

O'Loughlins Lawyers Costs Offer

We believe in transparent communication with our clients about how we charge and how we can assist you to achieve the best outcome for you.

The following terms set out the basis upon which O'Loughlins Lawyers (**we, us, our**) offer to act for a client (**you**).

You are entitled to seek independent legal advice about these terms.

This is an offer by us to act for you.

If you agree with these terms, please print, sign and date this document and return a completed copy to us by delivery, post or email.

You may also accept these terms by your conduct in paying accounts expressly calculated under these terms, or by your conduct in instructing us after you have received our letter.

These terms apply to all matters on which you instruct us, unless we and you agree in writing on different terms or we are allowed by the *Legal Practitioners Act 1981* to have a different arrangement. Those terms are as follows:

1. Scope of the legal work

- 1.1. On each occasion that you instruct us, we will set out in a letter the relevant legal work that you have asked us to do and our fee estimate for doing that legal work (**the letter**).
- 1.2. The letter and these terms together form our agreement with you regarding the matter that you have instructed us on.

2. Doing the work

- 2.1. The partner or consultant signing the letter is your client relationship partner or consultant, and is the person to contact about these terms, our accounts, any complaints and any compliments.
- 2.2. For each new matter, the letter will inform you who is the relevant partner or consultant responsible for your matter.
- 2.3. That partner or consultant will either do the work or delegate all or part of that work to other lawyers and nonlegal staff as appropriate for your matter.

3. Fees

- 3.1. Unless we agree otherwise with you in writing, our fees are calculated on a time costing basis. Our hourly rates are set out in the letter. These are updated on 1 July each year.
- 3.2. Each hour is divided into 10 units of 6 minutes duration. You are charged for a minimum amount of 6 minutes, even if the legal work does not take that long. This means that if a particular task takes only 2 minutes, you will be charged for 6 minutes. However, we do not divide up the work to increase the units. Where possible, we do the relevant legal work in one continuous block of time.
- 3.3. Our fees are calculated by multiplying the number of units used in doing the legal work

by 1/10th of the hourly rate applicable to the person doing the work.

- 3.4. For example, if we have taken 36 minutes to perform a legal task and the lawyer's hourly rate is \$400.00 plus GST per hour, each unit is worth \$40.00 plus GST. 36 minutes of time is 6 units and the charge will be 6 multiplied by \$40.00 which equals \$240.00 plus GST.
- 3.5. Hourly rates vary depending on the level of experience and expertise of the person doing the work. When we send you the letter, we will advise you of the hourly rates that are applicable to your matter at that time.
- 3.6. Our hourly rates are fixed until the end of the financial year in which the matter is opened. If the matter is not finalised by the end of the financial year, we will then advise you in writing of our proposed rates for the new financial year. You are not obliged to accept these rates but if you do not accept these rates we may stop acting for you. If you accept the rates, either expressly or by continuing to instruct us or paying bills expressly calculated upon those rates, they are binding on you.
- 3.7. Our hourly rates are different to the rates in the cost scales in the Uniform Civil Rules, and other scales of costs applicable in different courts and tribunals.
- 3.8. There may be other solicitors who are prepared to act for you and charge according to the relevant scale.
- 3.9. Our rates are likely to result in a higher charge than if the scale were used. Other solicitors may be prepared to do the work for a lesser fee.

4. Disbursements

- 4.1. In addition to our fees, we will charge you for expenses incurred or paid for you (**disbursements**).
- 4.2. For example, disbursements include expert's fees, court fees, government fees, search fees and couriers. We do not charge the carrier's charge for phone calls or data usage.
- 4.3. We charge disbursements at what they cost us.
- 4.4. If we need to incur a disbursement which is out of the ordinary, we will provide you with advice and seek your specific instructions before doing so.
- 4.5. We incur disbursements as your agent.
- 4.6. You must pay us or reimburse us for all disbursements including any GST on the disbursements.
- 4.7. We may charge for printing and photocopying where more than 100 pages at a time are printed or photocopied. We charge a fee of 35 cents plus GST for each page. This may be more than allowed under the applicable court or tribunal scale.

5. Legal agent fees

- 5.1. We may retain a legal agent such as a barrister, country agent, interstate agent or costs consultant to act for you in a particular matter.
- 5.2. When we do, we will let you know how that person intends to charge and an estimate of the fees which will be charged by that legal agent, and any major variables which will affect the calculation of those costs.
- 5.3. If your matter is a litigation matter, and the legal agent's fees are likely to exceed what may be recovered from the other side of the litigation, we will inform you of that. If you instruct us to engage the legal agent, you have agreed to pay a higher fee than you are likely to recover from the other side.

6. Fee estimates

- 6.1. When you instruct us on a new matter, in the letter we must:
 - (a) estimate our fees and disbursements and set out our assumptions on the scope of the legal work in making that fee estimate; or
 - (b) inform you that it is not possible at that time to provide an accurate estimate of the fees and disbursements that we will charge you for that matter, but provide a range of likely fees. We will set out the basis for that estimate.
- 6.2. Clause 6.1 does not apply where the urgency of the advice or other factors prevent us from giving a fee estimate before commencing the work.
- 6.3. The estimate of fees and disbursements is a preliminary estimate and not a quotation or a fixed maximum charge. We will charge you for work actually done and the expenses incurred calculated on the hourly rates and other terms set out in the letter.

7. Updating of advice

You have the right to be notified of any substantial change to the matters to be disclosed to you under the *Legal Practitioners Act 1981*, including any substantial change to the estimated costs of work.

8. Litigation matters

- 8.1. Our estimate only refers to the fees that we charge you. You may have to pay some or all of the fees of the other parties in the litigation.
- 8.2. Our fees are payable by you whether or not you have a right to recover some or all of your costs from another party in the litigation.
- 8.3. The scale of fees in the court or tribunal applicable to your matter will usually determine what can be recovered from the other party if you are successful.
- 8.4. Even if you are successful in obtaining an order for fees to be payable by another party in the litigation, it is most unlikely that it will cover the whole of your legal costs.
- 8.5. You must pay the total of our costs which includes the difference between our fees and

the fees that you can recover from the other party in the litigation.

- 8.6. Any order that you recover some of your fees from the other party is likely to be for an amount substantially less than what is due to us under this agreement.
- 8.7. In the letter, if possible, we will give you an estimate of the range of fees which may be recovered if you are successful in the litigation. If we are unable to do this at the start of the matter, we will do so as soon as it is practical to do so.
- 8.8. If you lose, you may have to pay the legal fees of another party to the litigation as well as our fees.
- 8.9. In the letter, if possible, we will give you an estimate of the range of fees that you may have to pay if you are unsuccessful, and the basis for that estimate. If we are unable to do this at the start of the matter, we will do so as soon as it is practical to do so.
- 8.10. If we negotiate a settlement of a litigation matter for you, prior to settlement we will provide you with a reasonable estimate of the fees we will charge you and an estimate of the contribution to those fees likely to be received from another party to the litigation.
- 8.11. This will enable you to work out the likely minimum net amount that you will receive from the litigation.
- 8.12. At that point, we must also give you a reasonable estimate of the fees we will charge you and an estimate of what you may have to pay to the other party if you lose the litigation.

9. Trust money

- 9.1. During the course of the matter, we can ask you to pay money into our trust account to cover anticipated fees or anticipated disbursements or both.
- 9.2. We do not have to do any further work on that matter or incur any disbursement until we have received the money requested.
- 9.3. If it is a litigation matter, we may request that at least 28 days before the trial date the amount reasonably estimated by us to cover the full cost of the trial including barrister's fees, court or tribunal fees and witness fees be paid into our trust account.
- 9.4. If you do not comply with any such request, we may suspend work or terminate this agreement as it relates to that matter and stop acting for you. We may then take immediate steps to remove ourselves from the court or tribunal file as acting for you.

10. Accounts and interest

- 10.1. An account for our fees and disbursements will be sent at appropriate times during the course of the matter. As a general rule, you should expect an account every month from us, but at least 21 days from the last one.
- 10.2. However, we may agree with you in the letter to only send an account to you upon the conclusion of the matter. If we and you agree

to do so, your requirement to pay us is not dependent upon a successful outcome for you.

- 10.3. Unless otherwise agreed, you must pay our accounts within 14 days of receipt.
- 10.4. If not paid within 14 days we may suspend work on your matter or terminate this agreement in relation to that matter and stop acting for you.
- 10.5. If you do not pay an account within 30 days of receipt we may charge interest on any amount outstanding at the rate of 2% plus the Reserve Bank of Australia Cash Target Rate (at the date of issue of the account) per year.
- 10.6. The following avenues are available to you if you are not happy with a bill:
 - (a) requesting an itemised bill;
 - (b) discussing your concerns with us;
 - (c) having our costs adjudicated;
 - (d) applying to set aside our costs agreement;
 - (e) making a complaint to the Legal Profession Conduct Commissioner (if you believe there has been over charging).

There may be other avenues available in your State or Territory (such as mediation).

