



BUCHANAN LAW
Intellectual Property and Technology

www.buchananlaw.com.au

BUCHANAN LAW COSTS PACK

With effect from 5 May 2009

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Explanation of this document (please read carefully)

Introduction

We understand the importance of legal costs to our clients and we take seriously our obligation to provide you with comprehensive and accurate information about them.

We want to help you make informed decisions about your legal services requirements, the progress of your legal matter(s) and to minimise the chance of any misunderstanding over billing.

Contents

This Costs Pack document contains the current version of our *Costs Disclosure Statement*; it may also contain one or more of a *Costs Agreement* and an *Estimate Note*.

a. Costs Disclosure Statement

The Costs Disclosure Statement (**CDS**) is typically provided to you (i) at the start of a new matter (if you are a new client), (ii) within 12 months of its last issue to you (if you are an existing client) or (iii) after any significant revision, each in order to try to ensure that we meet our legal obligations to disclose our costs in relation to Part 3.2 of the *Legal Profession Act 2006* (A.C.T.) (the **Act**).

In the CDS portion of this document, we will provide not only the information you are entitled to receive under the Act (as shown by the section number) but also any other information we believe is helpful in showing you how we bill legal costs.

b. Costs Agreement

The Act also allows a law practice and its clients to agree how legal costs are to be calculated and paid. An agreement made in this way is called a *Costs Agreement*. A *Costs Agreement* is legally binding and may be enforced in the same way as any other contract.

The *Costs Agreement* portion of the document is provided as part of our standard process of starting engagement in a matter and it will contain our offer to you of such a *Costs Agreement*. You may accept our offer by completing, signing and returning to us a copy of the relevant portion of the document.

c. Estimate Note

As part of providing costs information to you, we provide one or more estimate notes setting out estimated time frames, applicable charging methods and related costs information. If this document is being provided to you as part of you instructing us in a new matter, we will typically include an initial estimate note with this document.

Please do not hesitate to contact us if you require any further information or clarification in relation to this document or our legal costs generally.



BL COSTS DISCLOSURE STATEMENT (CDS)

1. The basis of our costs *Section 269(1)(a)*

The legal costs that we will bill you for are based on recovering (i) our professional fees and (ii) disbursements or other expenses incurred on your behalf.

Our professional fees are charged to you using either one or an agreed combination of the following **charging methods** unless you specifically request, and we agree, otherwise:

- On a time spent basis at our current hourly rates (**time costed method**).
- For an agreed fixed fee irrespective of time taken (**fixed rate method**).
- For a fee which will vary according to time take up to an agreed sum or within an agreed band (**capped rate method**).

Unless otherwise instructed by you, we will set out the applicable charging method to your matter in an **estimate note** (see further in paragraph 3 below). If more than one charging method applies to different parts of your matter, we will set out the event(s) or other bases on which each charging method will apply. By way of an example, we might say something like the following:

Example Only:

For drafting your contract, we estimate that it will take 5-6 hours of Shaun Creighton's time and for drafting amendments based on the other side's requests 2 - 3 hours. We propose to charge our professional fees for the drafting of your contract for a **fixed fee** of \$1,000 (exclusive of GST) and for any required amendments on a time costed basis at Shaun's current hourly rate.

Please note that, unless we expressly state that some or all our professional fees relating to your matter are fixed or capped (as the case may be) then any figures that we provide to you are estimates only¹. Where it looks likely that we are going to exceed our original estimate then, if and to the extent practicable, we will notify you and seek your approval before undertaking further work.

Subject to any special provisions of any agreement we may enter into with you, the ways in which we determine (i) our professional fees and (ii) our disbursements and other expenses are as set out below.

1.a Time costed method

Where your matter (or part of your matter) is to be time costed, we will apply the current hourly rates for each of the lawyers and other professional staff working on or in relation to your matter. Our lawyers and other professional staff will record their time spent in decimal **units** (each unit being fixed at six minutes, giving ten units per hour). The time spent by

¹ The difference between an estimate and actual time taken typically arises because it is not possible to predict time taken in any dealing with third parties: for example, many commercial matters involve further negotiations with the other side and additional time spent by us to draft negotiated changes and then advising you on related legal issues. Similarly, in relation to matters including a dispute, it will rarely be possible to predict how long negotiations will take to resolve the matter.



each of our team on your matter will then be multiplied by an hourly charge rate which relates to that person's skills and experience.

