



ADITUM LAWYERS

ABN: 49 648 489 712

Client Guide

General Terms of Engagement

Welcome

This guide is to help clients understand what to expect when engaging us to provide legal and other services.



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www.aditum.com.au

1. Fee Agreement

When accepted by you, this document and the letter, email or communication concerning the scope of your instructions, fees or retainer together form a costs agreement between us (Fee Agreement) for the purposes of Part 4.3 of the Legal Profession Uniform Law (NSW) (Act).

This document also explains how we invoice you for services and includes information that we are required to give you under the Act.

The Act applies to the provision of legal services but not to the provision of non-legal services. You have the right to negotiate the terms of this Fee Agreement.

2. Client satisfaction

We are confident that we provide high quality legal and other services.

The complete satisfaction of our clients is critically important. We welcome feedback at all times.

If you have any comments or concerns, we ask that you raise them with us. In the first instance, please contact the relevant supervising Director.

If for any reason matters cannot be addressed to your satisfaction or you wish to speak to someone unconnected with your matter you are welcome to contact any of our other Directors or our Complaints Officer, Carlyon Ward.

3. Your instructions

Your instructions are for us to act for you on an ongoing basis in relation to the matter, project or transaction described in any letter, email or communication concerning the scope of your instructions, fees or retainer.

It is imperative that we understand your instructions. If you are in any doubt, please let us know immediately.

Please provide us with all relevant information and documents, including contracts, notes of relevant meetings or conversations and any previous advice given concerning the relevant matter.

If you are not sure whether something is relevant, please let us know as soon as possible.

4. Additional services

You may seek additional ad hoc assistance and other services (substantive or not) from time to time. You may give us such instructions at any time. Such work will be undertaken in accordance with this Fee Agreement.

5. Person responsible

The work you instruct us to do will be carried out primarily by the persons named in any relevant communication.

Where appropriate the supervising Director may delegate work to supporting team members.

In certain circumstances, legal services provided by us may not be undertaken by Australian legal practitioners i.e. an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.

If this is the case, the relevant letter, email or communication will identify those legal services and indicate the status or qualifications of the person or persons who will provide the legal services.

Paralegals are not Australian legal practitioners but commonly have legal qualifications and/or relevant legal or practical experience.

We may use other staff, specialist counsel and consultants; including from affiliated or relationship firms. You authorise us to do whatever is necessary or convenient to act on your behalf.

6. Chargeable work

This is time we spend on all the various tasks undertaken in connection with your instructions. This includes meetings with you, other parties and professional advisors, telephone discussions, conferences, travelling and waiting, attending courts or tribunals, preparing and reviewing documents and correspondence, preparing comments or mark-ups with suggested amendments, legal research, conducting searches, registering and stamping documents, undertaking negotiations, advising, communicating with you or third parties and all other ancillary work within the general scope of your instructions.

Our fees are based on seniority and the time (calculated in 6 minute increments) spent by the relevant lawyer or advisor.

No fixed cost provisions made by or under legislation apply to our fees associated with the legal services we provide to you.

7. Hourly rates

Directors \$550 - \$620

Associate Director \$500 - \$550

Senior Associates \$435 - \$490

Lawyers/Associates \$250 - \$400

Senior Advisors \$330

Paralegals/Advisors \$135 - \$220



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We may from to time amend our hourly rates by written notice. Our standard rates are usually fixed and adjusted at the start of each financial year for that year (i.e. from 1 July) and any changes notified to clients shortly afterwards. Unless you object to any change within 21 days of receiving notice, you agree to the changed rates.

8. Estimate of fees

We will provide you with an estimate of our fees if reasonably practicable, or, if not, a range of estimates of the total legal fees and an explanation of the major variables that will affect the calculation of those fees. Our estimate of fees is given in the letter, email or communication concerning your instructions. Estimates we provide are given on the information available to us at the relevant time. These estimates invariably change (sometimes substantially) when more information is available to us and as the matter progresses. The major factors which affect estimates include:

- unexpected complications;
- the extent of negotiations;
- the amount of documents;
- a revised scope of work; and
- delays or extensions.

