

Our ref:

Client name/s:

Address:

Phone:

Email:

Nature of matter:

02 May 2016

OUR SERVICES

We will provide legal services to you after you instruct us and we accept those instructions. We will provide our services promptly, efficiently and to the best of our ability.

We will act honestly, diligently and in good faith in our dealings with you and in the performance of our services for you.

We will act in your best interests but we are not required to do *and cannot do* anything which is unethical or unlawful.

We will not knowingly act in conflict with your interests on any matter where we are already acting for you on that matter.

We welcome your feedback and suggestions as to how we can improve our services to you.

CALCULATION OF OUR FEES AND OTHER CHARGES

Unless we agree the amount of our fees with you in writing in relation to specific instructions, our fees for professional services will be calculated primarily on the time spent by us attending to your matter, multiplied by the practitioner's relevant hourly rate.

Fees will be charged for all professional time for lawyers, law clerks and paralegals including but not limited to drafting, reviewing and completing documents, correspondence, advices, conferences, reading materials, travelling (where related to the work), telephone calls, court appearances, research and providing representation letters where requested by you.

Time is costed by reference to *six-minute units*. Each hour has ten such units. The minimum amount of time recorded as having been spent on a task (i.e. a telephone call, drafting a letter) will be one such unit. If we spend more than six minutes on a task or on a number of successive tasks in one session, the total time spent will be rounded up to the next full unit. As an example, 33 minutes spent on a task would be rounded up to 6 units.

Our hourly rates differ depending on the experience and qualifications of the practitioner or staff member. These rates are set out in the attached schedule.

These rates will be reviewed annually. We will notify you of any adjustments. If you do not accept those adjustments, please notify us immediately as this may result in the termination of our appointment.

In some matters, we may, after discussion with you, charge a reasonable premium over and above the normal hourly charge.

We may from time to time request money in advance to be held in Trust on account of anticipated costs and disbursements.

Please refer to the Schedule for details of money we require in advance.

ESTIMATES

So far as we are able, we will provide you with an estimate of our fees before commencing work for you. We will also endeavour to update or revise this estimate from time to time as we proceed.

{00217375}
Unit 4, 140 Bussell Highway, Margaret River WA 6285

8 Fairbairn Road, Busselton WA 6280

All correspondence to:
PO Box 544 Margaret River WA 6285
Tel: 9757 3300
Fax: 9757 3500
reception@mcauliffe.com.au

McAuliffe Legal Pty Ltd trading as McAuliffe Legal is an incorporated legal practice. Mark McAuliffe is the Legal Practitioner Director

"Liability limited by a Scheme approved under the Professional Standards Legislation"

SCHEDULE OF PRELIMINARY ESTIMATE OF FEES

The costs that will be incurred will depend primarily upon your instructions but may be affected by the response of another party (if any) to the transaction or claim. Depending upon such response the course of the matter may be different incurring greater or lesser amounts of costs. As and when the response of another party is clear we will where possible adjust our estimates from time to time to provide you with a better view as to the estimated costs that will be incurred.

Activity: Estimate:

Activity: Estimate:

Activity: Estimate:

As we charge primarily on a time basis, our estimates will generally be based on our estimate of the likely time involved to complete the matter multiplied by the relevant hourly rate of the practitioner handling the matter. Unfortunately we cannot predict the time that will be involved in all matters.

DISBURSEMENTS

As your lawyer, we are your *agent*. As such, from time to time we may incur expenses on your behalf. So far as it is possible, we will obtain your consent before incurring substantial expenses on your behalf.

If we incur disbursements on your behalf they will be charged to you in accordance with the provisions of this agreement. However as a general practice we will ask you to provide payment to any third parties for any disbursements for any amount that can be predetermined.

Other disbursements will be charged for on the basis set out in the schedule.

GST

Where relevant GST legislation requires GST, we will charge GST over and above the rates referred to in this agreement.

OUR BILLING ARRANGEMENTS

We will bill you monthly on the first day of the month unless otherwise detailed herein.

Our bills are payable within 14 days of the date of the invoice.

If you do not pay the amount stated in our bills within 30 days, we may charge interest on any amount outstanding, calculated from the original due date for payment. Subject to any statutory qualification or limitation that may apply, the rate which we will charge will be the prescribed rate by the Legal Profession Regulations 2009.

We may cease acting for you immediately upon an account becoming overdue.

We have a lien on all documents, funds and records in any form whatsoever in our possession until payment in full of all our bills for all matters in respect of which you have retained us.

We are also entitled to retain all your files, documents and personal property in our possession relating to your matters until our accounts are paid in full or a Court otherwise orders.

Alternative billing arrangements:

INDEPENDENT COUNSEL, ADVOCATES & SOLICITOR AGENTS

As a general rule McAuliffe Legal will attend to appearance in Margaret River or Busselton Courts for directions hearings and pre-trial conferences. Counsel and/or solicitor agents are retained from time to time for more complex hearings, if McAuliffe Legal is unavailable, or if counsel and/or solicitor agent's attendance is more cost effective. Counsel or agents will be retained for hearings in Bunbury or Perth.

If we need to brief independent counsel or an advocate to assist us in any of your matters, we will usually seek your approval and discuss the choice with you. We will also pass on any information regarding fee estimates provided to us.

As a matter of public policy, the law in Western Australia provides immunity from suit in relation to advocacy. Nothing in this agreement affects an advocate's immunity from suit in relation to any advocacy conducted on your behalf.

YOUR RIGHTS IN RELATION TO OUR FEES

From time to time, the Legal Costs Committee, constituted under State legislation, makes determinations as to the nature and level of solicitor's costs. These are known as "fee scales". There are different scales for each Court and for non-litigious matters.

In the absence of agreement to the contrary, the fee scales are the only basis upon which solicitors are entitled to charge.

{00217375}

By signing this agreement, you will be agreeing to a different basis of charging.

The fee scales provide for charges according to different activities, whereas the basis of charging under this agreement is primarily based upon time spent. Certain activities (such as research or internal conferences between legal personnel) may not be included in the applicable fee scales but will nonetheless attract a fee under these terms.

Our fees, based on time charging, may be more than if calculated under the statutory fee scales.

Where we have acted for you and recovered costs in accordance with an applicable scale we may increase our fees up to the amount of the relevant scale should you have been charged by us at a lesser rate.

You have rights in relation to a review of our costs and disbursements.

Within *thirty days* of receiving an account from us, you may require us, by notice in writing, to provide you with an itemised account of the costs the subject of the account. Within thirty days of receiving an itemised account, you may require us to submit the account to the Taxing Officer of the Supreme Court of Western Australia for review. In these circumstances, we may issue a revised account for review by the Taxing Officer. In some circumstances (where our original account did not charge you for all the time we spent on the matter) this revised account may be greater than the original account.

Under the provisions of the *Legal Profession Act* we are required to provide you with notification concerning your rights in respect to legal costs. We enclose herewith Form 2 to the Legal Profession Regulations 2009 setting out this statutory disclosure.

TERMINATION

You may terminate our agreement by giving us written notice at any time. If you do so, you will be obliged to pay our fees for work done and for other charges incurred up to the time of termination.

We may terminate our engagement without your consent, if there is a significant breach of this agreement by you (including failure on your part to pay any accounts in accordance with the terms of this agreement) or where any other good cause exists.

APPORTIONMENT OF LIABILITY

If you should claim compensation, damage or contribution from us for loss or damage claimed to have been suffered by you arising from acts or defaults, including negligence on our part, and such loss or damage is, in part or wholly:

Due to or contributed to by your own acts or defaults or by the acts or defaults of other persons for whom you are responsible; or

Due to or contributed to by one or more persons not being partners, employees or agents for whom we bear responsibility,

Then we will be liable only for that proportion of the total loss or damage suffered which is attributable to our acts or defaults relative to the totality of the acts or defaults of all persons causing or contributing to the loss or damage.

TRUST MONIES AND AUTHORISATION

It is a term of our engagement that (where it is consistent with the purposes for which the money is held) we may apply, at our discretion, any money held in Trust that we receive from you or on your behalf, in payment of our costs and disbursements we have incurred on your behalf and in payment of our outstanding invoices. If we do this, *we shall advise you in writing within fourteen days.*

To facilitate this, by your signature of this letter, you hereby authorise us to use funds that we hold in Trust on your behalf, to make payment of any and all outstanding fees, disbursements and expenses owed to us by you, whether in respect of the matter the subject of this letter, or in respect of any other matter where you are the client, either solely or jointly with another or others, and your signature of this letter will be sufficient authority for that purpose.

We require some funds be placed in our trust account to cover disbursements and costs. Please provide the following funds.

Amount:

To be deposited by bank transfer into:

Account name: McAuliffe Legal Trust Account

BSB: 066 000

Account number: 1124 0180

Reference: (file number)

THIRD PARTY COMPANIES, TRUSTS AND JOINT INSTRUCTIONS

In matters where you provide us with instructions for and on behalf of a third party or jointly with another party, both you and the other party will be jointly and severally liable to pay for our services, including disbursements. Where work is carried out for you on your behalf and at your direction and where the work is for a company or a trust you agree that instructions to proceed will bind the directors of the company personally or the trustee of the trust personally to pay all outstanding accounts together with interest thereon if the same remains unpaid for a period of 30 days from demand.

{00217375}

COPYRIGHT

Subject to any pre-existing copyright held by others, copyright in documents prepared by us is and remains our property.

CONFIDENTIALITY

We will treat the instructions and confidential information you give us as confidential.

We will treat other clients' instructions to the firm and their confidential information on the same basis. Only the practitioners and staff working from time to time on your matters will have an obligation to give advice and disclose information to you.

We have no obligation to disclose to you information that is not actually known by the practitioners or staff members then working on your matters (even though that information may be actually known by other practitioners or staff members and may be relevant to you).

There is no obligation to disclose to you information that is confidential to other clients.

Our obligation to you with respect to giving you information is restricted by these provisions.

DISPUTES

If a dispute arises under this agreement, including a dispute about the costs payable by you to us, either party may refer the dispute to an arbitrator.

