

COSTS AGREEMENT

1. What This Document is About

This is an offer made by us, the Law Practice, to you, the Client. This offer sets out how we charge for legal services and our terms of service.

2. How You Can Accept This Offer

You can accept this offer:

- 2.1 by signing the "Acceptance of Costs Agreement" form; or
- 2.2 through your conduct, for example, by paying monies into our Trust Account or continuing to give us instructions.

3. Legal Services

You have instructed us to provide legal services in relation to your family law matter.

We do not provide legal services in relation to litigation or contested court proceedings.

We agree to provide the legal services subject to the terms and conditions in this Agreement. We will act in your best interests, but we are not required to do anything unethical or unlawful.

4. Legal Costs

We will charge you for the legal services we provide in accordance with the List of Legal Fees (Schedule 1 to this Agreement) or otherwise as quoted from time to time.

The List of Legal Fees and any quoted fees are subject to paragraph 19 below.

The List of Legal Fees are not absolute and we reserve the right to charge a different or higher fee if, in our absolute discretion, we consider the necessary work requires significantly more time to complete (for example, where the matter is significantly more complex than usual).

Disbursements and out-of-pocket expenses will be charged to you at cost.

5. How You Can Accept Any Quote For Legal Services

You can agree to and accept any quote for legal services we give to you from time to time:

- 5.1 by letting us know in writing, for example, by email;
- 5.2 through your conduct, for example, by paying monies into our Trust Account or continuing to give us instructions.

6. Estimate Of Total Client/Lawyer Costs

At this point in time, with all the information that we have, we cannot give you an estimate of total client/lawyer costs. This will depend, to a large extent, on factors outside our control, such as the attitude of the other party, and/or their lawyer, the complexity of the matter and how it unfolds.

7. Estimate Of Legal Costs If This Agreement Did Not Apply

If you do not accept this Agreement, we are entitled to charge you in accordance with the scale in the applicable Legal Costs Committee Determination (see paragraph 13 below).

8. Estimate Of Costs You May Recover If You Are Successful In Litigation

As mentioned previously, we do not provide legal services in relation to litigation.

In family law matters that are not litigated, each party pays their own legal costs unless the parties agree otherwise.

9. Estimate Of Costs Other Party May Recover From You If You Are Unsuccessful In Litigation

As mentioned previously, we do not provide legal services in relation to litigation.

In family law matters that are litigated, each party pays their own legal costs unless the parties agree otherwise or unless a court orders otherwise.

10. We Can Charge You Interest On Unpaid Invoices

We can charge you interest on any invoice which remains unpaid for 30 days or more after we have emailed it to you.

The rate of interest you agree to pay is the rate prescribed by the *Legal Profession Act 2008* and the *Legal Professional Regulations 2009*. The statutory rate is a floating rate that varies from time to time in accordance with independent determinations.

11. Goods & Services Tax ("GST")

If explicitly indicated in any invoice we give to you, you acknowledge that GST is payable in respect to each taxable supply made under this Agreement and that all charges, including disbursements, shown in this Agreement are inclusive of GST.

"GST", "taxable supply" and "tax invoice" have the meaning given in *A New Tax System (Goods & Services Tax) Act 1999*.

12. Chargeable Fees

You acknowledge that the legal fees we charge you in accordance with this Agreement will be, in most cases, less than we would have been able to charge you had you not entered into this Agreement.

In other words, our fees are generally less than the applicable Legal Costs Committee Determination.

Most law firms will request that you enter into a costs agreement that enables them to charge you more than the applicable Legal Costs Committee Determination.

13. Applicable Legal Costs Committee Determination

The Legal Costs Committee is an independent statutory body that regularly reviews & makes determinations about legal costs scales. The determinations they make establish maximum rates for particular kinds of legal services in circumstances where there is no costs agreement.

The Legal Costs Committee Determinations applicable in the absence of this Agreement are:

13.1 the *Legal Practitioners (Family Court of Western Australia) Report & Determination* current at the date this Agreement is entered into; and

13.2 the *Legal Practitioners (Magistrates Court) (Family Law) Report & Determination* current at the date this Agreement is entered into.

14. Instructions

You must give adequate and prompt instructions when requested by us.

15. Invoices

You must pay for the legal services we provide in accordance with any invoice we give to you. We will issue an invoice upon completion of legal services. Payment of invoices is due immediately after we issue the invoice.

16. Non-Payment

If you do not:

16.1 pay an invoice we issue to you within 30 days; or

16.2 pay monies into our Trust Account in advance as requested within 14 days of the request being made (see paragraphs 20 and 21 below);

we may stop acting for you immediately & we will let the other party know we no longer act for you.

17. Request For Itemised Invoices

If we give you a lump sum invoice you are entitled to request that we provide an itemised invoice. You must make that request within 30 days of us giving you a lump sum invoice. We will provide you with an itemised invoice within 21 days of your request & will not charge you for preparing the itemised invoice.