Our hourly charge rates are reviewed from time to time and may change as a result. Current standard hourly rates (i.e. current as at the date of the sending of this document to you) are set out at paragraph 15.

1.b Fixed rate method

Where we use a fixed rate for your matter (or part of your matter), we will bill the total amount stated as fixed in an estimate note (the **fixed amount**). Our fixed rate is typically based on our professional assessment of the time and resources we anticipate are necessary to complete the specific work in your matter. Once fixed, this rate applies whatever the actual time taken.

1.c Capped rate method

Where we use a capped rate for your matter (or part of your matter), we will bill up to the total amount stated as capped in an estimate note (the **capped amount**). Our capped rate is based on our assessment of the likely actual time to complete the specific work in your matter. Once capped, this rate applies as follows:

- if the actual time taken by us to complete your matter is the same as or greater than the assessed time, then we will only bill you the agreed capped amount; but
- if the actual time taken by us is less than the assessed time, then we will only bill you an amount equal to the actual time taken by us by reference to our hourly rates.

We may, in some instances, apply a second cap at the lower end so that the possible amount billable will be banded between a lower and an upper amount stated.

1.d Disbursements and other expenses

In addition to our professional fees as set out above, you must pay us all necessary and proper disbursements and other expenses incurred by us on your behalf.

Disbursements and other expenses include, but are not limited to, official filing fees, official registration fees, court fees, counsel's fees, travel expenses and stamp duty. Where it is applicable, you must pay any GST that may be payable on disbursements or other expenses.

Where practicable, we will try to set out likely disbursements or other expenses in our estimate notes but these may vary depending on factors beyond our control (e.g. raises in official fees). Unless it is not practicable to do so, we will disclose any disbursements or other expenses to you before we incur them.

1.e Extent of pricing inclusion

Please note that, unlike most other law firms, we do not charge you for our word processing, secretarial support, facsimile, scanning or similar internal administration costs as an additional item to our professional fees. Similarly, we do not charge you for photocopying. Finally, we do not pass on merchant fees in respect of the use of our credit card facilities, provided that you adhere to our payment terms (see further at paragraph 5).



2. Your costs rights *Section 269(1)(b)*

You have the right to:

- negotiate a Costs Agreement with us if you wish to do so;
- receive a bill from us;
- request an itemised bill within ninety (90) days after receipt of a lump sum bill for more than \$1,500 (excluding disbursements and other expenses); and
- receive notification from us of any substantial change to anything contained in this document.

3. Our estimates and estimate notes *Section 269(1)(c)*

General

Unless instructed otherwise, to the extent that it is reasonably practicable, we will try to estimate our total legal costs in a matter or, otherwise, a reasonable range of estimates which shows the major factors which, in our professional judgement, are likely to affect costs.

Unless instructed otherwise, we will give you relevant costs estimates and quotes in our estimate notes. Where this CDS is issued as part of an offer of services, you will find our first estimate note included with that offer: otherwise, we will send you one or separate estimate notes as appropriate. Our estimate notes briefly set out the circumstances of your matters as we understand them at the time of issue, the services we propose to provide to you, and the way in which we propose to charge you.

If any provisions of any legislation apply or will apply so as to limit the costs we can charge you for any or all of the work we have been instructed to do, then the total professional fees and disbursements that we will bill you for such work as is covered by that legislation will be limited to the amount of costs recoverable from you pursuant to that legislation.

Litigious matters

If or to the extent that your matter involves or may involve litigation, we will include in our first fee estimate note (to the extent that it is reasonably practicable):

- an estimate of the range of costs that may be recovered from the other party if you are successful; or
- an estimate of the range of costs that may be recovered from you if you are unsuccessful.

