Click here to enter a date.

Via Email: Click here to enter text.

C/: Click here to enter text. (M: Click here to enter text.)

**COSTS DISCLOSURE NOTICE & AGREEMENT (DIRECT ACCESS)**

BETWEEN

MARC JEAN MERCIER

AND

Click here to enter text.

AND

Click here to enter text.

(ABN Click here to enter text.)

[Collectively, The Parties]

Dear Click here to enter text.,

Thank you for seeking to retain me in this matter.

Your request for a Cost Disclosure Agreement was received on Click here to enter a date..

My understanding of the work that Choose an item. to brief me on, and the basis for the offer herein contained, can be summarised as follows:

Your client is in the process of developing a 2 unit residential dwelling to be constructed on the Gold Coast.

The Dwellings are at a stage where they are being signed-off by the builder and a surveyor has been engaged to undertake a survey with a view to obtaining final survey plans for filing with council.

The proposed development shall not have a need for Body Corporate Management and it is expected to have relatively simple by-laws.

The current title is owned 10%-90% (your client & his wife (10%) and his parents (90%)), and upon registration of the new titles your client and his wife propose to own one (1) villa (100%) and his parents will own the other villa (100%).

Choose an item.to retain me on the following basis:

* To liaise with the Council and the engaged surveyor;
* Prepare the CMS;
* Advise on Body Corporate aspects as the matter proceeds;
* Drafting any AGM / EGM minutes needed to get the scheme approved and lodged.

This Cost Disclosure Notice and Agreement is written as:

1. My disclosure under section 309(2) of the *Legal Profession Act 2007 (Qld)*; and
2. My offer to you, herein setting out the terms upon which I will accept your instructions, to enter into a costs agreement with you in relation to this matter under section 322(1)(c) of the *Legal Profession Act 2007 (Qld).*

Acceptance of my offer will result in an agreement for legal services (hereinafter “the Retainer Agreement”) with you, from whom I take instructions, and to whom I am accountable under the Retainer Agreement.

Should you have any questions about this letter, please do not hesitate to contact me on 0421 414 458.

Yours faithfully,



Marc Mercier, ESQ.

BARRISTER-AT-LAW

*Chambers*

Table of contents

[1.0 Instructions and scope of work 4](#_Toc455147422)

[2.0 Fee Disclosure 4](#_Toc455147423)

[3.0 Estimate of Fees 5](#_Toc455147424)

[4.0 Invoicing and Payment 5](#_Toc455147425)

[5.0 Standards, Immunity and Scheme Limitation 6](#_Toc455147426)

[6.0 Retention of your documents 6](#_Toc455147427)

[7.0 Privacy protection 6](#_Toc455147428)

[8.0 Intellectual property 6](#_Toc455147429)

[9.0 Communications 6](#_Toc455147430)

[10.0 Costs Agreement 6](#_Toc455147431)

[11.0 Covering email/letter 7](#_Toc455147432)

[12.0 Jurisdiction 7](#_Toc455147433)

[13.0 Severance 7](#_Toc455147434)

[14.0 Acceptance of Offer 7](#_Toc455147435)

[15.0 Direct Access Brief Notice 8](#_Toc455147436)

[16.0 Your rights 8](#_Toc455147437)

[17.0 Your obligations 8](#_Toc455147438)

[18.0 Schedule of Fees and Charges 9](#_Toc455147439)

[18.1 Commercial Legal Services 9](#_Toc455147440)

[18.2 Debt Recovery 9](#_Toc455147441)

[18.3 Mediation Services 9](#_Toc455147442)

[18.4 Commercial Litigation (Common Law & Equitable Remedies) 10](#_Toc455147443)

[18.5 Personal Injury Law (Medical Negligence, Motor Accidents & Public Liability) 10](#_Toc455147444)

[18.6 Criminal Law (Indictable Offences & Non-Indictable Offences) 10](#_Toc455147445)

[18.7 Family Law (Divorce, Property Division, Child Custody, & Relocation Matters) 11](#_Toc455147446)

[18.8 Outlays\* 11](#_Toc455147447)

[Litigation Booklet 12](#_Toc455147448)

# 

# Instructions and scope of work

Your instructions are to:

1. Reading and review of materials provided relating to the establishment of a two lot Body Corporate to be constructed on the Gold Coast (address TBA);
2. Consult on Body Corporate aspects as the matter proceeds;
3. Prepare the scheme Community Management Statement (inclusive of scheme by-laws);
4. Liaise with the local authority (Gold Coast City Council) and the engaged surveyor on matters relating to the establishment of the said proposed Body Corporate and facilitate the submission/filing of applicable documentation;
5. Draft the first AGM (and EGM) minutes and set up any required scheme records to facilitate establishment in accordance with the Body Corporate legislation;

Refer to Clause 18.0 of this agreement for additional works which may be undertaken and costed in accordance with clause 2.1(e).

