

## Cost Agreement

### 1. Introduction

Amendments to the *Legal Practitioners Act 1981* (“**the Act**”) effective from 1 July 2014 require us to set out in writing prescribed information concerning our costing arrangements with you. You may view a copy of this Cost Agreement and the fact sheet entitled **Legal Costs – Your Right to Know** on our website at [www.wbhlegal.com.au](http://www.wbhlegal.com.au).

We are required, at least once a year, to send you our current Cost Agreement. We will normally do this on or before 1 July each financial year.

When we are instructed on any new matter we may not send you a further Cost Agreement and you waive your right to receive a further Cost Agreement within 12 months from the date of this Cost Agreement. In most circumstances we will issue you with an Engagement Letter which will contain the following information for each new matter that you instruct us on:

- 1.1 the partner responsible for your matter;
- 1.2 a description of the work to be undertaken by us and, in some instances, a specific exclusion of the matters or work we will not be undertaking on your behalf;
- 1.3 the legal practitioner(s), paralegal(s), conveyancer(s) and our law clerk(s) who will be working on your matter;
- 1.4 details of our hourly charge-out rates (if applicable); and
- 1.5 a cost estimate for the work to be undertaken.

We will **NOT** and are not required to send you an Engagement Letter where the anticipated fees, exclusive of disbursements, is likely to be less than \$1,650 (inclusive of GST) or where we are not required to provide you with one under clause 13 of Schedule 3 of the Act.

### 2. Our obligations

We will endeavour to:

- 2.1 always act professionally and ethically in connection with your matter;
- 2.2 promptly carry out your instructions to us (assuming they are lawful and reasonable in the circumstances);
- 2.3 provide pro-active advice about how your matter may best be conducted;
- 2.4 keep you informed of the progress of your matter;
- 2.5 provide sufficiently detailed accounts to show the work we have done for you;
- 2.6 promptly answer queries you may have regarding your matter or our accounts to you;
- 2.7 not deal with any money we hold in our trust account for you without proper written authority; and
- 2.8 not debit a nominated credit card after withdrawal of the credit card debit authority.

We recognise the importance of protecting your personal information. WBH Legal fully complies with its obligations under the *Privacy Act 1988* (Cth), as amended from time to time. You may view our **Privacy Policy** online via our website at [www.wbhlegal.com.au](http://www.wbhlegal.com.au) or at our office. We recommend you view it and our Privacy Policy: Notice and Consent document that forms part of our Privacy Policy as these documents form part of our Terms and Conditions and this Cost Agreement.

### 3. The work we undertake for you

- 3.1 The legal practitioner who will undertake any specific work you instruct us on will send to you an Engagement Letter when commencing the matter. Depending upon the nature of the matter, the responsible partner and the people who will or are likely to undertake your work will be referred to in the Engagement Letter;
- 3.2 The partner who signs your Engagement Letter is the person whom you may contact with regard to legal costs. You may also contact any other legal practitioner who is named in the Engagement Letter. If there are any changes to the legal practitioner(s) responsible and any other people who may work on your matter over time, as reasonably required, we will endeavour to advise you in writing.

### 4. Your obligations

- 4.1 During the conduct of your matter, you will promptly provide those instructions which we need to properly act for you;
- 4.2 Reply to our correspondence and return our phone calls;
- 4.3 Subject to clause 5.11.6 of this Cost Agreement, pay our accounts within 7 days of the account date (or such other time we agree to);
- 4.4 Deposit into our trust account amount(s) which we may reasonably request against our costs and disbursements incurred or which we anticipate may be incurred in the course of your matter and if we request, you will procure an authority for us to debit a credit card.

If you do not work with us in these ways then we may terminate this Cost Agreement in accordance with clause 5.15. In such circumstances, you agree that you will file a notice of acting in person in any current court proceedings in which we have been acting for you.

### 5. Fees

#### 5.1 Time costing

We may charge for our services on a time cost basis.

In addition to our time charges, you are also liable for disbursements described in clause 5.3 of this Cost Agreement and administrative service fees described in clause 5.5 of this Cost Agreement.

