



Counsel Terms of Engagement

DEFINITION OF TERMS

Term	Definition
ACT Government Solicitor (ACTGS)	The Government Solicitor of the Australian Capital Territory is a body corporate established under section 26 of the <i>Law Officers Act 2011</i> .
Counsel Fee	Counsel's expenses, including disbursements reasonably estimated or actual for the conduct of a matter.
Delegate	A person authorised by the Solicitor-General to act on his or her behalf.
Instructing Solicitor	A Government Solicitor authorised to act in the name of the ACT Government Solicitor and holds a practicing certificate as a government lawyer.
Solicitor-General	The Solicitor-General for the Australian Capital Territory appointed under Section 16 of the <i>Law Officers Act 2011</i> .

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These Terms of Engagement as amended from time to time apply to all engagements of Counsel from the independent Bar (“Counsel”) to undertake Territory legal services (advise and representation) consistent with the *Law Officers Legal Services Directions 2023 (Legal Services Directions)*, unless otherwise agreed in writing by the Solicitor-General or Delegate.

INSTRUCTIONS AND COMMUNICATIONS

- 1.1. Counsel should familiarise themselves and have regard to the following policies and guidelines when acting on behalf of the Territory in particular the *Law Officers Legal Services Directions 2023*.
- 1.2. Counsel is engaged by or on behalf of the Territory¹ by the ACT Government Solicitor (**ACTGS**) to provide advice and representation for which it is providing services, unless otherwise approved in writing by the Instructing Solicitor or Delegate.
- 1.3. Counsel will take instructions only from the relevant Instructing Solicitor or Delegate.
- 1.4. Counsel will promptly bring to the attention of the Instructing Solicitor any actual or attempted communications with any other ACT Government directorate or agency in relation to the Services.

STANDARD OF SERVICES

- 1.5. Counsel will perform all Services:
 - a) personally or as agreed by the Instructing Solicitor;
 - b) professionally, carefully, skilfully and competently;
 - i) to a standard of care, skill and diligence that would be expected from an experienced legal practitioner who regularly acts in the capacity in which Counsel is engaged;
 - ii) ensure the highest quality of legal work;
 - c) consistent with the agreed engagement; and
 - d) act in good faith in the best interests of the Territory.

PROBITY

- 1.6. Counsel must not do anything which is prejudicial to the reputation of the Australian Capital Territory or puts at risk the probity of any transaction or agreement related to the Services.

¹ From time to time Counsel may be engaged by the ACT Government Solicitor to advise or appear on behalf of Statutory Office Holders, Statutory entities or other individuals.

CONFLICT OF INTEREST

- 1.7. Counsel warrants that he/she does not have any conflict of interest or potential conflict of interest in relation to the subject matter of the Services.
- 1.8. If Counsel becomes aware that he/she has or may have a conflict of interest or potential conflict of interest, Counsel must immediately inform the Instructing Solicitor, in writing, with full details of that conflict of interest or potential conflict of interest.
- 1.9. Counsel will comply with all directions of the Instructing Solicitor in relation to any conflict of interest or potential conflict of interest.

EXCLUSIVITY OF ENGAGEMENT

- 1.10. Counsel acknowledges that service providers other than the Counsel may also be engaged by the ACTGS in relation to the Services.
- 1.11. The provision of legal services by any party other than the Counsel (including by the ACTGS) does not reduce any liability that the Counsel may have in relation to or arising out of the Counsel's performance or non-performance of the Services.
- 1.12. The Instructing Solicitor or Delegate does not make any representation as to any minimum level of work under this engagement.

RATES

- 1.13. The day rates for any Senior Counsel and/or Junior Counsel will be approved by the Solicitor-General consistent with ACT Government Solicitor Counsel Fee Guide and within the maximum rate approved by the Attorney-General.
- 1.14. The day rates for Senior Counsel and/or Junior Counsel specified will be applied in calculating the charges for work performed when Counsel has performed seven hours or more of work in a day. In all other cases the hourly rate will apply.

