
Sean P. Hardy
Barrister

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This is a costs agreement in a direct access matter made between Sean P. Hardy and:

Client: Mobile:

Email: Dated:

Type of Matter: Other Party:

The client seeks legal advice and/or representation relating to traffic charges or criminal matters arising under the Magistrates Court Act, Road Safety Act, it's regulations and/or other legislation.

The Legal Profession Uniform Law (Vic) (the **Uniform Law**) requires me to disclose to you the information contained in this agreement and its annexures.

- A. This is an offer to enter into a costs agreement. You can indicate your acceptance by:
- (a) signing the attached Schedule of Legal Fees 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.
- B. Once you have indicated your acceptance I will perform legal work at your request. You agree to be responsible for my fees even if you are retaining me on behalf of someone else. The Uniform Law as applied in Victoria is applicable to legal costs in this matter.
- C. Traditionally, barristers are briefed by solicitors to perform work on behalf of clients. In Magistrates Court criminal matters a barrister is permitted to work for a client without the client having to engage a solicitor. Although barrister's are permitted to work without a solicitor they are not permitted to perform solicitors' work. Solicitor's work can be performed by the client or by a solicitor engaged by the client.

1. SCHEDULE OF LEGAL FEES. Section 174(1)(a) Uniform Law

My legal fees for traffic and criminal cases in a Magistrates Court are fixed amounts which are charged for each step taken in a proceeding:

- (a) **Conferences: \$350.00** for regular after court conferences up to 60 minutes in length;
\$400.00 for conferences at other times, or \$450 on weekends.
- (b) **Adjournments:**
\$160.00 for adjournment/abridgement of 1st mention without attendance.
\$180.00 for adjournment of subsequent mentions without an attendance.
\$220.00 for changing the court venue.
\$360.00 for appearing at court to adjourn a mention date.
\$550.00 to apply for an adjournment of a contest mention.
\$1,800.00 to adjourn a contested hearing date.
- (c) **Summary Case Conference: \$750.00** at all metropolitan courts.
Each subsequent listing of a summary case conference: **\$450.00**
- (d) **Contest Mention: \$1,300.00** (\$700 if a plea of guilty is presented on the day).
- (e) **Police withdrawing major charges prior to contested hearing: \$3,500.00.**

- (f) **Pleas of Guilty:** To appear at court on a plea of guilty:
 \$1,100 in respect of charges which impose mandatory licence loss,
 \$1,400 in respect of charges which do not impose mandatory licence loss,
 \$1,700 in respect of charges punishable by a term of imprisonment,
 \$1,900 jailable offences where the client has 2 or more priors for similar offences,
 \$2,200 in respect of Crimes Act offences, breach of suspended sentence/CCO.
 These fees include communications with the client, court, police, perusing police brief of evidence, advice, research and preparation. If a plea is part heard the second day will cost 60% of the first day. If charges laid by different informants are consolidated into a single plea add 35% of the applicable fee for each subsequent set. Fee covers 5 charges per brief only. Add \$100 for each additional charge.
- (g) **Contested hearing:**
\$1,100.00 for preparation of the defence case.
\$2,900.00 to appear at court to defend any charge laid under Regulations.
\$3,300.00 to appear at court to defend a licence-loss speeding offence.
\$4,000.00 to appear at court to defend any charge laid under Part 5 Road Safety Act.
\$3,500.00 to appear at court to defend any other charge. (This covers 5 charges. Add \$100 for each additional charge). The preparation fee covers all preparation for hearing including legal research, communications with client, police, court and non-expert witnesses, reading all materials, postage and photocopies but does not including drawing written submissions.
- (h) **Expert Witnesses: \$550.00** in respect of the time and skill involved in dealing with an expert witness and with the prosecution in respect of drawing, perusing and/or arranging filing or service of an expert witness statement. The client is directly responsible for all witness fees.
- (i) **Application for permission to drive** pending re-hearing or pending appeal: \$650.00.
- (j) **S.51 Appeal: \$1,600.00.** Appeal against immediate suspension of driver's licence under s.51 Road Safety Act; including all administrative work & appearances at court.
- (k) **Hourly rate: \$490.00** per hour for all work beyond what is usually necessary to prepare for the above steps in the proceeding.
- (l) **Travel: \$140.00** per hour of travel outside of metropolitan Melbourne.
- (m) **Disbursements:** Any disbursement over \$10.00 will be charged at cost.

