

## Costs Agreement

### INSERT NAME

INSERT ACN IF APPLICABLE

INSERT ADDRESS

("you", "your")

### COWELL CLARKE

Level 9

63 Pirie Street

ADELAIDE SA 5000

("we", "us", "our")

## 1. Introduction

The *Legal Practitioners Act 1981* ("**the Act**") requires us to set out in writing prescribed information concerning our costing arrangements with you. You may view a copy of the fact sheet entitled **Legal Costs – Your Right to Know** on our website at [www.cowellclarke.com.au](http://www.cowellclarke.com.au).

We are required to send you our current Costs Agreement and will normally do this upon receiving instructions from you on a new matter where you have not received a Costs Agreement in the previous 12 months or if the terms of that Costs Agreement are updated. You waive your right to receive a new Costs Agreement each time you instruct us on a new matter during the 12 month period after the date we sent you a Costs Agreement.

In most circumstances we will send you an Engagement Letter which will contain the following information for each new matter that you instruct us on:

- 1.1 the practitioner 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 fees, exclusive of disbursements, are for a fixed amount not based upon hourly rates of 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.

If we are to charge on an hourly rate basis the current rate for each fee earner working on the matter will be set out in the Engagement Letter.

## 2. Our obligations

Our mission statement is "delivering excellent commercial law solutions". We will endeavour to do that in our dealings with you. This includes:

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

We recognise the importance of protecting your personal information. Cowell Clarke fully complies with its obligations under the *Privacy Act 1988* (Cth). You may view our **Privacy Policy** on our website at [www.cowellclarke.com.au](http://www.cowellclarke.com.au) or at our office.

### 3. **The work we undertake for you**

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 practitioner and the people who will or are likely to undertake your work will be referred to in the Engagement Letter.

The practitioner 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 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. You will generally assist us to conduct your matter efficiently.
- 4.2 Reply to our correspondence and return our phone calls.
- 4.3 Subject to clause 5.11.4 of this Costs Agreement, pay our accounts within 14 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 Costs Agreement in accordance with clause 5.14. 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 Costs Agreement and

administrative service fees described in clause 5.5 of this Costs 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 practitioners and other specified persons 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. If we are charging on an hourly rate basis a schedule of rates for each legal practitioner, law clerk, conveyancer and paralegal likely to undertake work for you is set out in an Engagement Letter. The rates are specified as either exclusive or inclusive of Goods and Services Tax ("**GST**").

5.1.3 We will advise you in writing of any changes to the rates set out in the Engagement Letter if they are to increase. 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 charges 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 Costs Agreement.

5.1.5 Our rates may, and in some cases will, 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 work on a fixed fee basis. If so the work we undertake for you will not be charged at or referable to an hourly rate. The fixed fee

agreed may be for all work we have been instructed to do or on separate portions of work.

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, and in some cases will, 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 may charge you for international and mobile phone calls, hosted conference calls and couriers at the cost charged to us. We do not charge for local or STD telephone calls.

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 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**

For our Australian clients, our fees are subject to GST. For overseas clients not

subject to GST, we will advise our rates without GST.

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**

We do not charge for facsimile transmissions.

We do not charge for smaller or incidental photocopying, printing or document collation. We will 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 clerk, paralegal or administration clerk to carry out that administrative task. 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.

Charges for such administrative services may exceed, or in some circumstances may be less than, those provided for under the applicable Court Scale of Fees.

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

You have the right to:

5.6.1 negotiate a costs 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 Costs 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 Our estimate of 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.
- 5.7.5 If we agree a fixed fee then subject to any variation in the scope of work, the fixed fee plus GST will be the total legal fees for the work to be undertaken by us or any portion thereof as scoped in the Engagement Letter.
- 5.8 **Updating of advice**
- You have the right under clause 17 of Part 3 of Schedule 3 of the Act to be notified of any substantial changes to the matters to be disclosed to you under Part 3 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 Costs 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 Costs 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.
- 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**
- 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.

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.

## 5.11 **Billing**

- 5.11.1 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 14 days after the delivery of a previous account and upon conclusion of your matter.
- 5.11.2 If we agree a fixed fee arrangement on a staged basis, we will send you an account either 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.
- 5.11.3 Accounts are to be paid within 14 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 published by the Reserve Bank of Australia ("**Cash Rate Target**") as at the date the account is issued plus 2%. If an account remains unpaid after 14 days after delivery we may terminate this Costs Agreement.
- 5.11.4 If you are not happy with an account from us, you may:
- 5.11.4.1 request an itemised account;
  - 5.11.4.2 discuss your concerns with us;
  - 5.11.4.3 have our costs adjudicated;
  - 5.11.4.4 apply to set aside this Costs Agreement; and
  - 5.11.4.5 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.cowellclarke.com.au](http://www.cowellclarke.com.au) on the Costs Agreement page or ask us for a copy.

## 5.12 **No apportionment of liability**

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

- 5.13.1 We do not extend credit to any clients and may ask you for money in trust as security for fees.
- 5.13.2 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.
- 5.13.3 For security reasons, we will provide you our trust account details at our first meeting or by post. If this is not possible, we will send you an email attaching a password protected PDF containing the trust account details. We will then phone you with the password. We do **not** send our trust account details in the body of an email and if you do receive such an email, please immediately contact us.
- 5.13.4 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.

5.13.5 If you do not comply with any such request, we may cease acting for you in accordance with clause 5.14 below.

5.13.6 As an alternative or in addition to those matters set out in clauses 5.13.1 to 5.13.5, we may require a current credit card authority for us to debit our fees and disbursements. We will only debit your credit card 14 days after we have provided you with our account and have received no queries in relation to our account in accordance with those items set out in clause 5.11.4.

5.13.7 It is a term of this Costs 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.

#### 5.14 **Termination**

5.14.1 You have the right to terminate our services at any time.

5.14.2 Upon good cause such as failure to comply with the terms of this Costs 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 Costs Agreement in accordance with clause 5.14.3 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.

5.14.3 We may terminate our services at any time if you:

5.14.3.1 do not provide us with prompt instructions that we require to properly act for you; or

5.14.3.2 fail to act in accordance with any written advice we may provide you.

5.14.4 All fees and expenses incurred by us prior to termination by either you or us are immediately billable to you.

5.14.5 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.

#### 5.15 **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 Costs Agreement and cease acting for you.

#### 5.16 **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. 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.

#### 5.17 **Copyright**

We own 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.

#### 5.18 **Applicable law**

This Costs 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 Costs Agreement.

5.19 **Your agreement to this Costs Agreement**

- 5.19.1 You are also entitled to seek independent legal advice on the terms of this Costs Agreement.
- 5.19.2 This is an offer to enter into a Costs 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 Costs 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 Costs Agreement and/or you pay our accounts expressly calculated under the terms of this Costs Agreement.

Please contact the writer if there is anything in this 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.

Dated 1 July 2018

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Jon Clarke for Cowell Clarke

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

We/I have read and confirm the above terms of this Costs Agreement and acknowledge receipt of it.

Dated \_\_\_\_\_ 2018

.....  
Signature

.....  
Print Name

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