

Disclosure Statement & Costs Agreement

PURSUANT TO DIVISION 3 & 4 OF PART 4.3 OF THE LEGAL PROFESSION UNIFORM LAW

Law Practice:	Omond & Co Pty Ltd
Client:	[insert name of client]
Matter:	[insert case name or description of nature and scope of matter]

The Disclosure Statement and the Costs Agreement are to be read together and form the Agreement in this matter.

PART A – DISCLOSURE STATEMENT

Under Division 3 of Part 4.3 of the Legal Profession Uniform Law (Vic) (“Uniform Law”), we must disclose to you the following information relating to legal costs.

1. The work we do

We will only accept work when we believe we can do it on a cost-efficient basis.

If we do not believe we have the experience or expertise to do a particular piece of work, we will advise you of this, and suggest a number of options to you as to how the work should be handled. This may involve us advising you of another firm or individual lawyer who we believe will be able to the work competently and cost-effectively and:

- you instructing that firm or person directly, or
- us instructing that firm or person on your behalf, and managing the process for you.

2. What we need from you

For us to be able to provide accurate, timely legal advice, we need you to give us full details of the background and other circumstances relating to the matter on which our assistance is sought. If you can provide this in writing, it is obviously best for all concerned.

Please note that we provide legal advice only. Although we will always try to provide this in the context of your commercial circumstances, we do not provide commercial, financial or other advice.

Our duty of care is to the client named in our engagement letter or client agreement. If another person wants to rely on our advice, they do so at their own risk, ie they can only sue the firm if we agree in writing beforehand that they can rely on our advice.

3. The basis on which our charges will be calculated – section 174(1)(a)

We will always try to give you an estimate of the likely fees and disbursements if the actual fees and disbursements are not known for a particular matter. The actual fees and costs may differ from the estimate if the scope or nature of the matter or of our role changes or unforeseen circumstances arise.

Unless specified otherwise, quoted hourly rates do not include GST, and GST will be added to the amount to be paid. The firm is registered for GST purposes and will submit tax invoices in the form prescribed for the purposes of the GST legislation.

❖ Fixed rates

Wherever possible, we will provide you with a fixed price for undertaking discrete tasks, or specific work which we have been able to carefully scope in discussions with you. For trade marks and design work, we will issue a schedule of fixed rates each financial year.

❖ Hourly rates

Subject to you entering into a Costs Agreement with us, and where we have not provided you with a fixed price quote for particular work, our charges are determined by hourly rates. Many firms charge in 6-minute units – for example, the time charged for a 2-minute phone call will be rounded up to 6 minutes, and the time charged for an ‘attendance’ between 6 and 12 minutes will be rounded up to 12 minutes. We charge for the actual amount of time spent working for you (i.e. in 1-minute units).

The lawyer primarily responsible for your matter is James Omond, whose hourly charge-out is currently **\$530 + GST**. At times, it may be appropriate to delegate some tasks to other legal, paralegal or clerical staff.

Disbursements

In providing legal services to you, it may also be necessary to incur other fees, expenses and charges, including Court filing and issue fees, Barristers’ fees, experts’ fees, bank charges, travel expenses, stamp duty, courier fees, long distance telephone charges, photocopying fees and company and other search fees.

These fees, expenses and other charges we incur on your behalf are referred to as disbursements.

We will charge you at cost for any disbursements we incur on your behalf. You must pay reasonable disbursements, including GST (Goods and Services Tax), incurred by us on your behalf either on demand or at the conclusion of this matter.

If there are disbursements to be incurred that are unusual, we will seek your instructions before incurring the expense.

Disbursements will be charged at cost, except that there will be **no charge** for:

- secretarial or word processing services
- postage
- STD telephone calls, mobile phone calls, receiving or sending emails (or faxes, given that some lawyers haven’t moved out of the Dark Ages on this), and incidental photocopying, other than in exceptional circumstances
- file opening / administration fees.

If you do not promptly pay accounts of third parties retained to do work for you (e.g. barristers, overseas trade mark attorneys), we will pay these directly, and reserve the right to apply a margin of up to 10% for making such payment on your behalf.

Travel

All travel time specifically for a client is charged at 100% of the applicable hourly rate except for:

- travel time spent working productively on other clients' files;
- travel time in excess of 10 hours in any one day,

neither of which is chargeable.

The client must reimburse all reasonable out of pocket expenses incurred by the firm when travelling at the client's request including (without limitation):

- economy class travel (business class for flights of 2 hours or more duration);
- taxi and/or rental car charges; and
- reasonable accommodation and living expenses.

When time charges apply, the firm will not apply any mileage charges for use of a private car in such travel.