The client is directly responsible for any witness expenses. Where the client has more than one case, these fees will apply separately to each case.

Glossary

Mention date: This is a date when your case is first listed at court. You do not have to go to court on a mention date unless you are on bail. Usually I will not be at court on your mention date. Mentions are sometimes adjourned to further mentions. On a mention day the court wants to know what I am doing about your case. If you wish to defend the charge I will adjourn the charges to a summary case conference or a contest mention.

Summary Case Conference: If you plead not guilty to a charge, it will be listed for a summary case conference which takes place at court on a mention date. The police and your lawyer discuss the case and sometimes the case might resolve. If not, it is then listed for a contested hearing date, or in more complicated cases it will be adjourned for a contest mention. Usually the client does not attend a summary case conference.

Contest Mention: Some defended cases will be listed for a contest mention. The court manages the case to clarify the issues and allocate sufficient court time on a suitable contested hearing date. This is a date on which the informant and the defendant attend court with their legal representatives to discuss the progress of the case with the Magistrate and possibly resolve the case. Usually the court will list the case for contested hearing in about 2 or 3 months time. You should be prepared to spend all morning at court completing the contest mention step.

Contest Hearing Date: On this day the police will attend court with all relevant witnesses to prosecute the charge. You will need to attend with your lawyer and any witnesses. You should set aside the whole day for the case to be heard. Sometimes cases take more than one day.

The court will send you notice of your court dates to the address stated on the summons, and may send you confirmation by SMS. You should be at court for any contest mention date or contest hearing date. You need to keep the court and me informed as to your current address.

Please read the following webpages for important information about your court date:

<http://www.trafficlaw.com.au/courtday.html>
<http://www.trafficlaw.com.au/court.process.html>

2. ESTIMATED LEGAL COSTS:

Your total expected legal costs: \$

3. YOUR RIGHTS

Under the Uniform Law you have the following rights:

You have the right to negotiate the terms of your costs agreement with me including the billing method and the rates. You have the right to a bill of costs, and a right to request an itemised bill of costs within 30 days after receiving a bill that is not itemised or is only partially itemised. The Schedule of Legal Fees attached to this agreement is an itemised bill of costs which sets out the fixed costs you are required to pay for each step of the proceeding that you instruct me to complete and the approximate dates the work will be done. You will be notified by me of any substantial change to the steps required to be completed or the applicable costs as soon as practicable after I become aware of them. You have the right to seek the assistance of the Victorian Legal Services Commissioner in the event of a dispute about legal costs. You may request a written report of the legal costs incurred to date or since my last bill. If at any stage of your case you have any concerns about legal costs, please do not hesitate to contact me.

4. LIABILITY FOR LEGAL COSTS & DISBURSEMENTS

In the absence of alternative arrangements, all legal fees are payable by credit card. You authorise me to deduct all legal fees from your credit card when the fees are due. Legal fees are due for payment on the date that each step of the proceeding is performed. You authorise me to incur all necessary disbursements on your behalf. If there are disbursements to be incurred that are unusual, I will seek your consent before incurring the expense. You authorise all disbursement expenses to be reimbursed to me from your credit card. If you instruct me to appear on your behalf in a court case the cost of the court appearance is payable on the day of the court appearance. If you decide to cancel my services for a court appearance you agree to pay a cancellation fee as follows:

Less than 7 days notice prior to a contested hearing: 50% of the appearance fee.
Less than 24 hours notice prior to any court date: 100% of the appearance fee.