If we are requested to undertake substantive additional and/or alternative services which fall outside an existing scope of work or instructions, we will notify you of the estimated costs and disbursements in writing, either by letter or email.

In the event of a need to materially revise an estimate, we will notify you as soon as practicable.

9. Expenses and disbursements

We do not charge for reasonable levels of internal expenses such as photocopying, printing, telephone calls and faxes. However, if significant costs are incurred, we reserve the right to invoice you for a reasonable contribution towards such costs which in the case of photocopying is \$0.30 per page.

You will reimburse us for disbursements, being sums which we pay or are liable to pay to others on your behalf. These may include, for example, external photocopying or printing costs, courier costs, travel expenses, search fees, enquiry fees and court filing fees. We may identify specific expenses and disbursements in relevant communications.

Please allow up to A\$250 for incidental disbursements in relation to a matter.

We will inform you of any material expenses or disbursements which we have not specifically anticipated, or any material variations to the anticipated expenses or disbursements, as soon as is reasonably practicable.

10. Third party expenses

It may become necessary or advisable to obtain specialist advice or services from third parties such as another law practice which specialises in a particular area of law or barristers, accountants, experts or other consultants. We will not engage third parties on your behalf without first consulting with you and obtaining your agreement and disclosing to you the relevant information as required by the Act. Alternatively, we may ask you to enter into a costs agreement directly with the third party.

You will reimburse us for the actual disbursement costs of third party advice or services incurred on your behalf. This includes where we have an immediate liability for payment which is unpaid. We may issue a disbursements only invoice prior to or after incurring an expense. We will not ask for your consent for everything we do but we will consult regularly including before each significant step where this is appropriate.

You will reimburse us for the actual disbursement costs of third party advice or services incurred on your behalf. This includes where we have an immediate liability for payment which is unpaid.

We may issue a disbursements only invoice prior to or after incurring an expense.

We will not ask for your consent for everything we do but we will consult regularly including before each significant step where this is appropriate.

11. Payment into trust account

If we request, you must pay us in advance on account of costs and expenses. We reserve the right to cease or suspend work pending receipt. Monies received will be held on your behalf in our general client trust account.

You authorise us to receive any judgment, settlement monies or funds from any source in respect of your work and deposit them into our client trust account. You also authorise and instruct us to withdraw any amounts held in our trust account on your behalf and apply these towards payment of our costs, disbursements and expenses for the purposes of Subrule (4) of Rule 42 of the Legal Profession Uniform General Rules 2015 (NSW). We may also withdraw trust money as otherwise may be permitted in accordance with such Rule 42.

Any monies held in our trust account on your behalf will be returned to you at the resolution of the matter provided that all of our accounts have been settled in full. In accordance with the Legal Profession Uniform Law Application Act 2014, interest earned on trust account money is paid to the Law Society of New South Wales.

12. Changes to disclosures

We will notify you of any substantial change to anything included in a required disclosure to you in this Fee Agreement as soon as is reasonably practicable after we become aware of that change.

13. Exchange rate costs

If we incur disbursements on your behalf in a foreign currency, we will invoice you at the applicable exchange rate at the time of preparing the invoice on which the disbursement is described.





We will also invoice you for the cost charged to us for sending the foreign currency payment to the relevant supplier. If you do not pay the invoice by the due date, we will be entitled to invoice you for any currency exchange costs incurred as a result of currency movements between the date of our invoice and the date of payment by you.

14. GST

All rates, charges, estimates, expenses, disbursements and other amounts set out in this Fee Agreement for any taxable supply are, unless otherwise stated, exclusive of Goods and Services Tax (GST).

You must pay all GST in addition to all other sums payable by you to us or to any third party (in the same manner and at the same time as the costs and disbursements to which it relates are payable). The amount of GST payable by you will be calculated by multiplying the sum payable for the supply by the relevant GST rate (currently 10%) and will be payable when you are required to pay for the supply.

We will issue a tax invoice for any taxable supply by us to you, which will enable you, if permitted by the GST law, to claim a credit for GST paid by you. If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

15. Billing Practice

You have a right to receive a bill of costs for legal services provided. Our arrangement with you is not an 'entire arrangement' to carry out all work reasonably required in connection with your matter until its conclusion. Instead, we carry out stages of work and issue 'interim bills' for that work at intervals (usually one month or more or less at our option), subject to our right to cease acting for you.