18. Costs Assessment

You may apply to a taxing officer for an assessment of the whole or any part of an invoice we give you, even if that invoice has been wholly or partly paid. Your application for a costs assessment must be made within 12 months of us giving you our invoice. The law of the jurisdiction of Western Australia applies to legal costs in relation to the legal services we provide.

19. Changes In Circumstances- Effects On Legal Services & Legal Costs

Circumstances change and there are many variables that may impact legal costs. We will endeavour to provide you with details, in a timely manner, of changed circumstances that affect the extent and nature of the legal services we provide under this Agreement and the effect of these changes on our legal costs.

20. Advance Payment Into Trust Account

We may request that you pay monies into our Trust Account before we complete any legal services for you. You agree to pay these monies into our Trust Account.

21. Trust Account Monies Will Be Used To Pay Our Invoices & Other Authorised Expenses

You irrevocably authorise us to use the monies that you pay into our Trust Account (or other monies that we've received and hold on your behalf in our Trust Account) to pay towards our invoice(s) and any other expenses for which you are responsible or which you've authorised us to pay or incur.

Within 14 days of us using monies that we hold in our Trust Account on your behalf to pay all or part of an invoice we have issued to you, we will give you a statement to show how these trust monies were applied.

22. We Are Your Agent

We are your agent and may incur expenses (such as court filing fees, search fees, fees charged by an independent barrister etc) on your behalf. You are responsible for any expenses we incur on your behalf and you agree to reimburse us for these expenses. So far as reasonably possible, we will obtain your consent before incurring any expenses on your behalf.

23. Termination Of This Agreement By You

You can terminate this Agreement at any time by notice in writing. You will remain responsible for paying all legal costs which we may properly charge up to the time of receipt of the notice by us.

24. Termination Of This Agreement By Us

We may terminate this Agreement by writing to you and will stop acting for you if:

- 24.1 you do not comply with this Agreement; or
- 24.2 we form the opinion, on reasonable grounds, that mutual trust & confidence do not exist between us;
- 24.3 we consider, on reasonable grounds, that by continuing to act for you we may breach professional conduct rules.

25. Lien

We are entitled to retain all files, documents and personal property relating to your matter until all invoices that we have rendered to you have been paid in full or until a court orders otherwise.

26. Variation Of This Agreement

This Agreement is binding on you and us. This Agreement cannot be varied except in writing.

27. Reasonable Care

We will take reasonable care in providing legal services to you. If you suffer injury, loss or damage partly as a result of our negligence in providing legal service to you and partly as a result of your own negligence, any claim you make against us for breach of contract will be reduced, as if the claim was based in negligence, to the extent that it is just and equitable having regard to your share in the responsibility for the injury, loss or damage.

28. Copyright

We hold copyright in relation to all documents we prepare for you or have given to you. You must not reproduce, distribute or transmit these documents unless you have our prior written permission.

29. Retention & Destruction of Your File

We are entitled to destroy your file seven (7) years after completion of your matter. We may, in our sole discretion, elect to destroy the physical copy (if any) of your file on the condition that we retain an electronic copy of your file for the full period of 7 years. We can destroy your file, whether physical or electronic, earlier if we give you written notice and obtain your consent.

30. Setting Aside This Agreement

You can apply to the Supreme Court to have this Costs Agreement reviewed. If the court forms the view that this Agreement is not fair & equitable, the legal costs payable by you may be reduced and this Agreement may be set aside.

31. Changes To Our Fees

The fees we charge pursuant to this Agreement in "Schedule 1- List of Fees" are subject to change. Where we propose to change our fees, we will notify you in writing of the proposed revised fees and the date from which the revised fees will apply. The increase will not exceed the amount of the general increase in the CPI index (or 10%, whichever is the greater) since the date of this Agreement or since the last increase to the fees we charge pursuant to this Agreement.

You can accept the revised fees in writing or by your conduct through continuing to instruct us. If you do not accept the revised fees within 21 days of us giving notice of the change, we may cease to act for you.

32. Other Law Practices May Act for You Without A Costs Agreement

By accepting this offer to enter into a costs agreement, you acknowledge that other Law Practices may be willing to act for you in accordance with the relevant court scale and/or without requiring you to enter into a costs agreement. In either circumstance, their fees will be different (most likely, higher) to the fees we are entitled to charge you pursuant to this Agreement.

33. Definitions

Reference in this document to "this Agreement" is a reference to the offer, made by us to you, to enter into a costs agreement in accordance with the terms & conditions set out here.

Reference in this document to "invoice" means invoice, invoices, bill, bills, account or accounts.

34. Other Terms Of This Agreement

By accepting this offer to enter into a costs agreement, you confirm that you have read & understood the following information & documents:

- 34.1 Schedule 1 to Costs Agreement- List of Fees;
- 34.2 Costs Disclosure Statement;
- 34.3 current *Legal Practitioners (Family Court of Western Australia) Report & Determination*;
- 34.4 current *Legal Practitioners (Magistrates Court) (Family Law) Report & Determination*;
- 34.5 Duty of Disclosure brochure (published by FCWA); and
- 34.6 Marriage, Families & Separation brochure (published by the FCWA).