

EXPLANATORY NOTES FOR CLIENTS

Understanding the *Offer by Law Practice to Enter into Costs Agreement*

These notes are intended to help you understand a Costs Agreement.

The law practice may ask you to accept an offer to provide legal services on the terms and conditions set out in a Costs Agreement. The offer can be accepted by you by signing the offer or by your conduct. Example: by continuing to instruct the law practice.

It is in your interests to obtain independent legal advice from a different law practice about what the terms and conditions of the offer mean for you.

You should take care in accepting the offer from the law practice. If there is anything in the offer that you do not understand you should not sign the offer or instruct the law practice until you do understand the offer.

If there is anything you do not agree with or feel concerned about, you should discuss the issue with the law practice and, if necessary, insist on the offer being changed before you accept it. Your acceptance of the offer constitutes the agreement (“Agreement”).

Purpose of the Agreement

The Agreement sets out arrangements agreed between you and the law practice you have appointed to act on your behalf. Most of the arrangements relate to the costs which the law practice may charge you.

If you do not enter into an Agreement with the law practice the costs which the law practice may charge you will be regulated by costs scales. A costs scale is a schedule of costs fixed by the Legal Costs Committee which is an independent statutory authority established under the legislation that regulates the legal profession in Western Australia. The membership of the Committee comprises lawyers and non-lawyer community representatives.

By entering into the Agreement, you allow the law practice to charge you costs which are likely to be higher than the costs permitted under the costs scales fixed by the Legal Costs Committee or by the relevant Court or Tribunal.

Estimate of costs scales

The law practice should explain to you that it is not obligatory for you to accept the offer and enter into the Agreement. If you do not enter into the Agreement, the law practice may not wish to act for you. However, if the law practice does agree to act for you even though you have refused to accept the offer, the costs which the law practice may charge you will be determined according to the relevant costs scale.

Costs scales also apply to the legal costs which you can recover from the other party if you win or which you may have to pay the other party if you lose.

Costs determined under a costs scale are not necessarily calculated by reference to the amount of time spent. They are also calculated by reference to the nature of the work carried out.

Part 2, Item 6 of the Agreement sets out the law practice's estimate of the legal costs you would have to pay if you do not accept its offer and enter into an agreement.

Retaining a law practice

The Agreement confirms that you have retained the law practice to act on your behalf. It also describes the work that the law practice is to do for you (Part 2, Item 3).

The Agreement authorises the law practice to do whatever is necessary to act on your behalf. This could include issuing a writ and complying with requirements of the Court. The law practice is not required to ask your consent for every action the law practice takes. However the law practice should consult with you in advance about every significant step the law practice takes on your behalf.

The law practice may charge for all the time spent on the legal services provided on your behalf including reporting to you on the progress of the matter. However, the law practice cannot charge you for a progress report regarding costs.

Hourly rate for legal services

If the law practice has completed the hourly rates section in Part 2, Item 4A, this means the law practice may charge you on the basis of time spent working on your behalf, calculated by reference to hourly rates.

In the Agreement each hour is broken into 6 minute units, with one 6 minute unit representing the minimum charge.

For example, if the law practice is involved in a 7 minute telephone call on your matter, the time spent may be charged as 2 units, even though the actual time spent is less than 12 minutes.

The hourly rate is usually applied to all work which the law practice does on your behalf, such as making telephone calls, writing letters, researching the law, preparing documents, travelling, and attending Court including time spent waiting. The lawyer in the law practice with the conduct of your matter may arrange for other lawyers or clerks in the law practice to do work on your behalf. The hourly rate charged for the work done by other Lawyers or by clerks may be different, depending on their level of experience.

As the matter progresses, the circumstances can change. The law practice must provide you with details of the changed circumstances and their effect on the estimate of costs at Part 2, Item 5 of the Agreement.

Payment of Bills

By the Agreement you give to the law practice the right to bill you during the conduct of your case (Part 3, Item 3) and each bill must be paid within 30 days. Each bill is final for the work covered by it.

Recovering Legal Costs from the Other Party/Paying Legal Costs to Other Party

If you win

If you win the case (or part of it) you may be entitled to recover some of your legal costs from the losing party. The law practice will advise you about the factors which will affect your entitlement to recover legal costs. The amount recoverable from the losing party will be determined by reference to the costs scales fixed by the Legal Costs Committee or the relevant Court or Tribunal, not by reference to the Agreement. The actual amount payable towards your legal costs can be fixed by:

1. agreement with the losing party; or
2. an officer of the Court.

The law practice will have estimated at Part 3, Item 7 the legal costs you may be entitled to recover.

If you win, and the law practice incurs expenses on your behalf (such as independent barrister's fees), those expenses are not necessarily fully recoverable from the losing party.

If you lose

If you lose the case (or part of it) you may be ordered to pay some of the winning party's legal costs. The law practice will have estimated at Part 3, Item 8 the legal costs you may be ordered to pay if you are unsuccessful.

The law practice's estimates are made at a time when it is usually very difficult to predict all the work which will be required to be done on your behalf. All estimates in the Agreement are based on the information available to the law practice at the time the offer was prepared. None of the estimates in the Agreement are quotes.

As the matter progresses it is a good idea for you to ask for revised estimates from time to time.

Money Paid in Advance

Part 2, Item 9 will be completed if the law practice requires you to pay money in advance on account of the costs to be charged to you. The law practice may ask you to pay further money from time to time on account of costs, including expenses incurred on your behalf.

By the Agreement (Part 3, Items 4 and 5) you agree to pay to the law practice within 14 days monies reasonably requested by the law practice on account of your costs. If you do not pay these monies the law practice may take steps to cease to act for you.

Interest Rate

By the Agreement (Part 2, 10) you agree to pay interest on unpaid legal costs if the costs are not paid by you within 30 days after you have been billed by the law practice. The rate of interest may vary from time to time. The maximum rate of interest that can be charged by the law practice is prescribed by the *Legal Profession Regulations 2009*.

Additional Arrangements

You should make sure that any special arrangements you agree with the law practice are set out in Part 2, Item 13.

For example, a law practice may take reasonable security from a client for the legal costs and may refuse to act for you if you do not provide reasonable security.



Reviewing the Agreement

Even after you have signed the agreement, if you wish you may have it reviewed by a single Judge of the Supreme Court.

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