For more information about your rights, please read the fact sheet titled *Your rights to challenge legal costs*. It is on our website under the "Costs" section on the home page or you can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

11. Liability

- 11.1. If there is more than one of you, then you are jointly and severally liable for our fees and disbursements.
- 11.2. If you are a proprietary limited company, then we may ask the directors of that company to provide a director's guarantee. If you do not provide the director's guarantee, we may decline to accept your retainer to act for you.
- 11.3. Unless we specifically agree with you, our retainer does not require us to give you advice with respect to any tax or duty.

12. Our working relationship

- 12.1. We always need your appropriate involvement in a matter to ensure that we can properly represent you.
- 12.2. Accordingly, you agree to reply to correspondence and emails, return our phone calls, respond reasonably to requests for instructions and pay our accounts and money into trust as required under this agreement.
- 12.3. If you do not work with us in these ways, then we may terminate this agreement and stop acting for you in relation to all matters.
- 12.4. Other than in circumstances where there is an actual conflict of interest or in family law matters, if you do not instruct us on any

matters for at least three years from when we send you our last account, we may assume that you are no longer our client and that unless we have an actual conflict of interest or breach of duty of confidentiality to you, we may act against you for one of our other clients.

- 12.5. We never change the details of our bank accounts by an email. If you receive an email from us suggesting otherwise, you pay money into that bank account at your own risk, and you are not relieved from your obligation to pay money to our bank accounts. We suggest that you call our office and verify before any payment is made.

13. Intellectual property rights

- 13.1. Unless we otherwise agree with you, we have intellectual property rights in all documents that we prepare for you.
- 13.2. You have the right to only use those documents for the purposes for which they are prepared by us for you.

14. Records and files

- 14.1. To the extent allowed by law, all documents created by us on any matter remain our property.
- 14.2. We keep our file in hard copy storage or electronic storage or both for at least 7 years from the date that our file is closed. After that, we may destroy the file without notice to you.
- 14.3. If you have signed this agreement either electronically or in wet ink and you want us to retrieve any documents or things from the file after conclusion of a matter, we charge you what our archive storage facility charges us plus \$50.00 plus GST to cover our expenses in doing so.

15. Your rights

- 15.1. You have the right to:
 - (a) negotiate a costs agreement with us;
 - (b) receive a bill of costs from us;
 - (c) request an itemised bill of costs after you receive a lump sum account from us;
 - (d) request written reports about the progress of your matter and the costs incurred in your matter;
 - (e) discuss any concerns you may have with your matter or any fees estimate or account;
 - (f) apply for costs to be adjudicated within 6 months if you are unhappy with our costs;
 - (g) apply for the costs agreement to be set aside;
 - (h) make a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging);

- (i) accept or reject any offer we make for an interstate costs law to apply to your matter;
- (j) notify us that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the fact sheet titled *Legal Costs - your rights to know*. It is on our website under the "Payments & Costs" section or you can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

16. Termination of this agreement

- 16.1. You have the right to terminate our services at any time, but to the extent allowed by law we are entitled to withhold all papers (in hard copy or electronic form or both) obtained from or prepared for you or otherwise obtained in relation to the matter until all of our accounts have been paid. This does not limit clause 14.2.
- 16.2. We may stop acting for you if:
 - (a) you do not pay our accounts or pay money into our firm trust account within the agreed time;
 - (b) you do not comply with any of the other terms of this agreement;
 - (c) you fail to provide us with adequate instructions within a reasonable time or to comply with our reasonable requests to assist in representing you;
 - (d) you fail to reply to correspondence, or return telephone calls;
 - (e) we consider that the necessary relationship of trust and confidence required for a workable solicitor and client relationship has ceased to exist; or
 - (f) we consider that there are or may be ethical grounds (including a conflict of interest) which mean that we cannot continue to act for you.

17. Confidentiality and privacy

- 17.1. We maintain confidentiality in relation to any information given to us by you, unless you expressly authorise us to disclose that confidential information.
- 17.2. We collect personal information from you. We comply with the Australian Privacy Principles under the *Privacy Act*. Please refer to our Privacy Statement on our website about how we deal with your personal information.

18. Applicable law

- 18.1. This agreement is governed by South Australian Law.
- 18.2. We and you consent to the nonexclusive jurisdiction of the courts of South Australia with regard to any dispute arising from this agreement or our retainer or both.

19. Severance

- 19.1. If any clause in this agreement is unenforceable it can be severed from the agreement without affecting the validity of the balance of this agreement.

Acceptance of offer

I/We,
 Insert name(s) of signatories

have read, understand and agree with the above terms under which O'Loughlins Lawyers will act for

.....
 Insert client name(s)

Date:

.....
 Signature of authorised signatory

.....
 Print name of authorised signatory

Date:

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 Signature of authorised signatory

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 Print name of authorised signatory

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