4. Our estimated total legal costs – section 174(1)(a)

❖ We estimate that total legal costs, including our charges and disbursements, for this matter will be about \$

This estimate is made up as follows:

Our charges:	\$
Disbursements:	\$
TOTAL:	\$.....

This estimate of total legal costs is NOT BINDING on us until we provide a clear fixed price quote, as the work required may change and our understanding of your needs may still be limited, but is our best advice at this point in time. The estimate is based on our current understanding of the present circumstances of this matter. If the scope of this matter or your instructions to us change in a way that results in a significant change to anything we have previously disclosed, including this estimate, we will revise the estimate as soon as practicable.

Recovery of costs from another party in litigious matters

If your matter is a litigious matter, and if you are successful, it is likely that the Court will order the other side to pay some of your legal costs. These costs are usually calculated by applying the relevant Court scale of costs applicable to your matter. If the Court orders the other side to pay your costs, we estimate that you will recover between 50% - 70% of your total legal costs.

An order for costs in your favour does not affect your liability to pay all our charges and disbursements. The costs you may recover from another party are unlikely to cover the whole of the legal costs that you must pay us. If you cannot recover legal costs from the other party (if for example the party goes into liquidation or becomes bankrupt), you will still be liable for your total legal costs.

Your liability for the costs of another party in litigious matters

If your matter is a litigious matter, and if you are unsuccessful, it is likely that the Court will order you to pay some of the other side's legal costs. These costs are usually calculated by applying the relevant Court scale of costs applicable to your matter. Again, the amount they could recover could range between 50% - 70% of the amount they actually incur. This could even exceed your own legal costs.

You will still be responsible for payment of our legal costs. Please note that your liability for the costs of another party, if ordered by the Court, applies regardless of whether you entered into a Costs Agreement with us.

5. Your rights – section 174(2)

- You have a right to negotiate a Costs Agreement with us. You may want to seek independent legal advice before agreeing to the legal costs we propose to charge in this matter.
- You have a right to negotiate the billing method with us.
- You have a right to receive a Bill of Costs from us.
- You have a right to request an itemised Bill of Costs within 30 days after receiving a bill that is not itemised, or is only partially itemised, from us.
- You have a right to be notified of any significant change to the basis on which legal costs will be calculated or any significant change to the estimate of total legal costs.
- You have the right to seek the assistance of the designated local regulatory authority (Victorian Legal Services Commissioner) in the event of a dispute about legal costs.

6. Our accounts

We will usually send you a bill at the end of each month, unless the amount of that bill is only minimal.

As we do not operate a trust account, we will not ask you to pay any amounts in advance to cover expenses or on account of our charges. However, if we carry out any work on a fixed price basis, we may require payment of such amounts in advance.

Our bill is payable when you receive it, but in any event not later than 14 days after the date of issue. Unless arrangements are made otherwise, we will provide accounts in electronic format.

If you do not pay our bill, we may be entitled to exercise a common law right known as a 'solicitor's lien'. The lien allows us to retain your documents until our bill is paid.

7. Limitation of liability

Omond & Co participates in the Law Institute of Victoria Limitation of Liability Scheme. Under this scheme, the firm's liability is limited by a scheme approved under the Professional Standards Legislation.

8. Interest

If a bill remains unpaid 30 days after we gave it to you, we may charge you interest at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 per cent, at the date the bill is issued.

9. Your right to request a written report on legal costs – section 190(1)

You have a right to request a written report of the legal costs incurred to date or since our last bill (if any), and we must provide such a report within a reasonable period and without charge.

10. If you have a concern about our legal costs – section 174(3)

If you have any concerns about our legal costs, please do not hesitate to contact James Omund to discuss. This is because it is important to us that, in consenting to the proposed course of action for the conduct of your matter (in particular the proposed costs), you are informed and understand the issues involved.

11. Your documents

Your documents may be destroyed after seven years from the date of our final bill unless you write to us requesting retention for a longer period, in which case we may charge for their storage. At the end of the matter, and provided our invoices are paid in full, we will release your file and your documents as you direct.

12. Email

Email communications and electronic transmissions of confidential or privileged documents or advice is a convenient method of delivery. However, electronic internet mail is not secure and any communications or documents transmitted may be interfered with, contain computer viruses or other defects and may not be successfully replicated on other systems. You agree that 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 a transmission.

13. Official enquiries

We may be required in the future to participate in any enquiry, commission or proceedings arising out of our engagement by you. This may, for example, involve us producing documents, seeking to claim and defend your privilege to resist inspection or disclosure of certain documents or giving evidence at an enquiry. We will seek your instructions if these circumstances arise, but you agree to reimburse us for our out-of-pocket expenses and for the time we spend at our then-current hourly rates.

14. Jurisdiction

The Uniform Law as applied in Victoria is applicable to legal costs in this matter.

