

Explanatory Notes for Clients

Understanding Offer by Law Practices to
Enter into Costs Agreement

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Legal costs are regulated by the *Legal Profession Act*, which is the legislation that regulates the legal profession in Western Australia. Generally, a law practice can recover legal costs under an agreement called a costs agreement or under an applicable costs scale. A costs scale is a schedule of costs fixed by the Legal Costs Committee which is an independent statutory authority established under the *Legal Profession Act*.

These notes are intended to help you understand the *Offer by Law Practice to Enter into Costs Agreement* (the “Offer”). As the title suggests, it is an offer to enter into a costs agreement with you.

The law practice may ask you to accept the Offer to provide legal services on the terms and conditions set out in it. The Offer can be accepted by you by signing it or by your conduct, for example, by continuing to instruct the law practice. You do not have to accept the Offer. However, if you do not enter into the Agreement, the law practice may not wish to act for you.

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 it or instruct the law practice until you do.

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 costs agreement (the “Costs Agreement”).

Purpose of the Agreement

The Costs 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 the Costs Agreement or another costs agreement with the law practice and the law practice acts on your behalf then the costs which the law practice may charge you will be regulated by costs scales. This may happen for example if you refuse to accept the offer and the law practice still agrees to act for you.

A costs scale is a schedule of costs determined by the Legal Costs Committee which is an independent statutory authority established under the *Legal Profession Act 2008* that maintains regular reviews of costs scales (Determinations) to establish maximum rates for particular kinds of legal work where there is no costs agreement.

The Legal Costs Committee reviews costs scales and makes Determinations in areas of legal practice connected with:

- Supreme, District and Magistrates Courts
- Family Court
- State Administrative Tribunal
- Cases involving the application of the Official Prosecutions (Accused's Costs) Act
- Non-litigious commercial and probate work
- Notaries Public.

All costs scales (Determinations by the Legal Costs Committee) can be accessed and downloaded at the Legal Costs Committee's website www.legalcosts.wa.gov.au

By entering into the Costs Agreement, you allow the law practice to charge you costs which in most cases will be higher than the costs permitted under the costs scales fixed by the Legal Costs Committee or by the relevant Court or Tribunal. There may be other law practices that will charge in accordance with the costs scales.

The reason why the costs that the law practice will charge to you under the Costs Agreement will in most cases be higher than the costs permitted under a costs scale, is that the Costs Agreement allows the law practice to charge for all time spent on your affairs. Costs scales typically provide that some kinds of work might not be charged at all or may have a limit or cap in the number of hours that may be charged. For example, in Supreme Court litigation, the relevant scale provides that the maximum amount of time that may be charged for preparing a Statement of Claim is 10 hours.

Further, time billing (or charging by hourly rates) will in most cases result in higher charges because a uniform hourly rate applies to both complex and routine work.

If routine work is carried out by a senior lawyer that work may be charged at that lawyer's hourly rate under the Costs Agreement. The Costs Agreement permits the law practice to charge for all time spent on your affairs both of a complex and routine nature at the hourly rates prescribed for each practitioner undertaking work for you.

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.

Hourly rate for legal Services

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

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.

Except for progress reports you request about your legal costs, you will be charged this way for all the work which the law practice does on your behalf, such as making telephone calls, writing letters, researching the law, preparing documents, travelling (where related to work on your matter), and attending Court including time spent waiting. As stated above, the hourly rates do not vary according to the task performed. This differs to charging under costs scales. Costs determined under a costs scale are calculated by reference to the kind of work done. This means that under the relevant costs scale some kinds of work carried out by the law practice might not be chargeable at all.

The lawyer in the law practice with the conduct of your matter may also arrange for other lawyers or clerks in the law practice to do work on your behalf. If this happens then you will be charged according to the hourly rates for those lawyers and clerks set out in Part 2, Item 4A.

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 Costs 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 the 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 2, 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 2, 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 3, 6) 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 14.

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/Assessment/Applicable Law

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

You may apply to a taxing officer of the Supreme Court of Western Australia for the assessment of the whole or any part of a bill for legal costs that you have received (even if that bill has been wholly or partly paid). However, your application for assessment must be made within 12 months after the final bill was rendered to you.

The law of Western Australia applies to legal costs in relation to the agreement.

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