- 5.1.1 Fees charged on a time cost basis are the product of the hours worked (divided into minimum units of 6 minutes or part thereof) multiplied by the hourly rates of the legal practitioner(s) and other specified person(s) who did the work. The use of minimum units means that even if a particular task takes less than six minutes, it will be recorded and charged as a full six minute time unit. Likewise, if it is a multiple of six minute units, the final unit will be rounded up to a full six minute unit;
- 5.1.2 Hourly rates vary depending on the level of experience and expertise of the person involved. Our schedule of rates for each legal practitioner, law clerk, conveyancer and paralegal is set out in our Engagement Letter. These rates are inclusive of Goods and Services Tax ("**GST**");
- 5.1.3 Our rates are generally fixed until the end of the current financial year. We will endeavour to advise you in writing of any proposed rates for the new financial year. You are not obliged to accept such proposed rates, but if you do not accept such

rates we are entitled to cease acting for you. If you do accept the rates, either expressly or by paying accounts calculated upon such rates, they will be binding on you;

- 5.1.4 Our rates or charge for time spent are different from the rates set out in the Scale of Fees published by the Supreme Court ("**Court Scale of Fees**"). Although time charging is common, there may be other legal practitioners who would be prepared to act for you and charge according to the Court Scale of Fees. You are entitled to seek independent legal advice regarding this or any other term of this Cost Agreement;
- 5.1.5 Our rates may result in a higher charge than if the Court Scale of Fees was used. In some circumstances, our rates may result in a lower charge than if the Court Scale of Fees was used.

## **5.2 Fixed fees**

We may have been engaged by you to do repetitive work on a fixed fee basis for matters such as conveyancing, leasing, wills and power of attorney documents, or debt collection. This is just an example of some of your fixed fee offerings.

- 5.2.1 This fixed fee is different from the rates set out in the Court Scale of Fees. Although fixed fee charging is not uncommon for these types of services, there may be other legal practitioners who would be prepared to act for you and charge according to the Court Scale of Fees. You are entitled to seek independent legal advice regarding this or any term of this agreement;
- 5.2.2 The fixed fee may result in a higher charge than if the Court Scale of Fees was used. Or, in some circumstances, the fee may result in a lower charge than if the Court Scale of Fees was used.

We may provide a fixed fee for other instructions where we may agree to send an account on an agreed stage basis or at the end of the matter.

## **5.3 Disbursements**

- 5.3.1 In addition to our fees we charge for our out of pocket expenses incurred or paid on your behalf (called disbursements);
- 5.3.2 Out of pocket expenses incurred by us such as fees for barristers, agents, accountants or other experts, government and local authorities fees, are disbursements we will charge you for. We charge a file opening fee that includes international and mobile phone calls, however hosted conference calls and couriers at the cost charged to us will in turn be charged to you;
- 5.3.3 If we need to incur expenses on your behalf which are unusual as to their nature or extent (including in litigious matters, those expenses which are unlikely to be recoverable in full or in part from the other side if you win and obtain a costs order), we will endeavour to provide you with an estimate of that disbursement and seek your specific instructions before incurring such expenses.
- 5.3.4 Disbursements are incurred by us as your agent.

## **5.4 GST**

- 5.4.1 For our Australian clients, our fees are subject to GST. Under this Cost Agreement the amounts or rates quoted for fees are inclusive of GST. For overseas clients not subject to GST, we will advise our rates without GST;
- 5.4.2 To the extent that disbursements we incur for you or on your behalf are subject to GST, GST will also be payable by you in respect of those disbursements.

## **5.5 Administrative services**

- 5.5.1 We do not charge for facsimile transmissions other than in conveyancing matters, see 5.2 Fixed Fee rates.
- 5.5.2 We charge a flat fee at the commencement of matters for telephone charges of the firm (including STD and mobile calls) and a fixed fee for emails.
- 5.5.3 While we do not usually charge for smaller or incidental photocopying, printing or document collation we do charge for photocopying, printing and collating and binding larger volumes of briefs and/or folders of documents. These will be charged on a time basis for a law clerk, paralegal or administrative clerk to carry out that administrative task, plus the fee referred to in our standard disbursement disclosure per page photocopied and printed as set out in our Engagement Letter. In some circumstances we may send photocopying and/or binding of documents to third party service providers. If we do, these will be charged to you at the cost charged to us and are inclusive of GST.
- 5.5.4 Charges for such administrative services may exceed, or in some circumstances may be less than, those provided for under the application Court Scale of Fees.

## **5.6 Legal costs – Your right to know**

You have the right to:

- 5.6.1 negotiate a cost agreement with us;
- 5.6.2 receive an account from us;
- 5.6.3 request an itemised account after you receive a lump sum account from us;
- 5.6.4 request written reports about the progress of your matter and the costs incurred in your matter;
- 5.6.5 apply for costs to be adjudicated within 6 months if you are unhappy with our costs;
- 5.6.6 apply for this Cost Agreement to be set aside;
- 5.6.7 make a complaint to the Legal Professional Conduct Commissioner (if you believe there has been overcharging);
- 5.6.8 accept or reject any offer we make for an interstate costs law to apply to your matter; and
- 5.6.9 notify us that you wish an interstate costs law to apply to your matter.