Regular billing enables you to monitor the commercial viability of a matter and assists with budgeting.

Our bills, unless they state otherwise, constitute our final invoices for the work carried out and disbursements incurred during the period to which they relate but are issued on an E&OE basis and may not include all time recorded.

We issue a final bill of costs and disbursements incurred on conclusion of your matter or if a Fee Agreement is terminated. Your bill may be sent by email and will provide a brief description of the work done and the amount charged. If we send you a lump sum bill, you may request an itemised bill. An itemised bill may include items of costs not taken into account in the lump sum bill, thereby increasing costs. If an itemised bill is required we reserve our right to rely on the itemised bill as our final bill. You will not be charged for the preparation of an itemised bill.

16. Payment of Fees

Unless otherwise agreed, we require payment of our tax invoice, in respect of our fees and disbursements in full (without any deduction or set-off) within 30 days of the date of each invoice. Our invoices include payment directions.

17. Overdue or unpaid fees

If our costs are not paid within 30 days of receipt by you of our bill of costs we may charge you interest in accordance with Section 195 of the Act on the unpaid amount at the rate prescribed in Rule 75 (as amended) of the Legal Profession Uniform General Rules 2015 (NSW). The current rate is 2% above the RBS's cash rate (www.rbs.gov.au) per annum.

18. Review of bills for legal services

In relation to the legal services provided by us, the Act gives you the right to:

- make a complaint to the Office of the Legal Services Commissioner (Commissioner). The Commissioner may deal with a costs dispute if the total bill for legal costs of any one matter that is less than \$100,000 (indexed, including disbursements but excluding interest and GST), or if the bill is greater than this amount the total costs in dispute are less than \$10,000 (indexed, including disbursements but excluding interest and GST). A costs dispute is required to be made within 60 days after the legal costs become payable, or within 30 days after any request for an itemised bill was complied with. This time requirement may be waived or extended by the Commissioner in certain circumstances; or
- apply to the Manager, Costs Assessment at the Supreme Court of NSW for an assessment of the fairness and reasonableness of the whole or any part of the costs paid or payable; or
- apply to the Supreme Court of NSW to have a costs agreement, or a provision of a costs agreement, entered into set aside by the Costs Assessor on the basis that it is not fair or reasonable.

A costs assessment application must be made within 12 months after you are given the bill or a request for payment, or within 12 months after the costs are paid where no bill is given or request made. This time requirement may be waived or extended where certain circumstances exist.

For more information about your rights, please read the fact sheet entitled your right to challenge legal costs which is available at www.lawsociety.com.au.





19. Progress reports

You are entitled to request, at reasonable intervals, written progress reports on your matters. Our normal hourly rates will apply for this service. You are entitled to request a written report on the legal costs incurred to date or since the last bill of costs was given to you, free of charge.

20. Ceasing to act

We hope to complete every engagement. However, you may terminate your retainer and this Fee Agreement at any time on reasonable notice.

We may terminate a retainer and this Fee Agreement for sufficient cause and on reasonable notice.

We may in any event terminate a retainer and this Fee Agreement on 7 days' written notice if:

- you do not pay our bills when due;
- you fail to give us adequate instructions within a reasonable time;
- you provide us with instructions that we consider deliberately false or intentionally misleading;
- you engage another law or advisory practice on the relevant matter without our consent;
- you do not accept our (or counsel's) advice;
- we, on reasonable grounds, consider that a conflict of interest exists or arises;
- you advise us that we have lost your confidence; or
- you object to a change in our hourly rates.

If a retainer or this Fee Agreement is terminated, you will be liable for payment of costs and disbursements properly incurred by us up to the date of termination. For lump sum or fixed fee matters, you must pay the part of the lump sum or fixed fee that we reasonably estimate has been incurred in respect of the services provided to date plus the costs, expenses and disbursements.

If after receiving notice of termination we need to carry out some urgent work to protect your position before new lawyers or advisors are instructed or files are returned, we may also charge for assistance and in handing the matter over to you or to your new lawyers or advisors.