FEE ESTIMATE

- 1.15. Counsel may, on request be required to provide an estimate of Counsel fees for a matter, if reasonably practicable or, if it is not reasonably practicable to provide a fee estimate, a range of estimates and an explanation of the major variables that will affect the working out of the costs should be provided.

COUNSEL FEES AND DISBURSEMENTS

1.16. Counsel may charge for the following disbursements:

- a) photocopying and printing at a rate of no more than 20c per page;
- b) external search fees, registration fees and stamp duty at cost;
- c) STD and ISD telephone calls at cost;
- d) court and transcript fees at cost (but not in jurisdictions where such costs do not apply to the Australian Capital Territory);
- e) couriers at cost; and
- f) reasonable travel costs these are assessed with regards to the Australian Tax Office Tax Determination relating to reasonable travel cost, as varied from time to time and the travel entitlements for an Executive classification provided for under Part 7.1 of *Public Sector Management Standards 2006* (repealed standard, however, Part 7.1 continues to apply as per Division 10.2 of the *Public Section Management Standards 2016*).

1.17. Counsel must not charge for typing, secretarial services, administrative services, local telephone services, rounds services, fax, email or other overhead costs.

1.18. Travel arrangements are the responsibility of Counsel. The ACT Government Solicitor may arrange travel in exceptional circumstances, however, travel arrangements will be in accordance travel entitlements for an Executive classification provided for under Part 7.1 of *Public Sector Management Standards 2006* (repealed standard, however, Part 7.1 continues to apply as per Division 10.2 of the *Public Section Management Standards 2016*) and the Justice and Community Safety Travel and Related Services Guidelines.

CANCELLATION FEES OF COUNSEL

1.19. The parties will determine fair and reasonable cancellation fees in relation to any matter that has been settled prior to or during the hearing of a matter.

VARIATION TO TERMS

1.20. Any departure from the Terms of Engagement, including allowing extra reading time over and above the day rate and /or a different cancellation fee regime, must have prior approval from the Delegate.

TAX INVOICES

1.21. Counsel must submit tax invoices for Services on a monthly basis to the Instructing Solicitor.

1.22. Tax invoices must:

- a) be addressed to the ACT Government Solicitor;
- b) identify the particular matter by name and file number and the standard terms in relation to a specific matter;
- c) contain an entry for each separate cost and/or time record identifying the date, time incurred, item cost and a sufficient description of the work item to allow assessment of the reasonableness of the work item and associated charge;
- d) contain details of disbursements, photocopying and printing charges, including the number of pages charged; and
- e) if GST is payable in respect of the provision of the Services, be a valid tax invoice for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is correctly calculated in accordance with the standard terms in relation to the a specific matter; and
- f) attach copies of accounts for disbursements paid to third parties.

1.23. A final invoice must be rendered by Counsel within 21 business days upon the completion of a matter.

1.24. The ACT Government's standard payment terms are 30 days from date of invoice. Subject to the Instructing Solicitor or Delegate certifying that a valid and correctly rendered tax invoice is reasonable having reference to the terms of the original engagement and the approved rates, the Instructing Solicitor will use best endeavours to ensure that the tax invoice is paid within 30 days of its receipt.

GST

1.25. The rates specified are exclusive of GST (unless specified otherwise).

1.26. The Counsel represents and acknowledges that:

- a) he/she is registered under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act);
- b) he/she is registered under the *A New Tax System (Australian Business Number) Act 1999* and the ABN notified on each tax invoice is the Counsel's ABN;
- c) the supply of Services will be a taxable supply within the meaning of the GST Act; and
- d) no tax invoice is payable unless it is a valid tax invoice for the purposes of the GST Act.

RECORDS AND AUDIT

- 1.27. Counsel will keep proper records in relation to performance of the Services (“Records”) and, promptly upon request, supply them to the ACTGS.
- 1.28. The Counsel will, promptly on request, permit the Solicitor-General or Delegate to carry out an audit of the Services and provide the Solicitor-General or Delegate with reasonable assistance in this regard.