This Cost Disclosure Notice and Agreement is written as:

1. My disclosure under section 309(2) of the *Legal Profession Act 2007 (Qld)*; and
2. My offer to you, herein setting out the terms upon which I will accept your instructions, to enter into a costs agreement with you in relation to this matter under section 322(1)(c) of the *Legal Profession Act 2007 (Qld).*

Acceptance of my offer will result in a retainer agreement (hereinafter “the retainer agreement”) with you, from whom I take instructions, and to whom I am accountable under the retainer agreement.

# Fee Disclosure

1. My fees under this retainer agreement will, and for any further work on this matter until further notice, be calculated on the following basis:
2. The estimate fees for instructions contained in items 1.0(a)-(e) is $1,700.00-$2,500.00 plus GST plus Disbursements;
3. For out-of-court work, my fees will be calculated at the rate of $400.00 plus GST per hour or part thereof for all work performed under the retainer, including conferences, telephone consultations, reading, preparation (for conferences, trial, hearing or advices), travel time, drafting or settling documents, and preparing written advices. The fees so calculated on any day will not exceed the daily rate (as shown below) unless overnight work is urgently required;
4. For Court Work or other adversarial work, my fees will be calculated at the rate of $4,900.00 plus GST per day or part thereof. This is struck on the basis of an effective 8.5 hour day or allocation of a day. This covers preparation and appearance on the day;
5. I will also charge for my necessary out-of-pocket expenses (such as but not limited to airfares, taxi fares and accommodation) at cost plus GST; and
6. Refer further to Clause 18.0 of this agreement for costings for all other non-stated work.
7. These rates will remain in place for the duration of this retainer or one year, whichever is shorter. I reserve the right to review these rates in respect of any further work on this matter each year and to notify you of any increase in those rates to be applied one month after that notification unless my retainer is terminated in the meantime. Please note that there is no applicable scale, which restricts or constrains the fees that I can charge under the retainer agreement.
8. I reserve the right to review these rates during the course of the retainer, such as but not limited to the following:
9. If meetings, negotiations and conferences are protracted;
10. If clear instructions are not provided;
11. If you change your instructions;
12. If the complexity of the matter increases; and
13. If follow-up requests are required for the payment of invoices rendered.
14. Upon any such review of these rates, I will advise you in writing as soon as practicable.

# Estimate of Fees

1. On the material briefed to me, I estimate (having not yet read the brief or undertaken the work required) that the total fees payable to me under this retainer agreement in items 1.0(a)-(e) is $1,700.00-$2,500.00 plus GST plus Disbursements.
2. Reading and review of materials provided relating to the establishment of a two lot Body Corporate to be constructed on the Gold Coast (address TBA);
3. Consult on Body Corporate aspects as the matter proceeds;
4. Prepare the scheme Community Management Statement (inclusive of scheme by-laws);
5. Liaise with the local authority (Gold Coast City Council) and the engaged surveyor on matters relating to the establishment of the said proposed Body Corporate and facilitate the submission/filing of applicable documentation;
6. Draft the first AGM (and EGM) minutes and set up any required scheme records to facilitate establishment in accordance with the Body Corporate legislation;
7. In addition to specifying the basis on which professional fees will be calculated and charged, the terms of engagement section of the covering email/letter to you sets out the estimate of costs associated with your matter including (where possible) any variables which may affect such estimate or fee.
8. It is not reasonably practical to make any better estimate of fees at this point. Where an estimate is provided, it is an estimate only, and is not a quotation and is subject to change as more information becomes available.

# Invoicing and Payment

1. I will provide invoices to you, and you will provide full payment of my fees for work done, calculated on a time basis by reference to the above rates.
2. Where professional fees are to be calculated and charged based on the time spent attending to the matter:
3. The hourly rates for the particular practitioners working on the matter will apply; and
4. Time will be charged in six minute intervals, with six minutes being the minimum amount of time recorded for professional services. For example, time charged for an attendance of up to six minutes will be one unit and time charged for an attendance between six and twelve minutes will be two units.
5. I will provide an invoice on completion of each portion of the retainer agreement.
6. My fees are payable within seven (7) days of the date of invoice(s).
7. By accepting this costs agreement you authorise us to send you bills electronically via email.
8. For the purpose of this costs agreement you will be deemed to have received a bill:
9. Where it is emailed to you – on the day it is emailed to you; or
10. Where it is posted to you – two days after the date on which it was posted to you.
11. Bills can be paid by direct deposit into our bank account.
12. If any costs are incurred by me in the pursuit of payment of my memorandum of fees, you agree to be liable for all such costs in relation to the recovery of the debt, including but not limited to letter of demand costs, debt collection agency costs, and application fees and filing fees and service fees at the Queensland Civil & Administrative Tribunal or the Magistrates Court of Queensland.
13. Where a bill is not paid within 14 days of receipt you will be charged interest on the unpaid account at the rate prescribed by the regulations under s.321(1) *Legal Profession Act 2007 (Qld)*, being the rate that is equal to the cash rate target (as set by the Reserve Bank of Australia as at the date of the relevant bill) plus 2%.

