

INSTRUCTING LAWYERS THE BL STARTER GUIDE



BUCHANAN LAW
Intellectual Property and Technology

www.buchananlaw.com.au

Office Buchanan Law
IP & Technology Pty Ltd
Level 3,
54 Marcus Clarke Street,
Canberra ACT 2601

Postal GPO Box 579,
Canberra ACT 2601

Tel 02 6162 1639

Fax 02 6162 3202

Email info@buchananlaw.com.au

ACN 136 866 067

Introduction

Leaving aside all those old urban myths about wearing protective gauntlets, the basic rule when dealing with lawyers is %the client instructs and the lawyer advises+. But what is actually involved in this?

In general terms, the notions of instruction and advice is just a fancy way of describing how you engage lawyers and make use of the legal services they provide (see on). So, to de-mystify all this for people who have had little or no previous contact with lawyers, we have put together this short note* (*please note that this is not legal advice and is simply provided on an as isq basis).

Choosing a lawyer

Like cars, lawyers and law firms come in a variety of makes and models. The first thing you will need to work out ahead of instructing a lawyer is the sort of legal problem, issue or requirement for legal or related services that you have (collectively, we describe this as a **matter**) and to find the right kind of lawyer or law firm for you. How can you find this out?

Ultimately, the best place to get recommendations is from friends or colleagues who have actually used a lawyer or law firm; it is not generally worth looking at phone books, law directories or the World Wide Web until after you have done this (and then only to check the type of work the firm does, rather than as a recommendation in itself).

Also, although it does not recommend as such, your State/Territory Law Society can guide you as to the locations and types of work of firms operating under its supervision. You might even want to draw up a short list, especially if you want to shop aroundq(see on).

Making contact

Once you have decided which lawyer(s) or law firm(s) to approach, make contact in the way that best suits you (you may prefer email to phone, for example; many law firms also now work this way). One initial difficulty you may be concerned about is trying to explain or categorise your matter; do not worry about this.

When you make first contact a lawyer or law firm, one of the things that can and should be done ahead of formal instruction/advice is, where you are uncertain, to work out and clarify with

you what type(s) of law your matter involves (e.g. contract, family, tort, intellectual property) with a view to telling you whether (and to what extent) they deal with that kind of work.

Going beyond this, some law firms (including ours) may be willing in some instances to offer a short consultation of up to one hour to discuss your matter and clarify issues; this might be either free of charge or free of charge provided that you instruct that firm.

As part of making contact, and especially if you think that you might like to engage a firm, it is good to provide all your relevant contact details; these would typically be:

- Contact Name
- On behalf of (organisation: if any)
- ABN (if any)
- Position in organisation (if any)
- Street Address
- Postal Address
- Telephone
- Mobile
- Fax
- Email
- Website

Explaining your matter

However you choose to make first contact, the lawyer or the law firm will need to get a firm idea of the outlines of your matter before proceeding. When you make contact by phone, a note of the conversation may be made and circulated back to you (for confirmation), especially where the matter is complex. Otherwise, some other confirmation of receipt (plus requests for any other details) will usually be made.

What sorts of information will your contact want from you? Typically, answers to the following questions (whether stated or otherwise):

- How did you find us?
- Why have you contacted us?
- What is the background?
- What services proposals or other response do you want us to provide?
- When and how would you like us to contact you?

So, why ask these questions?

- The first question on finding the firm goes to checking for referrals and so on.
- The second question covers a short description of the matter and will involve a framing of the matter (e.g. identifying type(s) of law and so on) so as to provide a short description and title for it.
- The third question will involve sorting out a full background covering all the key facts, events, dates, persons involved, documents and any other information relating to your matter (NB don't be afraid to do this: it is both confidential and important for the next steps).
- The fourth question, based on discussion and answers to the second and third, basically sets out what you want the lawyer or law firm to do.
- The fifth question simply covers response times and so on.

The information that you provide and the identification of what you want the lawyer/law firm to do will, if the next few steps are taken, form the basis of your first instructions.

Costs information

Assuming you want the lawyer or law firm you have contacted to take on your matter, the next step will be provision of costs information to you.

Over the last few years, legal professional rules have been changed to place an obligation on lawyers and law firms to provide costs disclosure information to clients and potential clients in a Costs Disclosure Statement (**CDS**: a similar sort of idea to product disclosure statements for financial products) and, so, before or at commencement of your matter (and subject to a few exceptions), you should receive or be given access to a copy of the CDS. In addition to the CDS, some firms (including this firm) will also want a written agreement in place regarding costs; this is called a Costs Agreement and is usually provided along with the CDS to a potential new client.

Finally, of course, you should receive a document which contains the initial cost estimates relating to your matter. Remember: unless a lawyer or law firm specifically states otherwise, any time or cost figures that you see will typically be *estimates only*. Estimated time may vary against actual time for reasons well beyond the lawyer or law firms control, including (but not limited to) negotiating or responding to third parties (e.g. the other party to a draft contract, the Trade Marks Office raising an objection to a trade mark application, the other side in a legal dispute, etc.).

Unlike many other firms, we now publish our charge rates, both for our trade mark registration services and for our standard legal services. We also try to include as much as we can in pricing of our professional fees so as to cut down on those annoying hidden secretarial/administrative extras like photocopying charges.

Remember: if you want to shop around and get costs information from several law firms, that is a good idea provided that you carefully compare what pricing covers what services (e.g. to what extent are office administration costs charged as a separate item from professional fees?) so as to make sure you are not accidentally comparing apples with oranges.

Engaging a lawyer

If you are satisfied with the cost related documents you have received, you can then sign off and return the relevant sections: if not, please contact the lawyer or law firm to discuss possible changes or revisions. Once you have read, signed off and returned the relevant paperwork (or e-copies), the lawyer or law firm can begin work, typically taking their first instructions from the costs documents provided.

During the course of your matter, your lawyer or law firm may need to consult with you from time to time for **further instructions** (i.e. additional information and/or directions regarding services to be provided). Sometimes the legal costs associated with these instructions will be built into initial costs estimates, but, where not, revised estimates are typically provided as set out in the CDA or Costs Agreement.

Receiving advice

Advice can come in many forms, such draft agreements, draft letters to third parties, letters of advice, action plans, corporate briefing documents, advice over the phone and so on. Basically, advice is any output by a lawyer or law firm that either confirms or represents the supply of legal or related services you have instructed.

Sometimes, advice can be offered on a draft or interim basis (e.g. if needed urgently or if other information is needed to complete it) with the final version to follow: where advice work is done on an emergency basis, an additional charge may apply.

Litigious matters

It may be that, depending on advice you receive and the nature of your matter, you may find yourself having to decide about taking legal action in a court or administrative action before a tribunal (collectively, **litigation**). If this is the situation you are in, think long and hard before taking the plunge litigation can be very expensive and the outcome uncertain. You should look long and hard at the (potentially large) costs implications and consider the advice of your litigator with the utmost care, especially where his or her professional view of prospects for success is at or less than 50%. Remember: always resist the temptation to litigate for the principle of the thing and always take a realistic, calm and calculated view of your chances.

Matter progress and conclusion

In order to keep your matter moving forward, you will need to supply all necessary instructions promptly and, if necessary, give your lawyer or law firm a friendly reminder or prod if you have not heard anything for a while. Assuming this happens, and you adhere to payment terms, you should hear from the lawyer as the matter progresses and be updated as to costs/billed as agreed. Once the matter reaches its conclusion, because either it has naturally ended or you are satisfied with what has been done, the final invoice can be raised (if any legal costs are left outstanding) and the matter files can be closed off.

Conclusion

We hope that this short note has given you some help in how to deal with lawyers and law firms in relation to costs and instructions. For further assistance, we also have another note on saving money when instructing lawyers and we also provide notes on our webpage for how to instruct us.