INTELLECTUAL PROPERTY RIGHTS

- 1.29. The Australian Capital Territory owns all intellectual property rights in all things produced by the Counsel in the course of performance of the Services. For the purposes of this clause “intellectual property rights” means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of intellectual property right whether arising before or after commencement of the Services and the right to registration of these rights.
- 1.30. Australian Capital Territory owns all documents including electronic records produced by or for Counsel arising out of or in connection with the Services and Counsel must upon request deliver them to the Instructing Solicitor or Delegate in such form as the Instructing Solicitor or Delegate requests.

INSURANCE

- 1.31. Counsel must effect and maintain professional indemnity insurance in his/her name for the term of its engagement for an amount not less than \$1.5 million for any one event and in the aggregate in any one policy period with a run off cover for a minimum of 6 years or such other amount or timeframe as the Solicitor-General or Delegate may require.

CONFIDENTIALITY

- 1.32. In this clause “Confidential Information” means information disclosed by or on behalf of the Australian Capital Territory that:
 - a) is confidential by its nature or by the circumstances in which it is disclosed; or
 - b) is designated by the Instructing Solicitor or Delegate as confidential or identified in terms noting its confidentiality, but does not include information which is or becomes public knowledge other than by a breach by Counsel of an obligation of confidentiality to the Australian Capital Territory.
- 1.33. Counsel may only disclose Confidential Information in the following circumstances:

- a) with the prior written consent of the Solicitor-General, through the Instructing Solicitor or the client agency;
- b) if and to the extent that Counsel is legally compelled to disclose the Confidential Information; or
- c) to the Counsel's Instructing Solicitor or a member of staff of the Instructing Solicitor, but only if that person:
- d) has a requirement to know the Confidential Information for Counsel to perform the Services. Reflecting the arrangements provided for in the Legal Services Directions.

DISPUTES RESOLUTION

1.34. If difference or dispute (Dispute) arises in relation to an engagement of Counsel either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations for a period of thirty calendar days, including referring the matter to relevant senior executives with ACTGS to determine the matter.

TERMINATION OF ENGAGEMENT

1.35. The ACTGS may terminate the engagement of Counsel without cause at any time. Counsel will be entitled to payment for any Services authorised by the Instructing Solicitor or Delegate and performed by the Counsel up to the date of termination, subject to the certifying those Services as reasonable by the Instructing Solicitor under the Financial Management Act.

PUBLICITY

1.36. Counsel must not make or permit to be made a public announcement (other than in the course of submissions in a court) or media release about any aspect of the Services or their subject matter unless the Instructing Solicitor or Delegate has informed Counsel that approval has been given in accordance with ACT Government policy.

MODIFICATION

1.37. Any modification of these Terms of Engagement can only be effected with the written approval of the Solicitor-General.

JURISDICTION

1.38. These Terms of Engagement are governed by the laws of the Australian Capital Territory. The courts of Australian Capital Territory, the Federal Court of Australia (Canberra Registry) and the courts exercising appellate jurisdiction over them have non-exclusive jurisdiction in relation to these Terms of Engagement and any dispute under them.

DISCLOSURE

1.39. The Australian Capital Territory may disclose these Terms of Engagement and/or information in relation to the engagement of Counsel (including any letter of engagement with Standard Terms in relation to a specific matter, including the scope of works required and fees payable under that engagement) in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

1.40. Nothing in this clause derogates from:

- a) Counsel's obligations under any provisions of these Terms of Engagement; or
- b) the provisions of the *Freedom of Information Act 2016*.

1.41. Counsel acknowledges and consents to the following:

- a) the identity of Counsel engaged on behalf of the Territory, and the total amount paid for all engagements in each financial year, are listed in the Justice and Community Safety Directorate Annual Report.
- b) ACTGS' performance against the goal of gender equity is also reported annually in the Justice and Community Safety Directorate Annual Report. In addition, as an approved briefing entity by the Law Council of Australia the ACTGS is required to annually report on the use of Counsel.

AUDITOR GENERAL

1.42. Nothing in this Agreement derogates from the powers of the Auditor-General under the *Auditor-General's Act 1996*.