If your credit card expires or does not have sufficient funds to cover the cost of legal work, I may immediately stop work on your case without any notice to you. If any legal fees are outstanding after the date that the fees are payable, you agree to pay an account administration fee of \$60 for each month or part thereof that your account is in arrears for so long as it is in arrears and you agree that this fee fairly represents the cost of managing your credit arrangement. Alternatively, interest may be charged pursuant to statute. The fees set out in paragraphs 1 & 2 do not cover any administrative costs associated with outstanding accounts.

If you wish to pay by bank deposit or bank transfer, please call me on 0416 088 611 at least 48 hours prior to your court date to make arrangements. Cheques are not an acceptable means of payment.

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. If an order for costs is made in your favour, it usually takes about 4 months for those costs to be recovered from the other party.

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

Defendants are unlikely to be ordered to pay legal costs to Victoria Police in criminal proceedings. If you lose your case you may be ordered to pay court costs of up to \$135.00. In some cases you could be ordered to pay prosecution witness expenses on top of any fine that is imposed, which can include reimbursement of loss of wage, travel or expert reports. In non-police matters (e.g. local government prosecutions, VicRoads prosecutions), the court may order that you pay some or all of the other party's legal costs, plus any witness expenses. 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. You will also incur my legal costs and the costs of all defence witnesses.

7. POSSIBLE OUTCOMES

I do not guarantee that you will be acquitted of any charge or that a particular outcome will be achieved in your case. If you ask for my opinion of the expected outcome, my opinion will be based on the average of my experience over many years of doing similar cases in a variety of courts. Your case may turn out to be different to an average case. The outcome of your case is subject to many variables including the composition of the court and the evidence given in court. The court's decision in your case is beyond my control. If you are found guilty and a maximum penalty applies, there is a reasonable chance that you will receive less than the maximum penalty. Where a minimum penalty applies, you may receive more than the minimum penalty, but never less than it. It is always your choice as to how you will plead to charges and whether or not to defend any charge. I may recommend a strategy to increase or decrease the risk of a particular outcome, but in every case the outcome is beyond my control.

8. TRUST MONEY

I am not entitled to hold a deposit or payment in advance of future work and I do not operate a trust account. Any money you pay to me is a payment of legal fees or disbursements which have accrued and which I am entitled to be paid in full at the moment the costs are paid.

9. DISPUTES

If you have concerns about legal costs you must contact me as soon as practicable to discuss the matter. If I cannot satisfactorily resolve your concern, you may:

- (a) seek the assistance of the Legal Services Commissioner in the event of a costs dispute.
- (b) make a complaint to the Legal Services Commissioner under s.272 of the Uniform Law within 60 days after the legal costs become payable, or within 30 days after an itemised bill of costs has been provided, otherwise within 3 years of the conduct complained of, or
- (c) seek a costs assessment under s.198 of the Uniform Law within 12 months of a bill being given to you or a request for payment being made, else within 12 months of the legal costs being paid.

10. Compliance with Rule 22.

You acknowledge I have explained to you the effect of Rules 11 and 13 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* in the accompanying "Notice to Prospective Client".

11. ENDING THIS AGREEMENT

You may terminate this agreement by written notice to me at any time. If you do this, you must pay my legal costs up until such time as the agreement 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 this agreement. If this happens I will inform you and you must pay my legal costs up until such time as the agreement is terminated. I may terminate the agreement if you do not accept reasonable advice I give you. If I do this, you must pay my legal costs up until such time as the agreement 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 this agreement.

If I cease to act for you and this agreement is terminated:

- (a) I will not incur any liability as a result;
- (b) You may receive a final account from me setting out any 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 originals or copies of instructions and papers delivered to me. If you want any papers or advices returned, I may make and keep a copy of your papers and any advice.

12. ACKNOWLEDGMENT

By signing below you acknowledge that you have read and understood this Costs Agreement and disclosure statement and agree to be bound by its contents, and have had explained to you the matters set out in rule 22 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* and you have been informed of your right to seek independent legal advice before entering into this costs agreement.

Signed by:

Signed By Client:

Barrister: Sean Hardy

Dated:

Print Name: