

CONDITIONAL COSTS AGREEMENT AND DISCLOSURE STATEMENT
FOR BARRISTERS IN DIRECT ACCESS MATTERS

PRACTITIONER NOTE: Section 3.4.27 of the *Legal Profession Act 2004* allows barristers to enter into conditional costs agreements directly with clients except where the matter involves criminal proceedings or proceedings under the *Family Law Act 1975* (Cth). Section 3.4.28 of the Act provides for the payment of a premium on legal costs (or an “uplift fee”). The uplift fee must be no more than 25% of the legal costs otherwise payable. Practitioners must ensure that they set out the circumstances which constitute a “successful outcome” of the matter as this may vary from matter to matter. **Delete this box before sending.**

This Conditional Costs Agreement is made between [INSERT name of barrister] and [INSERT name of client] this [INSERT day] of [INSERT month] in the year [INSERT year] in relation to the matter of [INSERT name of matter and title of brief] (“Matter”).

- A. The *Legal Profession Act 2004* (Vic) (“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 the Matter. Before we agree, 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 conditional costs agreement. This means I will only charge you for my legal costs in the event of a successful outcome of the Matter. A “successful outcome” of the Matter means that after payment of all liabilities such as [INSERT liabilities] that you incur in the Matter, you receive an amount of money or [INSERT other circumstances].
- C. If you accept the terms contained in the offer you must indicate your acceptance of them by signing this document below and return a signed copy to me. Once I have received a signed copy of this agreement I will perform legal work at your request. This agreement may be enforced in the same way as any other contract.
- D. 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 agreement. These rules include, but are not limited to, the Direct Access Rules (a copy of which is attached to this agreement).
- E. If you are a member of a professional body approved by the Victorian Bar Council in accordance with the Direct Access Rules, you must inform me whether you are retaining me on your own behalf or on behalf of a client of yours. If you are retaining me on behalf of a client of yours, that client must be identified to me but you will remain responsible for my legal costs.

1. YOUR INSTRUCTIONS

Unless you and I 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

PRACTITIONER NOTE: You must agree with the client the basis on which the legal costs will be charged. 2.1 to 2.4 below cover some but not all methods of charging. You will need to delete the inapplicable methods according to your arrangements. **Delete this box before sending.**

2.1 Scale or Practitioner Remuneration Order

My legal costs will be charged on the [INSERT] scale as varied from time to time by the [INSERT] Court.

2.2 Hourly Rate

My legal costs will be calculated by reference to my hourly rate and daily rate as set out below:

- (a) [INSERT] per hour (inclusive of GST); and
- (b) [INSERT] per day (inclusive of GST).

These rates may be reviewed during the period of the retainer and I will notify you in writing as soon as practicable following such a review.

2.3 Uplift Fee

An uplift fee is an additional cost I may charge expressed as a percentage of my total legal costs. It is not a percentage of the amount you receive if you settle your case or are awarded a sum by the court. The details of the uplift fee are set out in paragraph 7 below.

3. YOUR RIGHTS

Under the Act you have the following rights:

- (a) You have the right to negotiate the terms of this agreement with me including the method of charging and the rates set out above.
- (b) You will be notified by me of any change affecting the terms of 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 an account from me (or my clerk).
- (e) If you are entering into a Conditional Fee Agreement with me, you have the right to seek independent legal advice in relation to this disclosure statement and the agreement before signing it.
- (f) 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.
- (g) You have the right to end this agreement by giving me notice in writing within five (5) clear business days after signing this agreement (“cooling off period”)

4. ESTIMATED LEGAL COSTS

PRACTITIONER NOTE: Sections 3.4.9(c) and (d) of the Act require that an estimate of the total legal costs be given to the client **or** if this is not reasonably practicable on your instructions at the time of entering into the agreement, you must give a range of likely costs and a list of factors which will affect the calculation within this range. **Delete this box before sending.**

I estimate my legal costs in the Matter will be **[INSERT]**. I have arrived at this estimate based on the following breakdown of work required to be done:

Nature of work	Estimated time required	Value
Advice		
Preparation and settling of documents		
Conference(s) with you		
Preparation for trial / hearing		
Trial / hearing		

The above estimate is based on the work required as I am presently instructed. It is given as an indication only and I will not be bound by it. Should the scope or nature of my work change in light of any further instructions I may receive from you, the above estimate may need to be revised.

-OR-

As I am presently instructed, it is not reasonably practicable for me to estimate my total legal costs. I estimate that the range of estimates of my total legal costs in the Matter is between **[INSERT]** and **[INSERT]**. The major variables that will affect the calculation of my legal costs are as follows:

- (a) ...
- (b) ...

5. BILLING DETAILS

Subject to any further instructions I receive from you which have the effect of varying the nature or the scope of the work in the Matter, I (or my clerk) will forward to you an account for work done at the following intervals:

- (a) once the work set out in the table above has been completed; or

- (b) at the end of each calendar month; or
- (c) **[INSERT billing cycle]**.

My account will consist of a tax invoice which will briefly describe work done and include a lump sum for payment. Should you require an itemised bill with more detail about my costs or the work I have done you must request this within 30 days after receipt of my account.

6. INTEREST

If my fees remain unpaid after the Work has been done and after my clerk or I have demanded payment from you in writing, interest will be charged by me on my legal costs at the Cash Rate Target set by the Reserve Bank increased by 2 percentage points. Interest will be charged commencing from the day 30 days after the demand is sent by me until the legal costs are paid by you.

7. LEGAL COSTS IF YOU ARE SUCCESSFUL

You will be liable to pay me the following costs ONLY if there is a successful outcome of this matter:

- (a) My professional costs inclusive of GST; and
- (b) An uplift fee of **[INSERT % if applicable]** of my legal costs.

PRACTITIONER NOTE: Section 3.4.28(3) provides that the uplift fee must be no more than 25% for litigious matters. If uplifting fees, practitioners must be aware of Section 3.4.28(4) which provides that “*a law practice must not enter a conditional fee agreement that provides for the payment of a premium on the legal costs otherwise payable unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely*”. **Delete this box before sending.**

An uplift fee is additional costs that are the percentage of total legal costs to be charged. It is not a percentage of the amount you receive if you settle your case or are awarded a sum by the court. An uplift fee is warranted because **[INSERT here the reason an uplift fee is warranted (s.3.4.14)]**.

A court may order, at the end of the litigation, that the unsuccessful party pay the successful party’s costs. If you are successful in the Matter, the court may order that **[INSERT name of other party]** pay some of your costs. These costs are known as party and party costs and are calculated by applying the court scale applying to your Matter.

If the court orders that **[INSERT name of other party]** pay some of your legal costs we estimate that you will recover **[Select the most appropriate option below]**

- (a) an amount of between [\$ INSERT] and [\$ INSERT];
- (b) [INSERT percentage of total costs]

If the court does order costs in your favour you must be aware that this order only gives you a right to recover some costs from [INSERT name of other party]. It does not affect your responsibility to pay my legal costs.

The costs you recover may not cover the whole of my legal costs. If you cannot recover the costs from [INSERT name of other party] (for example, if a party goes into liquidation or is bankrupted) then you will still be responsible for my legal costs.

8. LEGAL COSTS IF YOU ARE UNSUCCESSFUL

If you are unsuccessful in the matter you will not be responsible for my legal costs however the court will most likely order that you pay some of [INSERT name of other party's] legal costs. It is estimated that this amount could be between [INSERT] and [INSERT].

9. TRUST MONEY

PRACTITIONER NOTE: Regulation 3.3.35 of The Legal Profession Regulations 2005 (“the Regulations”) prescribes, for the purposes of Section 3.3.20(2)(a) of the Act, the procedure for the withdrawal of trust money held in a general trust account of an approved clerk. The following section outlines the circumstances under which a clerk may withdraw the trust money. **NOTE ALSO** that if you receive written instructions from the client for the withdrawal of money you **MUST** keep these instructions as a permanent record. If you receive these instructions orally from the client they **MUST** be reduced to writing within 5 working days of the withdrawal taking place. **Delete this box before sending.**

If I receive money on your behalf it will be deposited into my clerk’s trust account. Legal costs may be deducted 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 I request payment of my legal costs or you pay my legal 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 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 us that you require the law of another jurisdiction shall 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 (but without any uplift fee being applied).

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 (but without any uplift fee being applied).

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 (but without any uplift fee being applied).

If my retainer is terminated:

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

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.

14. ACKNOWLEDGMENT

By signing below you **ACKNOWLEDGE** that:

- (a) You have read this 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;
- (c) You have been informed of your right to seek independent legal advice before entering into this costs agreement;
- (d) You have been informed that there is a cooling off period giving you the right to end this agreement by giving me notice in writing within five (5) clear business days after signing this agreement; and
- (e) If you elect to end this agreement within the cooling off period I may charge you for legal costs for legal services which were reasonably necessary during that period to protect and preserve your rights.

SIGNED BY BARRISTER

PRINT NAME:

DATE:

SIGNED BY CLIENT:

PRINT NAME:

DATE:

SIGNED BY WITNESS:

PRINT NAME:

DATE:

SIGNED BY WITNESS:

PRINT NAME:

DATE:

PART VI - DIRECT ACCESS

1.
 - (a) Subject to these rules, a barrister may advise or act in a professional capacity (otherwise than in accordance with rules 126 or 127 upon instructions of a brief received –
 - (i) directly from a client; or
 - (ii) from a member of an approved body, acting on behalf of a client of the member; or
 - (iii) from Victoria Legal Aid, acting on behalf of a client, in a criminal matter –
in accordance with this Part.
 - (b) A matter in which a barrister accepts such instructions or a brief is referred to in this Part as a "direct access matter".
2. Deleted.
3. The Rules of Conduct apply to direct access matters.
4. 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.
5. 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.
6. A barrister may appear in a direct access matter in the Magistrates' Court or the Federal Magistrates Court in a criminal proceeding.
7. 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, 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 or the Federal Magistrates Court;
 - (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.
8. 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.

9. 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.
10. 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.
11. 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;
 - (d) 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.
12. 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.
13. 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.