If we cannot agree on the identity of the arbitrator, we will ask the President of the Law Society of Western Australia to nominate one. Each party may be represented by a lawyer at the arbitration.

PRIVACY

The *Privacy Act 1988* (Cth) requires us to comply with the National Privacy Principles when we collect, use and disclose information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion ("personal information").

We may collect personal information through your instructions and while acting for you. This includes personal information about individuals who are employees, directors or principals of corporate clients and we ask you to assist us to ensure that these individuals are aware that our acting for you may involve collection of personal information about them.

We will use such personal information in the course of acting for you. To do that, we may disclose personal information to our service entities or agents and to other organisations including other parties in the matter and government agencies responsible for processing transactions, but only to the extent necessary to give effect to your instructions and in accordance with our professional obligations (including our obligations as explained in our terms of engagement) or as required by law. If we do not collect such personal information, we may not be able to carry out your instructions.

In most cases, individuals whose personal information we hold are able to gain access to that information on request.

Contact details and other information (such as information about areas of interest) we hold about individuals may also be used by us (and disclosed to our service entities) to keep those individuals informed about developments in relevant areas of law or other legal services or seminars we may offer.

DESTRUCTION OF FILES

We may destroy the files created upon your instructions after two years from completion of the relevant matter. Files may be destroyed earlier with your consent. We do not hold documents on your behalf after closure of your file.

YOUR RESPONSIBILITIES

You are responsible for, in particular:

- Keeping us informed of your contact details at all times;
- Responding in a timely fashion to us;
- Keeping us informed of any details relevant to your matter;
- Providing relevant documents and instructions in a timely manner so that we may properly act on your behalf;
- Keep us advised of any circumstances that may impact upon the work we are doing on your behalf.

E-MAILS AND ELECTRONIC COMMUNICATION

Our preferred method of communication is e-mail. We will use e-mail and other forms of digital or electronic communication with you and third parties for provision of information, advice, opinions and copies of documents unless you specifically instruct us to the contrary and we can discuss and agree an alternative method of communication with you. E-mail and other digital or electronic communication may be interfered with, contain computer viruses or other defects, or may not be successfully replicated on other systems. To the extent permitted by law, we will not be liable for any copying, recording, reading or interference by others during, or after, a transmission, for any delay or non-delivery, or for any damage caused in connection with the transmission. You must contact us immediately if you have any doubts about the authenticity of any communications or material which appears to have been received from us.

{00217375}

COMMUNICATION BY MAIL

If any correspondence is to be sent by mail it is to be addressed to PO Box 544, Margaret River WA 6285. All correspondence by mail **must** be sent to this address.

YOUR CONTACT

Your contact solicitor on this matter is Mark McAuliffe who may be contacted on 9757 3300. If Mark McAuliffe is unavailable, you may wish to speak to our secretary. At times Mark McAuliffe may be unavailable due to attendance at meetings or court appointments. In addition to the answering services detailed messages may be sent by e-mail and will be responded to as soon as possible. E-mail is our preferred means of communication as it is faster and provides a record of the communication.

ACCEPTANCE OF TERMS OF ENGAGEMENT AND COSTS AGREEMENT

We propose that this document act both as a costs agreement and a contract between us for the provision of legal services to you. We are happy to discuss and explain any of our terms and conditions.

Please confirm your acceptance of these terms by signing this document and returning it to us.

Please note that by instructing us to provide you with legal services, or allowing us to continue to provide you with legal services after the date of this document, we will proceed on the basis that you have accepted the terms of this document.

ACCEPTANCE

I/We hereby confirm acceptance of the terms contained in this document on behalf of the parties described at the beginning of this letter.

Signed: _____

Name of Signatory: _____

Date: _____

SCHEDULE OF HOURLY RATES FOR PRACTITIONERS

APPLICABLE FROM 1 January 2016

MARK McAULIFFE	\$430.00
SENIOR SOLICITOR	\$430.00
JUNIOR SOLICITOR	\$310.00
CLERK/PARALEGAL.....	\$210.00
SECRETARIAL and ADMINISTRATION	\$150.00

SCHEDULE OF DISBURSEMENTS

Disbursements will be charged on the following basis:

- Search Fees** will be charged to you at the same as the cost is charged to us plus an additional \$5.00 service fee.
- Photocopying** will be charged at the rate of 80 cents per page.
- Facsimile transmissions** to or from us will be charged at the rate of \$2.00 per page for the first page and thereafter \$1.00 per page for each subsequent page after the first page.
- Documents received by e-mail including correspondence or other electronic transmissions** will be charged at the cost of \$1.00 per page for the printing thereof.
- Courier fees** will be charged to you at the same cost as the courier fee is charged to us.
- Bank fees and charges incurred in respect of funds paid into or out of our trust account on your files on your behalf** will be charged to you as the same cost to us.

7. **Travel expenses:** where we have to travel from our office in Margaret River to attend any court on your behalf we will not charge you professional fees for the time for travelling but we will charge kilometreage at \$1.00 per kilometer.
8. Save as specified, all other disbursements of any nature incurred by us on your behalf will be charged to you at cost to us.
9. Where GST is levied in respect of fees and/or disbursements you will charged in respect of same.