If settlement of your claim is negotiated, we will provide you before settlement with (to the extent that it is reasonably practicable):

- a reasonable estimate of our costs payable by you to us on settlement; and
- if the settlement is in your favour, a reasonable estimate of the costs likely to be received from the other party on settlement; but
- if the settlement is in the other party's favour, a reasonable estimate of the costs you may have to pay the other party.



If court or similar proceedings are undertaken on your behalf, the relevant court, tribunal or other body may order the other party to pay your costs of the proceedings if you are successful. The sum recoverable from the other party is unlikely to cover all the professional charges and disbursements that you must pay to us because of the way costs are calculated by courts, tribunals and other bodies.

It is also possible that the court may make an order that you pay the other party's costs (if, for example, you lose the case) and, if so, these costs are payable by you to the other party in addition to the legal costs payable to us.

If any costs are or become recoverable by you from any other party, you are not entitled to offset those costs (or anticipated costs) against any costs that we may have billed you. However if any costs are or become recoverable by you from any other party, you authorise us to seek, and if recovered by us, to pay those costs into our trust account.

4. Payments on account and billing *Section 269(1)(d)*

We may ask you to pay one or more amounts in advance to cover some or all of our likely legal costs plus GST where applicable (**payment on account**). We will promptly deduct payment on account from our legal costs.

We will send you bills for our legal costs arising while a matter is ongoing (**interim bills**). Typically, it is our practice to send our interim bills at or after the end of each month except where either little or no legal costs have arisen during that month and we determine at our sole discretion to carry forward legal costs. However, we reserve the right to send interim bills at any time that significant legal costs have accrued.

We will also send you a bill for our remaining legal costs when a matter is finalised or if our engagement ends (see paragraph 11 below) (a **final bill**).

If a matter is finalised within one month, interim and final legal costs will be merged into one bill (a **first and final bill**).

Unless otherwise required by us or by you, our bills will be in the form of tax invoices and will be itemised.

If an error occurs in our preparation of a bill, please contact us as soon as possible and we will send a corrected bill as necessary.

5. Interest on unpaid bills *Section 269(1)(e)*

Our payment terms are strictly fourteen (14) days from date of invoice. If our bill remains unpaid after fourteen (14) days, we may charge you interest. Where we charge you interest, we will do so at the rate (if any) specified in the Costs Agreement relating to the matter in question or, otherwise, at the rate prescribed under the *Court Procedures Rules 2006* (A.C.T.) (**the Rules**), Schedule 2, Part 2.2, Table 2.3* (*since 9 January 2005, this has been set at 11% per annum but may be officially varied by a change to the Rules).

If you do not pay our bill, this entitles us to exercise a common law right known as a solicitor's lien. The lien allows us to retain your documents until our fees are paid in full.



6. Trust money

Sections 223 and 229

If we receive money on your behalf, we will deposit the money into our trust account. We may deduct any disbursements or other expenses that we have paid on your behalf and we may deduct our professional fees, provided that we notify you of this in writing within five (5) days and adjust our billing accordingly.

If we receive money to be paid to a third party, we will forward that money to the third party unless you instruct us otherwise.

7. Progress in a matter

Section 278

We will update you on progress in your matter, either orally or in writing, as soon as practicable upon your contacting us, upon our response to third party communications in your matter or upon third party responses to our communications in your matter or on other similar triggering events (**regular communication**). In addition to regular communication, you can ask us for separate written **progress reports** at any time.

8. Concern about our costs and services

If, at any time, you have any concern whatsoever about our legal costs or our legal services, please do not hesitate to contact our Practice Director, Shaun Creighto.

If we cannot satisfactorily resolve your concern with you, you may:

- seek a costs review by the A.C.T. Supreme Court within 12 months after the bill is given to you or we request payment of costs or you pay the costs (whichever is earlier or earliest);
- apply to the A.C.T. Supreme Court to set aside a Costs Agreement where we have entered into one with you; or
- make a complaint to the Law Society of the A.C.T. under Part 4.2 of the Act.

9. Jurisdiction

The laws of the Australian Capital Territory will apply to our relationship and you submit to the jurisdiction of the courts of the Australian Capital Territory.

