

## PROTOCOL IN FEE DISPUTES BETWEEN BARRISTERS AND SOLICITORS

(as amended by the Council of the Bar Association of Queensland on 13 April 2015)

1. This Protocol is unilaterally applied by the Bar Association of Queensland following the decisions of the Council of the Queensland Law Society:
  - in October 2008, not to mutually agree any Protocol as between the Bar Association of Queensland and the Queensland Law Society concerning fee disputes between barristers and solicitors;
  - in October 2010, not to appoint a co-mediator in fee disputes between barristers and solicitors.
2. This protocol applies to tax invoices sent by a barrister to a solicitor after 13 December 2010.
3. Barristers are entitled to prompt payment of their fees. Solicitors should avoid delay or procrastination in dealing with the barristers' tax invoices or in clearing up differences as to fees properly payable. Proper payment for the purposes of the Protocol means payment within the period specified in the Costs Agreement between the barrister and the solicitor or otherwise within thirty (30) days of the day on which the tax invoice is rendered.
4. This Protocol operates in addition to, and does not derogate from, the provisions of the *Legal Profession Act 2007* which entitle a barrister, if the requirements of that Act are met, to sue for fees owed to them by solicitors. In the event of any inconsistency between this Protocol and the *Legal Profession Act 2007*, this Protocol should be read down so as to avoid any inconsistency. Should any clause or provision of this Protocol be inconsistent with the *Legal Profession Act 2007*, or otherwise be invalid, this shall not affect the validity or enforceability of any other provision of this Protocol, which shall remain in full force and effect.
5. This Protocol applies only if:
  - 5.1 the barrister seeking to recover fees has, in respect of those fees, complied with his or her obligations of disclosure under s. 309(2) of the *Legal Profession Act 2007*, save where the barrister has had his or her legal costs assessed under Division 7 of that Act;

- 5.2 the tax invoices rendered by a barrister, in the opinion of the Secretary, provide sufficient particulars and references to readily identify the matter, the solicitor concerned and the nature and extent of the services performed.
6. If the solicitor considers the tax invoice of a barrister is in excess of what he or she or it is bound to pay or that, in the circumstances of the particular case, no fees are payable, the solicitor should protest the tax invoice in writing.
7. A solicitor shall be taken to have protested the account only if:
- 7.1 within sixty (60) days of the receipt of the tax invoice, the solicitor notifies the barrister in writing that the solicitor, as opposed to the client, disputes the account and the grounds upon which the solicitor does so; or
- 7.2 within sixty (60) days of the receipt of the tax invoice, the solicitor applies for the assessment of the whole or any part of the barrister's legal costs.
8. Should the solicitor not protest the tax invoice in the manner prescribed in clause 6 hereof within sixty (60) days of the receipt of the tax invoice, the fees shall be deemed not in dispute for the purposes of this Protocol.
9. If the fees are deemed not in dispute, the following applies:
- 9.1 the Secretary shall give to the barrister and solicitor written notice that the Secretary intends to place the name of the solicitor on the Private List should the fees not be paid;
- 9.2 subject to Clause 9.4 of the Protocol, should the fees not be paid within fourteen (14) days of the notice referred to in clause 9.1 of the Protocol, the Secretary shall proceed to place the name of the solicitor on the Private List;
- 9.3 if, after the name of the solicitor is placed on the Private List, the fees in dispute are paid by the solicitor, then the Secretary shall promptly remove the name of the solicitor from the Private list;

- 9.4 if the mediation process is engaged in the circumstances referred to in Clause 12.2 or 12.3 of the Protocol, though the fees are deemed not in dispute, the Secretary shall have a discretion as to whether to place the solicitor on the Private List of the Bar Association of Queensland pending the mediation.
10. Should the solicitor protest the tax invoice in the manner prescribed in clause 7 of the Protocol within sixty (60) days of the receipt of the tax invoice, the fees shall be deemed in dispute.
11. If the fees are deemed in dispute, the following applies:
- 11.1 where there is no application for an assessment of the whole or any part of the barrister's legal costs, but the solicitor has protested the tax invoice in accordance with clause 7.1 of the Protocol, a mediation pursuant to Clause 13 of the Protocol shall take place;
- 11.2 where, within sixty (60) days of the receipt of the tax invoice, the solicitor applies for the assessment of the whole or any part of the barrister's legal costs, then should both the barrister and the solicitor request in writing to engage in the mediation process, a mediation pursuant to Clause 13 of the Protocol shall take place.
12. The process of mediation shall be engaged in the following circumstances:
- 12.1 should both the barrister and the solicitor, within fourteen (14) days of the notice referred to in Clause 9.1 of the Protocol, both approach in writing the Secretary seeking to engage the process of mediation under the Protocol; or
- 12.2 should the solicitor, within fourteen (14) days of the notice referred to in Clause 9.2 of the Protocol, assert to the Secretary in writing circumstances which, in the opinion of the Secretary, constitute a reasonable excuse for the solicitor's failure to protest the tax invoice within sixty (60) days and during any additional delay thereafter; or

