT

If you have any concerns about my legal costs you must contact me as soon as practicable to discuss the matter.

9. DISPUTES

If I cannot satisfactorily resolve your concern, you may:

- (a) Seek a costs review by the Taxing Master under Division 7 of Part 3.4 of the Act within 60 days after the bill is given to you or the law practice requests payment of costs or you pay the costs.
- (b) Apply to the Victorian and Civil Administrative Tribunal to set aside this costs agreement under section 3.4.32 of the Act; or
- (c) Make a complaint to the Legal Services Commissioner under chapter 4 of the Act within 60 days after the bill is given to you or I request payment of my legal costs.

10. JURISDICTION

The law of Victoria shall apply to legal costs in this matter. You have the right to sign a costs agreement under a corresponding law or to advise me that you require the law of another jurisdiction to apply.

11. ENDING THE RETAINER

You may terminate my retainer by written notice at any time. If you do this, you must pay my legal costs up until such time as the retainer is terminated.

Circumstances may arise (such as a conflict of interest) which will make it impossible for me to continue to act for you and necessitate the termination of my retainer. If this happens, I will contact you immediately and you must pay my legal costs up until such time as the retainer is terminated.

I may terminate the retainer if you do not accept reasonable advice I give you relating to the Matter. If I do this, you must pay my legal costs up until such time as the retainer is terminated.

If you do not pay my account or if you fail to pay money in advance if it is requested, I have the right to stop work until I am paid. If the account continues to remain unpaid I may terminate the retainer.

If I cease to act for you and my retainer is terminated:

- (a) I will not incur any liability as a result;
- (b) You will receive a final account from me setting out all outstanding legal costs; and
- (c) You must pay my legal costs and disbursements up until the date I cease to act.

I will be entitled to keep, for the purposes of my records, instructions and papers delivered with your instructions. If you need any papers or advices returned, I will be entitled to take and keep a copy of your papers and any advice.

12. ACKNOWLEDGMENT

By signing below you **ACKNOWLEDGE** that:

- (a) You have read this costs agreement and disclosure statement and agree to be bound by its contents;
- (b) You have read and understood the Direct Access Rules attached to this costs agreement; and
- (c) You have been informed of your right to seek independent legal advice before entering into this costs agreement.

SIGNED BY BARRISTER

SEAN P. HARDY

DATE:

SIGNED BY CLIENT:

PRINT NAME:

DATE:

**THE VICTORIAN BAR INC
PRACTICE RULES**

PART VI - DIRECT ACCESS

165.

Subject to these rules, a barrister may accept instructions or a brief (without the intervention of a solicitor) from:

- (a) a member of an approved body acting on its own or on behalf of a client;
- (b) a lay client in a matter in which the client is directly concerned; or
- (c) the Victoria Legal Aid in criminal matters;

hereinafter referred to as a "direct access matter".

166.

An approved body is a professional or other body which has been approved by the Bar Council.

167.

The Rules of Conduct apply to direct access matters.

168.

A barrister:

- (a) must not accept any brief or instructions in a direct access matter if he or she considers it is in the interests of the client that a solicitor be instructed.
- (b) must decline to act in a direct access matter in which at any stage he or she considers it in the interests of the client that a solicitor be instructed.

169.

A barrister may appear in a criminal matter in the County Court for a legally aided person if he or she is requested to do so by the Victoria Legal Aid without an instructing solicitor and he or she is satisfied that no prejudice will be suffered either by the barrister or by the client due to the absence of such a solicitor.

170.

A barrister may appear in a direct access matter in the Magistrates' Court in a criminal proceeding.

171.

A barrister must not, except with the written permission of the Ethics Committee, accept any instructions or brief in a direct access matter:

- (a) to appear in the High Court of Australia, Federal Court of Australia, Industrial Relations Court of Australia, Family Court of Australia, Supreme Court of Victoria, County Court of Victoria (except in criminal matters where the barrister is instructed by Victoria Legal Aid), or in any civil proceeding in the Magistrates' Courts of Victoria;
- (b) once proceedings are instituted (if acting for a plaintiff) and served (if acting for a defendant) in any of the courts set out in sub-paragraph (a) hereof.

172.

A barrister who has accepted any instructions or a brief in a direct access matter must cease to act once proceedings are instituted (if acting for a plaintiff) and served (if acting for a defendant) in any of the courts set out in Rule 171(a) hereof unless:-

- (a) retained by a solicitor to act; or
- (b) given permission by the Ethics Committee so to act.

173.

Notwithstanding anything to the contrary in these Rules, a barrister in a direct access matter must not deliver, file or lodge any document as the legal practitioner on the record in any Court or Tribunal.

174.

A barrister who accepts instructions or a brief in a direct access matter must:

- (a) keep a case record in written form which sets out:
 - (i) the date of receipt of the instructions or brief, the name of the client, the name of the case and any requirements of the client as to time limits;

- (ii) the date on which the instructions or brief were accepted;
 - (iii) the terms on which the instructions or brief were accepted;
 - (iv) the dates of any subsequent instructions, of the dispatch of advices and other written work, or conferences and of telephone conversations;
 - (v) when agreed the fee;
 - (vi) when made any promises or undertakings as to the completion of the work;
 - (vii) as soon as they become apparent to the barrister, any time limits;
- (b) retain:
- (i) copies of instructions and briefs;
 - (ii) copies of all advices given and documents drafted or approved;
 - (iii) a list of all documents enclosed with any instructions or brief;
 - (iv) notes of all conferences and of all advice given on the telephone.

175.

A barrister must not accept instructions under these Rules:

- (a) to receive or handle client's money;
- (b) to perform any administrative work not normally performed by a barrister in private practice;
- (c) to perform inter partes work of a kind not normally performed by a barrister in private practice;
- (c) from a member of an approved body on behalf of a client in respect of a matter not generally within the professional expertise of that body.

176.

A barrister shall not commence any work on a direct access matter until the barrister and the client have executed the standard terms of engagement approved by the Bar Council, except where it is impossible to do so prior to commencing the work, in which case the terms should be executed as soon as is reasonably practicable.

177.

All fees paid for direct access work shall be paid into a trust account established pursuant to the Legal Practice Act to be retained in that trust account until a memorandum of fees is forwarded to the client.