

INFORMATION FOR NON-SALARIED CROWN PROSECUTORS – SEPTEMBER 2013

DPPNet locations: (1) Policies & Guidelines/Legal (2) Organisation/Delegations

You are briefed to conduct a trial on behalf of the NSW DPP. It is expected that as part of accepting this retainer that you will:

- Prepare the matter for trial, including meeting with relevant victims and witnesses;
- Conduct the trial and any preliminary applications;
- Where you form the view during the preparation of the matter that there should be no further proceedings, you should prepare a written submission to the Director setting out the relevant evidence and the reasons why you have reached this opinion;
- Where the defence have made an offer to plead guilty to a lesser charge, you should prepare a written submission to the Director about whether the plea should be accepted. If the plea is to be accepted you should draft a set of facts.

Where you are of the view that the charges require amendment or further particulars, you should prepare and submit a written report to the Director about the proposed amendments to the indictment and the particulars.

As a private Crown Prosecutor you are bound by the Prosecution Guidelines of the Office of the Director of Public Prosecutions, NSW. The Guidelines can be accessed at the ODPP website www.odpp.nsw.gov.au and on the Office intranet.

The Guidelines should be read in conjunction with the many other instruments that affect the conduct of prosecutions.

I bring the following matters to your attention.

CROWN PROSECUTORS IN REGIONAL OFFICES

Crown Prosecutors in regional Offices are authorised to undertake the responsibilities outlined below. However, it is required that on each occasion a private Crown Prosecutor consults a regional Crown Prosecutor, there is a full record kept either on CASES or on the case file. The regional Crown Prosecutors may, prior to making any decision relating to the responsibilities outlined below, further consult with the Director, a Deputy Director, the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor.

Reference to a Regional Office means all ODPP Offices other than the Head Office in Sydney.

INDICTMENTS

There is no authority for you to sign indictments. See section 126 of the Criminal Procedure Act 1986. If no indictment has been signed, then you need to obtain a signed indictment from a Crown Prosecutor. You should prepare a written recommendation identifying what you think are the appropriate charges to be included in the indictment.

Should you need to change the indictment and proceed on a new indictment you will need to have the indictment signed:

- In Head Office Sydney by the Senior Crown Prosecutor, or a Deputy Senior Crown Prosecutor, and
- In Regional Offices by the most senior Crown Prosecutor available.

CHARGE NEGOTIATIONS

There is no authority for you to negotiate charges except after consultation with and the approval of:

- In Head Office Sydney the Director, a Deputy Director, the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor, and
- In Regional Offices, the most senior Crown Prosecutor available.

The views of the police officer-in-charge and the victim must be sought at the outset of formal discussions. See Prosecution Guideline 20.

You and your instructing solicitor must maintain a detailed note of the discussions and decision.

FORM1

Matters should not be placed on a Form 1 pursuant to Section 32 of the Crimes (Sentencing Procedure) Act 1999 except after consultation with and the approval of:

- In Head Office Sydney the Director, a Deputy Director, the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor, and
- In Regional Offices the most senior Crown Prosecutor available.

You do not have authority to sign a Form 1 and must approach and request the Form 1 be signed on behalf of the Director of Public Prosecutions by:

- In Head Office Sydney the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor, and
- In Regional Offices the most senior Crown Prosecutor available.

See Prosecution Guideline 20.

AGREED FACTS

Where a statement of facts is negotiated and agreed, the statement is to be signed (preferably) on behalf of both parties and a copy kept on file with an explanation of how and when it came into being.

Where reference to any relevant evidence is to be omitted from a statement of facts the view of the police officer-in-charge and the victim must be sought and:

- In Head Office Sydney the Director, a Deputy Director, the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor should be

- consulted about any statement of agreed facts before it is adopted, and
- In Regional Offices you should consult with the most senior Crown Prosecutor available.

See Prosecution Guideline 20.

35A CERTIFICATES

Section 35A Crimes (Sentencing Procedure) Act requires consultation with police and victims to be certified. Non salaried Crown Prosecutors cannot sign such certificates, but should follow the same procedures as arranging for an indictment to be signed.

JUDGE ALONE

TRIALS

There is no authority for you to consent to proceed by way of trial by Judge Alone, pursuant to section 132 of the Criminal Procedure Act 1986. If an application is made for a Judge Alone trial you should consult with one of the officers mentioned below to determine if you should consent or oppose any such application. Such determination can only be given by:

- The Director, a Deputy Director, the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor who will also sign the election and,
- In Regional Offices after consultation with the most senior Crown Prosecutor available who will also sign the election.