You have the right to sign a Costs Agreement under a corresponding law or to advise us that you require the law of another jurisdiction will apply.

10. Engagement of another lawyer or other professionals

We may from time to time need to engage on your behalf another lawyer or other professionals (e.g. a barrister, patent attorney, expert witness etc.) to provide specialist advice or services. We will consult you about the terms of the engagement and notify you in writing about the person's fees before incurring the expense.

11. Starting and ending the engagement

Unless we indicate otherwise to you, you start our engagement by entering into a written Costs Agreement with us and by acknowledging receipt of our Costs Disclosure Statement.



You may end our engagement by written notice at any time. If you end our engagement, you must pay any outstanding bills together with our final bill (if any). After payment of our final bill, we will, at your request, return or provide copies of all documents relating to your matter which we are required to release.

We note that circumstances may arise (e.g. a conflict of interest) which make it impracticable for us to continue to act for you. If this happens, we will contact you as soon as practicable to end our engagement and, where possible, help you to find somebody else to act for you. If we end our engagement, you must pay our final bill, and after payment, we will return or provide copies of those documents which we are required by law to release.

12. Stopping work or ceasing to act

If you do not pay our bill, or if you fail to make a payment on account when asked to by us, we may stop work until we are paid or the payment on account is made. If the bill or payment on account continues to remain unpaid, we may cease to act for you. If we cease to act for you:

- we will not incur any liability as a result;
- we will remove our name from the court record in any court proceedings;
- you will receive a final bill which will include all outstanding legal costs;
- you must pay our legal costs up until the date when we ceased to act; and
- we retain the right to keep your documents until we are paid.

13. Retention and destruction of materials

Subject to any overriding legal requirements, our professional obligations (including abiding by the statements made in this CDS) and any other agreement we may have with you regarding the retention of documents, records and other materials stored in any format (**materials**), we reserve the right to destroy materials relating to you or your matter which are held by us and which we regard in our sole discretion as no longer required or relevant. If at any time you wish to have materials transferred into your custody or the custody of a third party, please contact us to discuss transfer.

14. References

With effect from 5 May 2009, ~~usq weq purq BLqor Buchanan Lawqin~~ this document refers to Buchanan Law IP & Technology Pty Ltd (ACN 136 866 067) both as a provider of legal services regulated under the Act and acting in its capacity as corporate trustee for The Creighton Family Trust.

[THIS SECTION INTENTIONALLY LEFT BLANK: PLEASE CONTINUE]



15. Standard hourly charge out rates from 5 May 2009*

Name	Role	Rate ex GST
Shaun Creighton	Practice Director & Principal Lawyer	\$340
Scott Buchanan	Consultant	\$380
Gary Lea	Consultant (Overseas & Trade Marks)	\$330
James O'Connell	Lawyer (1 st year)	\$220
Beth Morrisroe ^[1]	Paralegal/Clerical Assistant	\$80

*The rates listed above are **standard (rack)** rates for hourly and related unit charging purposes: please note that other rates (e.g. discounted by special agreement, premium for expedited work, etc.) and/or other fee structures (e.g. capped, fixed fee) may apply to your matter but that these will be advised in writing accordingly.

^[1]Beth provides paralegal services separately from her secretarial/administrative duties and, when she is acting in her paralegal capacity, will be charged as noted.



BL COSTS AGREEMENT

1. Relationship of this Agreement to our Costs Disclosure Statement

- 1.1 Except to the extent that this Costs Agreement expressly or by necessary implication provides otherwise, the operative provisions of our Costs Disclosure Statement are incorporated as terms and conditions of this Costs Agreement.
- 1.2 We may from time to time amend or otherwise alter our Costs Disclosure Statement and this Costs Agreement is deemed amended or otherwise altered accordingly.

2 Your matter(s)

- 2.1 Unless otherwise agreed, we will issue a separate fee estimate for each new matter in which you instruct us to act. If you accept our fee estimate then this Costs Agreement will govern the delivery of services to you and our relationship with you generally.

