

Appendix A

Standard terms of engagement of a barrister undertaking direct access work

THIS AGREEMENT made theday of 20..... between
..... of 205 William Street, Melbourne (“barrister”) and
..... of (“the client”).

THE PARTIES AGREE:

1. That the barrister is to perform legal work at the request of the client.
2. Any Rules of the Victorian Bar for the time being in force regulating the conduct and practice of the members of the Bar shall apply to this Agreement.
3. The Rules of the Victorian Bar known as the Direct Access Rules (a copy of which are attached hereto) apply to this Agreement.
4. The client, if a member of a professional body approved by the Bar Council in accordance with the Direct Access Rules, shall prior to forwarding any instructions to the barrister, inform the barrister whether the member is acting on its behalf or on behalf of the client who shall be identified.
5. (a) The barrister shall not do any work on the instructions from a member of an approved professional body on behalf of an identified client:-
 - (i) unless the work is of a kind which falls generally within the professional expertise of that professional body;
 - (ii) the instructing member of the body warrants that the matter in which the barrister is instructed is of a kind which falls

substantially within the field in which the instructing member normally practises.

- (b) The execution of these terms by a member of the approved professional body is evidence of the matters required by paragraph 5(a).
- 6. The client executing this Agreement is liable for payment of the barrister's fees.
- 7.
 - (a) Unless the instructing member of the professional body or client otherwise stipulates and the barrister agrees, the barrister will deal with instructions or a brief as soon as is reasonably practicable in the ordinary course of his or her work.
 - (b) Where for any reason, time is of the essence, the instructing member of the professional body its client or the client must on delivery of the instructions or brief inform the barrister or his or her clerk of that fact and of the particular reasons for urgency in order that the barrister or clerk may decide whether in those circumstances the instructions can be accepted. The information concerning the urgency must be communicated to the barrister or clerk separately from the instructions or brief.
- 8. Notwithstanding that instructions of a brief have been delivered to a barrister, the barrister shall not be deemed to have accepted those instructions or brief before having a reasonable opportunity to peruse them and decide whether they are appropriate for direct access work and after so informing the instructing member of the professional body or the client
- 9. Without prejudice to any other right which the barrister may have in accordance with any rules of the Victorian Bar to decline instructions or a brief, a barrister shall be entitled at his or her complete discretion, which shall be exercised in the interests of the client executing this agreement and

any client for whom it acts, at any time to require, as a condition of continuing to act in the matter that a solicitor shall take over the instructions or that the services of a solicitor shall otherwise be retained to assist in the future conduct of the matter. In such an event the instructing person shall have the option of withdrawing the instructions or brief to the barrister or of complying with the barrister's request.

10. In the event of the barrister ceasing to act or a solicitor is retained the client executing this agreement shall be liable to pay to the barrister his or her reasonable fees for all work done to the time when he or she ceased to act or a solicitor is retained.
11. (a) The barrister shall be entitled to require payment on accounts of fees at the time of accepting instructions or the brief.

(b) The barrister's fee shall be paid promptly upon submission of a fee note.

(c) All fees charged or to be charged by the barrister shall be paid to the barrister's clerk or any other person approved by the Bar Council, who shall be authorised to pay to the barrister the fees upon a fee note being submitted at the conclusion of the matter to the client or by earlier arrangement.
12. (a) The client shall pay the following fees:
 - (i) a fee of \$
 - (ii) a fee calculated on the hours spent on the work at the hourly rate of \$
 - (iii) a daily fee of \$
 - (iv) a fee not exceeding \$

(Delete whichever is/are inappropriate)

(b) The client shall pay:

(i) \$ prior to the commencement of the work.

(ii) \$ on account of the fees prior to the commencement of the work.

(iii) the balance of the barrister's fees on completion of the work, or in the event of the barrister ceasing to be retained, or if a solicitor is retained, whichever is the earliest.

(Delete whichever is/are inappropriate)

13. A barrister shall be entitled for the purposes of his or her records to retain instructions or any papers delivered therewith or, if the instructing client or its client should require the return of such instructions and papers, to take and retain a copy of such instructions and papers and of any written advice, and if so requested by the barrister shall be the duty of the client to supply the barrister with and to permit the retention for those purposes, of a copy of such instructions, papers or advices.

Client

.....

In the presence of:

.....

Barrister

.....

In the presence of:

.....

THE VICTORIAN BAR INC
PRACTICE RULES
RULES OF CONDUCT & COMPULSORY
CONTINUING LEGAL EDUCATION 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;
 - (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.
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.