## **5.7 Cost estimate**

- 5.7.1 The fees and expenses to be incurred with us in carrying out your instructions, will be set out in our Engagement Letter for each matter that you instruct us on where the fees are likely to exceed \$1,650 (inclusive of GST);
- 5.7.2 If it is not possible at the time of issue of the Engagement Letter to provide an accurate estimate of the total costs, we will provide you with a range of costs inclusive of GST;
- 5.7.3 We emphasise that the estimate is just that, a preliminary estimate. It is not a quote or a fixed maximum charge. The actual costs will be based on the work actually done and the expenses actually incurred;
- 5.7.4 If at any time the scope of the work you have instructed us to undertake changes, we will advise you in writing of the change together with a revised estimate of any additional legal costs and disbursements.

## **5.8 Updating of advice**

You have the right under clause 17 of Schedule 3 of the Act to be notified of any substantial changes to the matters to be disclosed to you under clause 19 of Schedule 3 of the Act, including any substantial change to the estimated cost of work.

## **5.9 Litigation matters**

- 5.9.1 The estimate in our Engagement Letter only refers to the costs we charge you. In addition, the Court may order you to pay other moneys, including some or all of the costs of other parties;
- 5.9.2 Fees and expenses incurred with us are payable by you according to our payment terms whether or not you may, if successful in your action, have rights to recover some of your costs from another party or parties;
- 5.9.3 The Court Scale of Fees which applies in the Court in which your action will run will usually determine what can be recovered from the other party or parties if you are successful;
- 5.9.4 It is a term of this Cost Agreement that you, as our client, are aware and acknowledge that you have been advised by us that even if you are successful in obtaining an order for costs payable by other parties in the litigation, such an order will not necessarily cover the whole of your legal costs. It is likely to be for an amount less or substantially less than the costs payable under this Cost Agreement (in our experience a costs order is likely to cover no more than 50% to 75% of your costs due to us on a particular matter). The recovery of costs in Magistrate Court matters may be substantially less than this. The difference in these costs will be your expense;
- 5.9.5 If you are unsuccessful, you may be liable to pay the costs of the other party or parties to the litigation, in addition to our costs. As we are not aware of the extent of the legal work which may be performed for the other side, it is difficult to be precise as to what the amount of such costs might be. If the other side's legal costs were to be similar to our costs in acting for you, the costs order against you may be for an amount of between 50% to 75% of the amount of the costs we charge you;
- 5.9.6 If we negotiate a settlement of a litigation matter on your behalf we will disclose prior to the settlement a reasonable estimate of our costs and an estimate of the contribution to those costs (if any) likely to be received from another party so that the likely minimum net amount that you will receive may be estimated.

## **5.10 Legal agent fees**

- 5.10.1 If we intend to retain an agent such as a barrister, an interstate or overseas solicitor, accountant or expert, we will advise you in writing and provide to the best of our ability, an estimate of their charges. If we engage a barrister we will advise you of their hourly and daily rate and if possible an estimate of their fees. We will forward any letter of engagement received from barristers together with any estimate of fees received from them;
- 5.10.2 There may be variables to the calculation of these costs, principally depending upon the scope of work and the time that it undertakes an agent to complete a task;
- 5.10.3 That third party will bill us for their work at regular intervals. You will be provided with copies of those bills when we seek reimbursement from you. You may also be asked to provide us with funds in our trust account to cover third party costs, legal agent fees prior to engaging that third party.

### 5.11 Verification of Identification (VOI)

- 5.11.1 As you may or may not be aware, we have a legal obligation to formally verify you, or any of our clients involved in a real estate transaction, in accordance with the Verification of Identity (VOI) Policy. This is a policy that has been introduced in nearly every State and Territory and must be followed with statements regarding VOI provided to the Registrar General of the Lands Titles Office;
- 5.11.2 The Policy was introduced as a measure to help protect the integrity of the transaction, by minimising the risk of fraud;
- 5.11.3 Identification data will be sought from you at a face-to-face meeting where we will need to sight original copies of your identification documents and copies will need to be taken. Those copies will be stored in a safe and secure environment. If you are unable to attend a face-to-face meeting at our office, then we can arrange for agents to attend to this on our behalf;
- 5.11.4 If you instruct us to act in a real estate transaction we will speak to you about the overall process and work closely with you to ensure the required information is gathered as quickly and seamlessly as possible.