[See below for a template fee estimate note. In our fee estimates we will describe your matter (as we understand your instructions and requirements) and provide details of our proposed fees. You may request clarifications to any fee estimate which we may issue.]

- 2.2 Unless otherwise agreed, this Costs Agreement will apply to each new matter that you may instruct us to act without a need for separate costs agreements to be entered into between you and us.

3 Our costs and estimates

- 3.1 We will charge you as follows:
 - (a) where we have already issued an estimate note or other notification of legal costs instructed by you in relation to your matter, in accordance with that estimate note or other notification; or
 - (b) where we have not yet issued an estimate note or other notification of legal costs instructed by you in relation to your matter, in accordance with any estimate note to be issued or other notification to be issued.
- 3.2 If we issue an estimate note under this Costs Agreement in compliance with your request for any alternate charging method under paragraph 1 of our Costs Disclosure Statement, you agree that it satisfies:
 - (a) the requirements for showing the basis of our costs under s269(1)(a) of the Act;
 - (b) the requirements for providing an estimate under s269(1)(c) of the Act; and
 - (c) the corresponding requirements of our Costs Disclosure Statement.

4 Intellectual Property

- 4.1 Unless we agree otherwise, we retain copyright in all documents, advices and other work materials supplied by us to you (**our materials**). Provided you pay our fees, we grant you a permanent, irrevocable, royalty free, non exclusive licence to use our copyright for the sole purpose of using our materials for the purposes for which they were supplied to you.



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- 4.2 We will take all reasonable steps to ensure that third parties who own copyright in subject matter used in our materials grant to you a licence on the same terms as applicable to our materials.
- 4.3 In relation to any documents, notes or other materials (**your material**) that you provide to us, you grant us a royalty-free, non-exclusive and perpetual licence to use, reproduce, sub-license, disclose, modify and adapt your material for the sole purpose of providing enabling us to provide services to you.

5 Your warranties

- 5.1 You warrant to us, in relation to your material that:
- (a) you own or are authorised to use intellectual property in your material; and
 - (b) you have obtained all necessary approvals, consents and permissions to provide your material to us, and that our use of your material, including incorporation of your material into our materials, will not infringe:
 - i. the rights of any person, including the Intellectual Property rights of any person; and
 - ii. any other Laws, including without limitation, a breach of the *Trade Practices Act 1974* (or its State and Territory equivalents), the laws relating to privacy or any person's common law rights under the tort of passing off or laws relating to defamation.
- 5.2 You further warrant to us that the instructions you give us are lawful.

6 Our warranties

- 6.1 We warrant to you that in addition to any professional obligations regarding client confidentiality or similar, all personal information provided or disclosed to us by you will be held and processed in accordance with our Privacy Policy as from time to time amended.

7 Termination of this agreement

- 7.1 Any circumstance giving rise to an ending of our engagement or our ceasing to act as set out in our Cost Disclosure Statement will automatically terminate this Costs Agreement.
- 7.2 Rights and obligations accruing before the termination of this Costs Agreement are preserved for and in respect of both parties.
- 7.3 Obligations under clauses 3, 4, 5 and 6 of this agreement survive termination.

NOTICE: INDEPENDENT LEGAL ADVICE

Before signing this Costs Agreement, you must consider how it will affect you, including as to costs payable. If yours is a litigious matter, a statutory scale of costs may limit the costs that we could recover from you if you do not enter into this Costs Agreement. Further, if you obtain an order for the payment of your costs by another party, such an order for costs in your favour will probably not result in you recovering from that other party all of the professional costs and disbursements that we will bill you pursuant to this Costs Agreement; this is because, usually, you will be restricted to recovering an amount for costs from the other party which is limited to the costs provided for in the relevant court or tribunal scale of costs, and because not all of the work that we perform and not all of the disbursements that we incur are likely to be covered by any costs order that you obtain; this may mean that you will be further out of pocket than you would otherwise be if you do not enter into this Costs Agreement.



**BL ESTIMATE NOTE
[TEMPLATE ONLY]**

Your matter described

Our estimate in this matter

Charging proposals

Signed and dated