21. Retention

We may be entitled to retain possession of your papers and documents and any cash proceeds of litigation or settlements while there is money owing to us for our fees or for any expenses, disbursements or third party costs, incurred by us on your behalf, unless and until security is provided for our costs.

22. Copyright

We retain copyright in documents which we prepare in the course of the retainer unless agreed otherwise in writing.

23. Keeping your documents

On completion of your work, we will retain any papers or documents to which you are entitled but which are left in our possession (except documents deposited in safe custody). If we do not receive a request from you for your file papers or that documents may be required in relation to legal proceedings that have commenced or are likely to commence, we have your authority to destroy the file 7 years after the completion of the work.

During this period, we may hold papers and documents at an off-site storage facility. If we are required to retrieve files at any time we may charge you a reasonable fee in relation to their retrieval. Please make sure that you collect from us any important documents including for tax or any other purposes.

24. Conflict of interest

We will take all reasonable care in the performance of a retainer to avoid any conflict of interest.

If we become aware of circumstances where we believe a conflict may arise we will promptly inform you and take such action as may be reasonable and necessary to protect your interests. In some circumstances we may be obliged to cease acting for you.

25. Privacy protection

We will maintain in a secure manner all confidential information imparted to us in connection with a retainer. We will not, without your authority, disclose to another client confidential information or knowledge obtained by us as a result of acting for you.

We will not disclose to you, nor be under any obligation to disclose to you any confidential information or knowledge obtained by us as a result of acting for any other client.

We often provide details of our experience for tenders, directories or for public material about the practice or to journalists. Unless you state the contrary, we may inform third parties, including journalists, of the fact that we act for you and the general nature of matters we are handling. If we would like to publicise any further details, we will first seek your approval.

In the course of you instructing us to provide you with services or in connection with the provision of such services we may collect personal information from directors, officers, employees, agents, representatives and others from your organisation. This information is used to advise you of developments generally and to inform you of upcoming seminars, events and business development activities which we consider may be of interest to you.

You consent to the collection and use of all such information but may opt out at any time.





26. Electronic communications

Unless otherwise agreed with you, we generally only send documents and correspondence to you by email and not by post or other physical means of delivery unless we believe physical delivery is appropriate.

You agree that if you elect to correspond or exchange documents with us in electronic form the transmission may be subject to unauthorised interference by a third party beyond our control. You acknowledge that you are aware that we store confidential client information on our computer system. We will have no liability to you for any loss or damage which you may suffer as a consequence of any unauthorised interception of, or interference with, the transmission, or the storage within our computer system, or information confidential to you.

27. Privileged communications

Many communications between us concerning legal work for you will be protected by 'legal professional privilege'. This protects such communications from compulsory disclosure to third parties.

The privilege will usually also protect our communications with third parties on your behalf which are in contemplation of legal proceedings, but not our other communications with third parties. It is possible that only key individuals within a client organisation involved in instructing us will be treated as the 'client' for the purposes of the privilege. Accordingly, communications by us with non-key individuals within a client and communications forwarded to such persons may be treated as third party communications which are not protected.

28. Limitation of liability

This Fee Agreement constitutes the entire agreement between you and us for a retainer with us and you accept that you rely only on the express warranties, promises and representations made in this Fee Agreement.

Where applicable, civil liability in actions that may arise in contract, for negligence or other tort, for breach of duty, misrepresentation or otherwise whatsoever (but not death, personal injury, breach of trust or certain liability under the Real Property Act 1900 (NSW)) is limited by a scheme approved under the Professional Standards Act 1994 (NSW) as amended (Scheme). Solicitor members of the Law Society of NSW with a current practising certificate employed by us, each of our Directors and other officers and each of our employees are members of the Scheme. The Scheme applies to anything done or omitted by any person to whom the Scheme applies in acting in the performance of his or her occupation.

