
Sean P. Hardy

Barrister

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

Between: Sean P. Hardy, Barrister, and

Client:

Address:

Mobile: **Home:**

Email: **Dated:**

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

- A. The *Legal Profession Act 2004* (Vic) ("the Act") allows you (the client) and me (the barrister) to agree on how legal costs will be calculated and paid in 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 to be responsible for my fees even if you are retaining me on behalf of some other person.
- G. Ordinarily 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 may be performed by the client or a solicitor engaged by the client.

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 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. SCHEDULE OF LEGAL COSTS

My legal costs for traffic related matters in a Magistrates Court are calculated as follows:

- (a) **Conferences: \$300.00** for regular conferences between 4:00PM and 6:00PM up to 60 minutes in length; \$350 for urgent or after-hours conferences.
- (b) **Other costs which will be discussed in conference once the case is investigated.**

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. 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 your plea is. If you wish to defend the charge the case will be adjourned to a case conference or a contest mention which will take place in about 6 weeks time.

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

Contest Mention: Some defended cases will be listed for a contest mention. 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. The court wants to know about various matters to determine whether the case is ready to be allocated court time and be listed for a contested hearing date. You should allow the whole morning to complete this step. The court will list the case for contest in about 2 months time. No evidence is given at a contest mention.

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. You do not go to court on a mention date. 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 webpage for important information about your court date:
<http://www.trafficlaw.com.au/court.process.html>

3. ESTIMATED LEGAL COSTS

I estimate your total legal costs in this Matter will be approximately: If Pleading Guilty: less than \$2000
If contesting charges: over \$4000

This estimate is based on the work required to be done as I am presently instructed. It is given as an indication only and I will not be bound by it. Should circumstances change, the above estimate may be revised upwards or downwards.

4. 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 11 below).

5. LIABILITY FOR LEGAL COSTS

You are required to pay the agreed fees on or prior to the date that the work is done.

For pleas of not guilty: 50% of the appearance fee must be paid at least 5 weeks prior to the date of contested hearing in order to reserve your hearing date. The balance of 50% must be paid on or prior to the hearing date. I have the right to cease acting on your behalf if you fail to pay the agreed amount of legal costs in accordance with this agreement. My clerk accepts cheque, money order, cash, Visa card, Mastercard, or direct debit. If you provide me or my clerk with your credit card details you agree that any fees incurred by you under this agreement that remain unpaid for 7 days after the date when the fee is incurred can be charged to your credit card. A tax invoice will be issued by my clerk upon request. You agree to pay interest on any sum owing under with this agreement at the rate prescribed by the Legal Profession Act 2004, or if no rate is prescribed under that Act at the rate of 13% per annum. You agree that you will pay for all costs (including any legal costs) that are incurred by me when recovering outstanding fees from you. The fees set out in paragraph 2 do not cover my administrative costs of debt collection. **If I agree to appear in court on your behalf prior to legal fees being paid in full, you agree to pay an additional administrative fee of \$200.00 to cover the time and cost of entering into and administering the credit arrangement.** All payments can be made directly into the following trust account:

Account name: Barristers Logistics Pty Ltd

BSB: 633 108

Account: 137515789

Reference: Please use your surname on this deposit so the money can be attributed to you.

6. 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 6 months for those costs to be recovered from the other party. If you ask me to do work to recover legal costs from another party I will charge additional legal fees for doing that work.

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

Defendants 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 up to \$75.00. 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, VicRoads Appeals), 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.

8. POSSIBLE OUTCOMES

Unless stated in writing, 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.

9. 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.

10. CONTACT

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

11. 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.

12. 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.

13. 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 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, for the purposes of my records, 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.

14. ACKNOWLEDGMENT

By signing below you **ACKNOWLEDGE** that you have read this costs agreement and disclosure statement and agree to be bound by its contents, and that you have read and understood the Direct Access Rules attached to this costs agreement; and you have been informed of your right to seek independent legal advice before entering into this costs agreement.

Signed by:

Barrister: Sean Hardy

Dated:

Signed By Client:

Print Name: