

## Costs Disclosure and Costs Agreement

This document, together with our General Terms of Business, sets out the terms of our offer to provide legal services to you and constitutes our costs agreement and disclosure pursuant to the *Legal Profession Uniform Law (NSW)* ("the Uniform Law").

### A. Scope of Work

You have instructed us to take instructions on the history of your relationship, the children/child, and the financial position of both parties considering the provisions of the Family Law Act and other relevant factors. In general terms:

- Discuss and explain the law and its application to your circumstances;
- Explain the court process and particularly the requirement for endeavours to be made to negotiate an agreement before commencing proceedings;
- Write to the other party and to you in the process of engaging in discussions and negotiations;
- If agreement is reached then the drafting, signing and making of consent orders by the court;
- If agreement is not quickly reached then preparation for and attendance at mediation;
- If mediation is unsuccessful then preparing, signing, filing and serving application for orders and subsequent attendances, correspondence and calls with you and the other party or their solicitor resulting in attendances before a Registrar or Judge.

### B. Professional Fees

Our fees will be calculated as follows:

Those members of the firm that work on your matter will record the time they spend and charge according to the following rates:

Director	Hourly rate of	\$ 600 - \$750	plus GST
Senior Associate	Hourly rate of	\$ 400 - \$650	plus GST
Solicitor (up to 2 years experience)	Hourly rate of	\$ 350 - \$450	plus GST
Paralegal	Hourly rate of	\$ 200 - \$350	plus GST
Legal Assistant/Administrative Assistant	Hourly rate of	\$ 150 - \$200	plus GST

You will be proportionately charged for work involving shorter periods less than an hour. Our charges are structured in 6 minute units. For example, the time charged for an attendance of up to 6 minutes will be 1 unit and the time charged for an attendance between 6 and 12 minutes will be 2 units.

Our rates are reviewed on an annual basis and may change during the course of a matter. In relation to lengthy matters this may impact upon our cost estimates (which may be revised accordingly). You will be given 30 days' notice in writing of any changes to our charge out rates.

### C. Disbursements, Internal Expenses and PEXA Fees

#### *Disbursements*

We may incur disbursements (being money which we pay or are liable to pay to others on your behalf). Disbursements may include search fees, court filing fees, process server fees, expert fees, witness expenses, travel expenses, transcript expenses and barrister's fees.

Where you instruct us to brief a barrister or other expert and they provide a disclosure and costs agreement we will provide this to you.

Disbursements specifically include \$200 inclusive of GST to use the software FamilyProperty ([www.familyproperty.com.au](http://www.familyproperty.com.au)).

FamilyProperty is used to securely collect and manage information and documents about your family property matter. This helps us to conduct your family property matters in a timely, streamlined and collaborative way, ensuring that we can assist you as efficiently as possible.

You authorise us to enter and review personal and financial information about your family property matter into FamilyProperty.

Information entered into FamilyProperty will remain secure and confidential (no bank account login or passwords are stored) and is protected under the [Privacy Policy of FamilyProperty](#).

#### Court fees – current as at 1 July 2023

Application for Consent Orders		\$195
Initiating Application (parenting or financial, final only)		\$410
Initiating Application (parenting or financial, final and interim)		\$550
Initiating Application (parenting and financial, final only)		\$670
Initiating Application (parenting and financial, final and interim)		\$810
Response to Initiating Application		\$410
Application in a Proceeding		\$140
Setting down for final hearing (FCFCA Div 1 and FCWA)		\$1,010
Daily hearing fee (excluding first day) FCFCA Div 1 and FCWA)		\$1,010
Setting down for final hearing (FCFCA Div 2 and magistrate FCWA)		\$745
Daily hearing fee (excluding first day) (FCFCA Div 2 and magistrate FCWA)		\$745
Notice of Appeal or an application for leave to appeal		\$1,605
Conciliation Conference		\$465

Subpoena		\$65
Application to register a NZ judgment under the Trans-Tasman Proceedings Act 2010 (Cth) (TTPA) (FCFCA)		\$125
Application under TTPA (FCFCA)		\$140
Application for Divorce		\$1,060
Application for Divorce – reduced fee		\$350

#### *Internal Expenses*

You will be responsible for internal expenses which we incur in carrying out your instructions. These include photocopying which is charged at \$0.80 per page and a fee of \$10.00 for electronic signature services.

#### *PEXA Fees*

You will be responsible for PEXA fees associated with electronic settlement of real property transactions (where applicable). PEXA fees are \$132.66 per workspace.

#### D. Estimate of Professional Fees, Disbursements and Internal Expenses

If the matter proceeds very smoothly and settlement is reached quickly, we estimate the cost of the work, exclusive of GST, up to settlement following short negotiation to be:

Professional fees:	\$5,500 - \$15,000
Disbursements:	\$500
Internal Expenses:	\$50
TOTAL (excluding GST)	\$6,050 – \$15,550

If the matter does not settle quickly and further negotiation and mediation are required then we estimate the cost of the work, exclusive of GST and in addition to the above, to be:

Professional fees:	\$5,500 – \$25,000
Disbursements:	\$2,500
Internal Expenses:	\$50
TOTAL (excluding GST)	\$8,050 – \$27,550

If the matter does not settle following mediation and court proceedings are commenced then we estimate the cost of the work, inclusive of GST and in addition to the above, to be:

Professional fees:	\$27,500 – 100,000
Disbursements:	\$25,000 – \$50,000
Internal Expenses:	\$1,000
TOTAL (excluding GST)	\$53,500 – \$151,000

### *Variables*

Some of the variables which may affect and change the costs estimate include:

- (a) the number and duration of telephone calls or other communications;
- (b) your prompt and efficient response to requests for information or instructions;
- (c) whether your instructions are varied;
- (d) whether documents have to be revised in light of varied instructions;
- (e) the lawyer or other persons with whom we deal and the level of co-operation of the lawyer's clients and other persons involved;
- (f) changes in the law; and
- (g) the complexity or uncertainty concerning legal issues affecting your matter.

Please note that this is an estimate only and not a fixed quote. The total costs may exceed the estimate. While the estimate is based on present information and instructions and our current understanding from you as to what services are required, our costs may exceed the estimate if further information becomes available or circumstances change which affect these matters. In this event we will provide you with a revised estimate as soon as practicable. Where there is a significant change in your matter then as far as possible we will advise the impact of the change on the legal costs.

### E. Costs Payable and Recoverable on Litigation Outcome

Even if you are successful in proceedings and have a costs order in your favour it is unlikely that you will recover all of the costs you must pay us from another party. If you do have a costs order in your favour, it may still be necessary to seek to enforce such costs order e.g. through the assessment system. This can be time consuming and costly. The possible costs associated with such potential enforcement proceedings are not dealt with in this document, but will be advised to you should the relevant circumstances arise. It is also possible that you cannot recover the costs from the other party (for example if the party goes into liquidation or becomes bankrupt); nonetheless you will still have to pay us. Please note that costs orders in family law matters are not routinely made.

If you lose the litigation, then you may have to pay some or all of the costs of the other party - either an amount you can both agree on or if no agreement can be reached then an amount of costs assessed by a costs assessor as payable.

However, the Court always has a discretion in relation to costs orders and you should be aware that they are generally difficult to obtain and rarely granted in Family Court Proceedings.

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I accept the above terms:

A handwritten signature in black ink, appearing to be 'S. Cooke', written over a dotted line.

Stephen Cooke

Date: 20 November 2023

A handwritten signature in blue ink, appearing to be 'Clarity Lawyers', written in a stylized cursive script.

Clarity Lawyers:

## General Terms of Business

### 1 Billing Arrangements

Our usual policy is to issue a tax invoice on a monthly basis but we may issue tax invoices on a more frequent basis depending on the nature of the work. All tax invoices are due and payable 7 days from the date of the tax invoice. You consent to us sending our tax invoices to you electronically at your usual email address or mobile phone number as specified by you.

### 2 Acceptance of Offer

You may accept the Costs Disclosure and Costs Agreement by:

a) signing and returning this document to us or: b) continuing to instruct us. Upon acceptance you agree to pay for our services on these terms.

### 3 Interest Charges

Interest at the maximum rate prescribed in Rule 75 of the Legal Profession Uniform General Rules 2015 ("Uniform General Rules") (being the Cash Rate Target set by the Reserve Bank of Australia plus 2%) will be charged on any amounts unpaid after the expiry of 30 days after a tax invoice is given to you. Our tax invoices will specify the interest rate to be charged.

### 4 Recovery of Costs

The *Legal Profession Uniform Law (NSW)* ("the Uniform Law") provides that we cannot take action for recovery of legal costs until 30 days after a tax invoice (which complies with the Uniform Law) has been given to you.

### 5 Your Rights

It is your right to:

- (a) negotiate a costs agreement with us;
- (b) negotiate the method of billing (e.g. task based or time based);
- (c) request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
- (d) seek the assistance of the designated local regulatory authority (the NSW Commissioner) in the event of a dispute about legal costs;
- (e) be notified as soon as is reasonably practicable of any significant change to any matter affecting costs;
- (f) accept or reject any offer we make for an interstate costs law to apply to your matter; and
- (g) notify us that you require an interstate costs law to apply to your matter.

If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:

- (i) when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and
- (ii) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.

Nothing in these terms affects your rights under the Australian Consumer Law.