### 5.12 Billing

- 5.12.1 If your matter is being charged on an hourly rate basis, we will forward to you interim accounts. Unless we specifically agree with you otherwise, those accounts will be sent no more often than 7 days after the delivery of a previous account and upon conclusion of your matter. While bills are issued regularly they are usually sent every 14 days or monthly;
- 5.12.2 If we agree a fixed fee arrangement on a staged basis, we may send you an account at the beginning of the stage, at the end of each stage or at the end of the matter. If we agree with you some other basis for charging, we will send accounts in accordance with that agreement;
- 5.12.3 Accounts are to be paid within 7 days after delivery. Interest begins to run on our accounts once they have remained unpaid for 30 days. Interest is charged at the cash rate released by the Reserve Bank of Australia ("**Cash Rate Target**") as at the date the account is issued plus 2% above the RBA's cash target rate as set from time to time. The current rate is 4% per annum. If an account does remain unpaid after 7 days after delivery we may terminate this Cost Agreement;
- 5.12.4 If you pay your bill by making a credit card payment a further charge of 2.8% will be added to your account. This charge represents the median of the fees imposed upon us by the various credit card companies and the banks processing the credit card payment;
- 5.12.5 You need to be aware that if you are in breach of our terms relating to payment of our accounts or we are required to take recovery action with respect to outstanding bills, for any reason, then you agree that we are entitled to lodge a caveat over your interest in any real property held by you from time to time and, if you are a director of a company client, you agree that this right to lodge a caveat extends to your personal property. Nothing in this clause is intended to substitute your obligations to pay our accounts.
- 5.12.6 You also agree that if you have not paid our accounts, then we are entitled to proceed to lodge a charge under the PPSA on the PPSR over all of your or your company property and, we are entitled to immediately appoint a receiver and manager under the Corporations Act or otherwise. Nothing in this clause is intended to substitute your obligations to pay our accounts.
- 5.12.7 In addition to clause 5.15.6 if we hold funds in trust, for a specific purpose or otherwise, and you are in breach of our terms in relation to payment of your accounts for a period of more than 45 days from the date of issue, then you agree

that those funds will then be held for the purpose of paying our, or third party fees, and we are then at liberty to apply those funds, or part of those funds, to pay outstanding accounts.

- 5.12.8 If we are required to take recovery action with respect to outstanding bills, for any reason, then you agree that you are liable to pay any associated debt collection costs or legal costs that are incurred in undertaking such recovery action.
- 5.12.9 If you are not happy with an account from us, you may:
- 5.12.9.1 request an itemised account;
  - 5.12.9.2 discuss your concerns with us;
  - 5.12.9.3 have our costs adjudicated;
  - 5.12.9.4 apply to set aside this Cost Agreement; and
  - 5.12.9.5 make a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging).

For more information about your rights, please read the fact sheet titled **Your Right to Challenge Legal Costs**. You can obtain it from the link on our website at [www.wbhlegal.com.au](http://www.wbhlegal.com.au), or ask us for a copy, or obtain a copy from the Law Society of South Australia (or download it from their website).

### **5.13 No apportionment of liability**

- 5.13.1 Where we act for two or more people or entities in a matter, each of you will be individually responsible for payment of our entire account for that matter irrespective of any arrangements that may be made between you. You agree that you are personally liable for our costs and disbursements even if the matter involves us acting for other persons and/or organisations. If you provide us with instructions for or on behalf of a third party or jointly with another party, you will be personally liable to pay for our services in accordance with these terms of engagement, irrespective of the liability of any third party or other party to our fees;
- 5.13.2 If the work to which this letter/agreement relates is done on behalf of a company of which you are a director, the signing of our letter of engagement by you, or the company continuing to instruct us, you as the director will also be responsible and liable for payment of the firm's accounts (including any agent fees);
- 5.13.3 You are entitled to seek independent legal advice on this clause and its implications to you personally.

### **5.14 Limitation of Liability**

Liability is limited by a scheme approved under Professional Standards Legislation. You may request a copy of the Scheme from us or the Law Society website if you require further information.