12.3 if:-

- (a) in the Secretary's opinion, there is sufficient reason otherwise for the fees or some of them not to be paid; and
- (b) the solicitor and/or the barrister submit to any condition imposed by the Secretary upon the whole of the mediation; and
- (c) the solicitor pays within seven (7) days any part of the fees which the Secretary advises the solicitor in writing in his opinion ought be paid, as no reasonable grounds exist for refusing to pay same;

12.4 if the fees are deemed in dispute in the circumstances referred to in Clause 11.1 of the Protocol;

12.5 if the fees are deemed in dispute in the circumstances referred to in Clause 11.2 of the Protocol.

13. If the process of mediation is engaged pursuant to Clause 12 of the Protocol:

13.1 the President shall appoint a member of the Bar Association to act as a mediator;

13.2 the Secretary shall notify the barrister, solicitor and appointed mediator of the time, date and place of the mediation;

13.3 the barrister and solicitor must attend, participate in and act reasonably and genuinely in the mediation.

14. In the event a mediation does not resolve the dispute, and where the solicitor has not also applied for an assessment of the fees within sixty (60) days of the receipt of the tax invoice, the Secretary shall write to the barrister and the solicitor inviting each of them, in writing to the Secretary within fourteen (14) days, to submit to an arbitration of the dispute by an arbitrator appointed for that purpose by the President of the Bar Association of Queensland.

15. If a barrister or solicitor refuses to submit to a mediation of the dispute in the circumstances referred to in Clause 12 of the Protocol, or to an arbitration of the dispute pursuant to Clause 14 of the Protocol, then:
  - 15.1 should the unwilling party be the barrister, the Secretary shall not place the name of the solicitor on the Private list;
  - 15.2 should the unwilling party be the solicitor, the Secretary shall be at liberty to place the name of the solicitor on the Private list after notice of no less than seven (7) days to the solicitor of the intention of the Secretary to do so.
16. If the solicitor does not pay the barrister's fees payable within the following periods, as applicable, the Secretary may place the solicitor on the Private list without further notice to the solicitor:
  - 16.1 where there has been an agreement as to the amount payable, and the time by which it shall be paid, within seven (7) days of the agreed time for payment;
  - 16.2 where there has been agreement as to the amount payable, but not as to the time by which it shall be paid, within a reasonable time;
  - 16.3 where there has been an arbitration of the dispute, within seven (7) days of the award;
  - 16.4 where there has been an assessment of the barrister's fees, within seven (7) days of the assessment;
  - 16.5 otherwise in accordance with Clause 9.2 of the Protocol.
17. In and for the purposes of the operation of this Protocol:
  - 17.1 barristers' fees are fees for the performance of barristers' work within the meaning of Rule 77 of the *Barristers' Rules* 2007;
  - 17.2 barristers' fees include interest owing pursuant to a Costs Agreement;
  - 17.3 solicitor means an entity practising as a solicitor and includes:

- (a) an Australian legal practitioner who is a sole practitioner; and
- (b) a law firm trading in partnership; and
- (c) an incorporated legal practice; and
- (d) a multi-disciplinary partnership; and
- (e) every principal thereof as defined in s. 7(4) of the *Legal Profession Act 2007*;

17.4 where the solicitor retaining Counsel is an incorporated legal practice, it is to be treated:

- (a) if it has only one legal practitioner director, as if the practice was constituted by a sole practitioner and the employees of the practice were employees of the legal practitioner director; and
- (b) if it has two or more legal practitioner directors, as if the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors as partners;

17.5 the Secretary shall have a discretion as to whether to place the name of the relevant law practice or the names of the principals thereof or both on the Private List.