15. Engagement of another lawyer or law practice – section 175

In providing legal services for you, it may be necessary to engage another law practice (including Barristers) to provide specialist advice or services.

We will consult you about the terms of these engagements before incurring the expense. We will provide you with a statement setting out the rates and estimated costs of any other law practice we propose to engage as soon as the retained law practice provides this information to us.

PART B – COSTS AGREEMENT

Division 4 of Part 4.3 of the Uniform Law allows a law practice and you (the client) to agree on how the law practice's charges are to be calculated and paid. It is called a "Costs Agreement" and it may be enforced in the same way as any other contract.

This document is an offer to enter into a Costs Agreement in accordance with the information contained in the Disclosure Statement (Part A) given to you in compliance with Division 3 of Part 4.3 of the Uniform Law.

If you accept these terms, the Disclosure Statement and this document will make up the complete Agreement between us for this matter.

You may accept the Agreement by writing to us indicating your acceptance, by returning a signed copy of this document as provided in the Acknowledgement at the end of this document or by continuing to give us instructions in this matter.

1. The basis on which our charges will be calculated

Our charges will be calculated in accordance with the methods (i.e. fixe price or hourly rates) detailed in the Disclosure Statement (Part A) that forms part of this Agreement with you.

2. Payment of our charges

Interim Bills of Costs will be given to you, generally at the end of each month, and a final Bill of Costs will be given to you at the conclusion of the matter. Our accounts are immediately due and payable.

If a bill remains unpaid 30 days after you receive it, we may charge you interest at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 per cent, at the date the bill is issued.

If you do not pay our bill, we may be entitled to exercise a common law right known as a 'solicitor's lien'. The lien allows us to retain your documents until our bill is paid.

3. Payment of disbursements

We will charge you at cost for any disbursements we incur on your behalf. You must pay disbursements, including GST (Goods and Services Tax), incurred by us on your behalf either on demand or at the conclusion of this matter.

4. Bills

We may give bills to you in any way specified in Rule 73 of the Legal Profession Uniform General Rules 2015. For the purposes of Rule 73, you consent to receiving bills:

- by email address or mobile phone number to the address or number specified by you;
- by fax to the number specified by you; or
- by any other means of electronic transmission agreed to by you and us.

5. Your obligations

We require you to, and you agree to:

- provide full and honest instructions relevant to your matter and any material change in your circumstances that might impact on your matter while we continue to act for you;
- co-operate in the matter and do all that we reasonably request of you in a timely manner;
- accept and follow our reasonable legal advice; and
- provide funds in advance in accordance with this Agreement or some later arrangement.

If you fail to comply with any of these conditions, we have the option to terminate this Agreement by advising you of termination in writing.

6. If we cease to act for you or you stop using this law practice

Circumstances may arise (such as a conflict of interest) that make it impossible for us to continue to act for you. We may also cease acting for you if you breach your obligations as set out in above.

We will notify you immediately if any of the above matters arise.

If we cease to act for you:

- we will take steps to remove our name from the Court record in any Court proceedings;
- you will receive a final account which will include all outstanding legal costs;
- you must pay our legal costs up until the date we cease to act; and
- we may retain your file and keep your documents until we are paid, subject to any other statutory requirements.

If we cease to act for you during the course of this matter and before there is an outcome, then all legal costs incurred up to the date of the termination will be charged.

You may end our engagement by written notice at any time. If this occurs, then all legal costs incurred up to the date of the termination will be charged but without any uplift fee being applied. Depending on circumstances, we may be entitled to exercise our right to a solicitor's lien by retaining documents relating to any matters we are conducting on your behalf.

7. Seeking independent legal advice

You are advised to seek independent legal advice prior to signing this Agreement or otherwise agreeing to the terms of Part A or Part B of this Agreement.

8. Acknowledgment

I, [insert the name of the client], ACKNOWLEDGE that I have:

- read and understood the Disclosure Statement (Part A) pursuant to Division 3 of Part 4.3 of the Uniform Law; and
- read, understood and approved this Agreement (Parts A & B); and
- been advised of my right to get independent legal advice before entering into this Agreement; and
- agreed that I may sign and return this Agreement in any of the following ways:
 - (i) sign the Agreement and return it to the law practice by hand, post, electronically or other method;
 - (ii) reply electronically to the law practice stating that I agree to the terms and acknowledgements set out in the Agreement received and for the email which contains my printed name or signature to be my signature in the Agreement;
 - (iii) type my name into the Agreement and confirm by email to the law practice that it should stand as my signature in the Agreement; or

- (iv) any other method that would identify me as the client and my intention that I wish for my signature to be noted as being applied in the Agreement.

Signed by client:

Print Name:

Dated: / / 20