### **5.15 Trust money or security for our fees and disbursements**

- 5.15.1 We do not extend credit to any clients and may ask you for money in trust as security for fees;
- 5.15.2 We may request you to pay money into our trust account from time to time to cover reasonably anticipated expenses, including barrister's fees and anticipated fees. These moneys are retained in our trust account and will be applied to our invoices (including GST) when they fall due for payment, or will be used in payment of particular expenses of this firm which are incurred on your behalf;

- 5.15.3 If the matter proceeds to trial, we will request you to provide to us, at least 21 days prior to the trial date, the moneys reasonably estimated by us to cover the full cost of the trial, including counsel, court and witness fees. We will hold moneys in our trust account against the anticipated cost and disbursements;
- 5.15.4 If you do not comply with any such request, we may cease acting for you in accordance with clause 5.15 below;
- 5.15.5 As an alternative or in addition to those matters set out in clauses 5.14.1 to 5.14.4, we may require a current credit card authority for us to debit our fees and disbursements;
- 5.15.6 It is a term of this Cost Agreement that if we receive any money from you or on your behalf other than for a specified purpose, we are at liberty to apply that money in payment of our outstanding accounts if we do not hear from you disputing the relevant accounts within 7 days after delivery of those accounts to you.

## **5.16 Termination**

- 5.16.1 You have the right to terminate our services at any time;
- 5.16.2 Upon good cause such as failure to comply with the terms of this Cost Agreement or, if in our view the necessary relationship of confidence no longer exists between us, we have a right upon reasonable notice to terminate this Cost Agreement in accordance with clause 5.15.3 below and cease acting for you and in litigation matters, apply to be removed from the Court file as your legal practitioners. Any application by us to be removed from the Court file is likely to incur fees for which you will be responsible to pay;
- 5.16.3 We may terminate our services at any time if you:
  - 5.16.3.1 do not provide us with prompt instructions that we require to properly act for you; or
  - 5.16.3.2 fail to act in accordance with any written advice we may provide you.
- 5.16.4 Just cause may include your failure or refusal to pay our bills, your failure to comply with the terms of this Agreement, or if in our view the necessary relationship of confidence and trust no longer exists between us;
- 5.16.5 All fees and expenses incurred by us prior to termination by either you or us are immediately billable to you;
- 5.16.6 Subject to any court order to the contrary or consequent agreement to the contrary, you agree that we are entitled to retain all moneys, papers and records relating to the matters for which we have represented you until our accounts are paid in full.

## **5.17 Conflicts of interest**

We will not intentionally become involved in a situation where there is a conflict of interest of a legal nature between you, us and/or another client but if through inadvertence or unforeseen circumstances this should occur, we may be obliged to terminate this Cost Agreement and cease acting for you.

## **5.18 Storage of records**

We will store your files for seven years following completion of each matter. We may store your files in electronic format unless you ask us to store them in paper format. However, in the course of the conduct of your matter, we may create or record documents in electronic format only. We will not print those electronic documents for storage purposes unless you ask us to, in which case you will be liable for our costs of the printing and collation – see clause 5.5. We do not charge for storage of your files, but if you require us to retrieve any of your stored files after completion of a matter, you agree that we will

charge you a reasonable fee for the services required. In that regard we refer you to the standard disbursement schedule in our Engagement Letter. You authorise us to destroy or delete any of your files retained by us after seven years following the completion of the matter. We encourage you to collect your file from us for your own records within seven years after completion of the work.

**5.19 Copyright**

We own the copyright in all documents we author in supplying our services and you have the right to use those documents only for the purposes for which they are supplied.

**5.20 Applicable law**

This Cost Agreement is governed by South Australian law. All parties consent to the non-exclusive jurisdiction of South Australian courts with regard to any dispute arising under or out of this Cost Agreement.

**5.21 Your agreement to this Cost Agreement**

5.21.1 You are entitled to seek independent legal advice on the terms of this Cost Agreement;

5.21.2 This is an offer to enter into a Cost Agreement and that Schedule 3 of the Act applies to matters that you instruct us on. We ask you to sign the counterpart copy of this Cost Agreement by way of confirmation and return it to us. You may also acknowledge your agreement by email or facsimile. You will also be taken to have accepted our offer by conduct if you provide instructions to us without first stating that you do not accept the terms of the Cost Agreement and/or you pay our accounts expressly calculated under the terms of this Cost Agreement.

Please contact the writer if there is anything in this Cost Agreement which you wish to discuss, which you do not understand or with which you disagree. We look forward to working with you towards a successful completion of this matter.

Yours faithfully  
**WBH LEGAL**

Per:

Partners  
admin@wbhlegal.com.au

**[Matter]**

***Please sign and return by email, fax or post:***

We/I have read and confirm the above terms of this Cost Agreement and acknowledge receipt of it and the Schedule of Hourly Charge-Out Rates that has been sent to us.

Dated ..... 20 .....

.....  
Signature

.....  
Print Name

.....  
Title if applicable (*eg Partner, Director, etc*)