### 6 Your Rights in relation to a Dispute concerning Costs

If you have a dispute in relation to any aspect of our legal costs you have the following avenues of redress:

- (a) in the first instance we encourage you to discuss your concerns with us so that any issue can be identified and we can have the opportunity of resolving the matter promptly and without it adversely impacting on our business relationship;
- (b) you may apply to the Manager, Costs Assessment located at the Supreme Court of NSW for an assessment of our costs. An application for assessment must be made within 12 months after the final bill in this matter was provided or request for payment made or after the costs were paid.

## **7 Payment Methods**

It is our policy that, when acting for new clients, we do one or more of the following:

- (a) approve credit;
- (b) ask the client to pay monies into our trust account;
- (c) ask the client for their credit card details.

Unless otherwise agreed with you, we may determine not to incur fees or expenses in excess of the amount that we hold in trust on your behalf or for which credit is approved.

## **8 Authorisation to Transfer Money from Trust Account**

You authorise us to receive directly into our trust account any judgment or settlement amount, or money received from any source in furtherance of your work, and to pay our professional fees, internal expenses and disbursements in accordance with the provisions of Rule 42 of the Uniform General Rules. A trust statement will be forwarded to you upon completion of the matter.

## **9 Retention of Your Documents**

On completion of your work, or following termination (by either party) of our services, we will retain your documents for 7 years. Your agreement to these terms constitutes your authority for us to destroy the file after those 7 years. The authority does not relate to any documents which are deposited in safe custody which will, subject to agreement, be retained on your behalf indefinitely. We are entitled to retain your documents while there is money owing to us for our costs.

You will be liable for the cost of storing and retrieving documents in storage and our professional fees in connection with this.

## **10 Termination by Us**

We may cease to act for you or refuse to perform further work, including:

- (a) while any of our tax invoices remain unpaid;
- (b) if you do not within 7 days comply with any request to pay an amount in respect of disbursements or future costs;
- (c) if you fail to provide us with clear and timely instructions to enable us to advance your matter, for example, compromising our ability to comply with Court directions, orders or practice notes;
- (d) if you refuse to accept our advice;
- (e) if you indicate to us or we form the view that you have lost confidence in us;
- (f) if there are any ethical grounds which we consider require us to cease acting for you, for example a conflict of interest;
- (g) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
- (h) if in our sole discretion we consider it is no longer appropriate to act for you; or
- (i) for just cause.

We will give you reasonable written notice of termination of our services. You will be required to pay our costs incurred up to the date of termination.

## **11 Termination by You**

You may terminate our services by written notice at any time. However, if you do so you will be required to pay our costs incurred up to the date of termination (including if the matter is litigious, any cancellation fees or other fees such as hearing allocation fees for which we remain responsible).

## **12 Lien**

Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:

- (a) we shall be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all costs, disbursements, interest and other moneys due to the firm have been paid; and
- (b) our lien will continue notwithstanding that we cease to act for you.

## **13 Privacy**

We will collect personal information from you in the course of providing our legal services. We may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties.

We are required to collect the full name and address of our clients by Rule 93 of the Uniform General Rules. Accurate name and address information must also be collected in order to comply with the trust account record keeping requirements of Rule 47 of the Uniform General Rules and to comply with our duty to the courts.

Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988* (Cth). For example, we may use your personal information to provide advice and recommendations that take into account your personal circumstances.

If you do not provide us with the full name and address information required by law we cannot act for you. If you do not provide us with the other personal information that we request our advice may be wrong for you or misleading.

Depending on the nature of your matter the types of bodies to whom we may disclose your personal information include the courts, the other party or parties to litigation, experts and barristers, the Office of State Revenue, PEXA Limited, the Land and Property Information Division of the Department of Lands, the Registrar General and third parties involved in the completion or processing of a transaction.

We do not disclose your information overseas unless your instructions involve dealing with parties located overseas. If your matter involves parties overseas we may disclose select personal information to overseas recipients associated with that matter in order to carry out your instructions.

We manage and protect your personal information in accordance with our privacy policy (which either can be found on our firm website or a copy can be provided at your request). Our privacy policy contains information about how you can access and correct the personal information we hold about you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing.

#### **14 Sending Material Electronically**

We are able to send and receive documents electronically. However, as such transmission is not secure it may be copied, recorded, read or interfered with by third parties while in transit. If you ask us to transmit any document electronically, you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.

#### **15 GST**

Where applicable, GST is payable on our professional fees and expenses and will be clearly shown on our tax invoices. By accepting these terms you agree to pay us an amount equivalent to the GST imposed on these charges.

#### **16 Governing Law**

The law of New South Wales governs these terms and legal costs in relation to any matter upon which we are instructed to act.