See Prosecution Guideline 24.

APPLICATION TO VACATE TRIAL DATE

You may not apply to vacate a trial date or consent to the vacation of a trial date without first consulting and receiving permission to do so from the Director or a Deputy Director.

No FURTHER PROCEEDINGS

The question whether or not the public interest requires that a matter be prosecuted is resolved by determining:

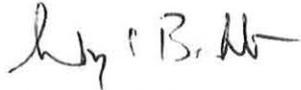
1. whether or not the admissible evidence available is capable of establishing each element of the offence;
2. whether or not it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed as to the law; and if not
3. whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

Should you form the view during the preparation of a matter that there should be no further proceedings bearing in mind the above matters, you should send a written report to the Director, or a Deputy Director. You should not disclose to defence legal representatives what your advice to the Director or the Deputy will be.

INFORMERS

Approval to call informer/s to give evidence must be obtained from the Director or Deputy Director.

See Guideline 16.

A handwritten signature in black ink, appearing to read 'Lloyd Babb SC', with a stylized flourish at the end.

Lloyd Babb SC
Director of Public Prosecutions

11 September 2013

DIRECTOR OF PUBLIC PROSECUTIONS (NSW)

FUNCTIONALITY REQUIREMENTS OF RETAINED COUNSEL

PURPOSE

The role of a barrister on retainer is to conduct proceedings on behalf of the Director of Public Prosecutions in trials.

The barrister advises the Director of Public Prosecutions on matters referred to him.

Barristers retained by the Crown represent the Director in providing an independent, efficient, fair and just prosecution service for the people of New South Wales.

NATURE & SCOPE OF THE POSITION

A barrister on retainer must provide a professional prosecution service to the community of New South Wales.

MAJOR CHALLENGES & CONSTRAINTS

The major challenges for a barristers retained by the Crown are:

- To prepare and conduct criminal trials often with minimal preparation time and in a highly stressful environment, and advise the Director of Public Prosecutions on matters referred for advice.
 - To prepare large and complex matters involving multiple accused and legal representatives.
 - To provide an ethical prosecution service in accordance with the Director's Guidelines.
 - To provide a prosecution service in accordance with the relevant legal principles which equally apply to Crown Prosecutors in terms of the Rules of the New South Wales Bar Council.
 - To balance the rights of the various stakeholders in the criminal justice system with the requirement to conduct prosecutions in a fair and ethical manner in accordance with the relevant legal principles.
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ADVICE & DECISION MAKING

A barrister is accountable for the achievement of the key objectives and accountabilities listed, taking into account the prosecutorial independence and the Director's Guidelines.

KEY OBJECTIVES AND ACCOUNTABILITIES

- To prepare and conduct trials in significant matters and provide advice to the Director of Public Prosecutions.
- To provide advice to the Director of Public Prosecutions on applications made there be no further proceedings in a criminal matter.
- To comply with the Rules of the New South Wales Bar Association as it relates to prosecutors.

KEY COMMUNICATIONS

- The Director of Public Prosecutions and/or Deputy Directors of Public Prosecutions regarding no further proceedings applications and trial matters generally.
- The Senior Crown Prosecutor and Deputy Senior Crown Prosecutors to discuss issues relating to matters briefed to them.
- ODPP legal staff.
- Defence legal representatives, Police Officers in Charge of investigations, victims and other witnesses.

KNOWLEDGE, SKILLS AND EXPERIENCE

- Eligible for admission as a legal practitioner of the Supreme Court of New South Wales
 - Experience as a Counsel in jury trials.
 - Extensive knowledge of NSW criminal laws, the rules of evidence and relevant Director's Guidelines and legal principles as would apply to Crown Prosecutors and the relevant Rules of the New South Wales Bar Association.
 - Skill in writing formal submissions
 - Strong interpersonal, organisation and time management skills
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- Strong analytical and problem solving skills, and an ability to make decisions under pressure
- Excellent written and verbal communication skills
- A strong commitment to ethical practices.

FEE STRUCTURE

The fee scale is:

- \$1,150 (inclusive of GST) per day.
- \$1,265 (inclusive of GST) per day for appearing in a “complex trial”.

A **complex trial** is defined as

- All Supreme Court trials
- Manslaughter trials,
- Fraud trials involving more than \$500,000,
- Trials having an estimated length of 20 days or more,
- Where the brief exceeds 5,000 pages
- Where there are multiple complainants in a sexual assault trial
- Multiple accused.

Preparation time is paid at the applicable daily rate and is determined in advance by the Professional Assistant to the Senior Crown Prosecutor.