It is agreed that:

- subject to the fifth sub-paragraph below, if you make a claim for loss or damages against us, to which the Scheme does not apply, our liability will not exceed, after taking account of the immediately following subparagraph, an amount equivalent to the maximum liability and monetary ceiling applicable to a class 1 law practice under the Scheme if the Scheme was applicable to the claim;

- subject to the fifth sub-paragraph below, if you make a claim against us for loss or damage suffered partly as the result of your failure to take reasonable care, the damages which may be recoverable by you from us, whether the claim is made in contract, for negligence or other tort, for breach of duty,

misrepresentation or otherwise whatsoever are to be reduced to such extent as is just and equitable having regard to the maximum liability and monetary ceiling applicable to a class 1 law practice under the Scheme if the Scheme was applicable to the claim;

- subject to section 33 of the Act, any claim may only be made against us (and enforced against our assets); namely, the contracting party and not against our shareholders, employees, lawyers, Directors or other officers or consultants (but not independent contractors, against whom a claim shall be made directly) whether on the basis of the existence of a special or similar relationship or on any other basis whatsoever;

- subject to the fifth sub-paragraph below, in no circumstances will we be liable for any indirect or consequential loss or damages (including loss of profits or loss of business opportunities) suffered by you or any other person arising out of, in connection with or relating to the performance, breach, termination or non-observance of this Fee Agreement; and

- nothing in this Fee Agreement excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

29. Contribution of loss

We may claim against you if you contribute to any loss suffered by us in the course of doing work for you.





30. Applicable law

The law of New South Wales applies to our engagement under this Fee Agreement.

If any legal services for which we are instructed by you have a substantial connection with the law of any other State or Territory, you may wish to enter into an agreement with us under the corresponding law of that other State or Territory or notify us within the time allowed under the corresponding law that you require the provisions of the corresponding law to apply to such legal services. If you do so, as an incorporated legal practice, separate disclosures and requirements are imposed on us and we will disclose our costs in accordance with those requirements. You may, however, contract with us that the costs assessment scheme in New South Wales is applicable in the event of any dispute arising as to legal costs.

You have the right to:

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

31. Tax advice

We do not assume a duty or responsibility to advise you in relation to matters of taxation (including stamp and ad valorem duties). Please obtain appropriate advice from your tax adviser or other appropriately qualified professional with respect to any matter in which we are instructed to act for you.

32. Acceptance of terms

Please read your Fee Agreement carefully. If there is anything that you do not understand, do not accept a Fee Agreement until we have clarified matters. If there is anything that you feel concerned about please discuss the matter with us and, if necessary, request a change to the terms.

You may accept the terms of a Fee Agreement:

- orally by confirming your instructions with the relevant Director or employee; or
- if applicable, by signing a copy of the letter, concerning the scope of your instructions or fees or retainer and returning it to us; or
- by emailing us to confirm, in effect, that the relevant retainer, estimate, quote or Fee Agreement is accepted; or
- by requiring or expecting us (expressly or impliedly) to do the work which is the subject of the retainer; or
- by instructing us; or
- otherwise by virtue of your conduct.

If we do not hear from you within 5 days of the date of a relevant communication (or such lesser period as may be appropriate in the circumstances or where appropriate to protect your interests), we will proceed on the basis that you agree to the relevant retainer and Fee Agreement.

33. Dispute resolution

In defending or pursuing proceedings, the court or tribunal may order the other party to pay your costs of the proceedings. In most cases, the sum awarded will not cover the whole of your legal costs due to us and the gap could be substantial. The other party may not be able to pay the costs or any other sum awarded.

It is possible that the court or tribunal may make an order that you pay the other party's costs (if, for instance, you lose the case). These costs are payable by you to the other party in addition to the costs payable to us.

We will discuss with you possible cost outcomes during the conduct of your dispute. Specifically, we will provide you with an estimate of:

- the range of costs that may be recovered if you are successful in the litigation; and
- the range of costs you may be ordered to pay if you are unsuccessful.

34. Definitions used

For the purpose of this Fee Agreement, except where the context otherwise provides or requires, the term we or us or our or The Cosmetic Lawyer refers to Aditum Lawyers Pty Ltd and you or client refers to the person or persons to whom a relevant letter, email or other communication is addressed or from whom it is received by us or other person who gives us instructions to provide services or who enters into a costs letter or retainer with us from time to time as a client.

June 2021