# Standards, Immunity and Scheme Limitation

1. I am bound by the ethical and cognate standards set forth in the *Legal Profession Act 2007 (Qld)* andthe *Legal Profession (Barristers Rules) 2011 (Qld).*
2. My immunity under common law from suit relating to work done in court, or work done out of court affecting the conduct of this matter in court, will apply to the retainer agreement.
3. Further:
4. As a “Class A Ordinary” member of the Bar Association of Queensland, my professional liability is limited by a scheme approved under the *Professional Standards Act 2004 (Qld);*
5. In this regard, refer to the statement to that effect at the base of each page of this letter, and also refer to the Professional Standards Council website at *http://www.psc.gov.au/psc/schemesii/baq.*html for further information; and
6. Please note that there are exceptions to the scheme’s operation specified in section 6 of the *Professional Standards Act 2004 (Qld).* These include the circumstance of me “acting for a client in a personal injury claim”.

# Retention of your documents

1. Following the completion of this matter we will retain a copy of your file for 7 years (or such longer period as may be required by legislation).

1. We may elect to retain such copy in electronic rather than hard copy form.
2. You may obtain your file, or a copy of your file, at any time upon payment of a fee of $75.00 (inclusive of GST) to cover administration expenses and subject to you having paid all outstanding accounts to us on this and any other files.
3. You authorise us to destroy your file after 7 years.

# Privacy protection

1. Personal information about you, provided by you and other sources, is protected under privacy legislation. Disclosure of such information may be compelled by law (eg under the *Social Security Act*). You also authorise us to disclose such information where necessary to others in furtherance of your matter (eg within the firm, to a relevant court, to the other party or parties to litigation, to valuers, experts, barristers etc).

# Intellectual property

1. You acknowledge that we retain the copyright in all correspondence, documents, advices, agreements and any other material prepared for or on your behalf (**Materials**). You have the right to use these Materials for the purpose for which it was provided to you. However, you are not entitled to use the Materials, or supply them to any other party, for any other purpose without our written consent.

# Communications

1. Our usual method of communication is via email rather than post or fax.
2. It is your responsibility to:
3. Ensure that we have the correct email address for you and advise us of any changes to your email address; and
4. Notify us if you would prefer an alternative contact method to email communication.

# Costs Agreement

1. This letter is also an offer by me to you to enter into a costs agreement relating to my proposed retainer in this matter. Upon acceptance of my offer, the above will comprise the terms of the agreement.

# Covering email/letter

1. The terms of engagement section of the covering email/letter to you sets out specific conditions which apply to this matter and forms part of this costs agreement.
2. We will endeavour to notify you of any substantial changes to the matters set out in the terms of engagement section of the covering email/letter or this costs agreement (for example any substantial changes to hourly charge rates, cost estimates etc) as soon as reasonably practicable.

# Jurisdiction

1. The laws of Queensland apply to this costs agreement and legal costs in relation to this matter.

# Severance

1. If a provision, or part of a provision, of this costs agreement is void or voidable that provision, or part, is severable and the remainder of the costs agreement has full force and effect.

# Acceptance of Offer

1. You acknowledge that you:
2. Have read and understood the contents of this costs agreement;
3. Have voluntarily entered into this costs agreement without any duress from us;
4. Have had reasonable opportunity to consider the terms of this costs agreement and seek legal advice prior to accepting the terms of this costs agreement; and
5. Believe that the terms of this costs agreement are fair and reasonable.
6. I will not proceed with any work without your instructions or confirmation that you are satisfied with the terms of the costs agreement, and encourages you to contact our office to discuss any concerns or questions.
7. The terms of this costs agreement will be accepted by you, if you:
8. Continue to instruct us (in writing or orally) to perform the scope of instructions as detailed in our covering email/letter;
9. Or the avoidance of doubt, the type of conduct (other than in writing) that constitutes acceptance of our covering email/letter may include but is not limited to:
10. Written instructions by way of email, facsimile or hard copy correspondence;
11. SMS text message;
12. Verbal instructions by way of telephone or other attendances;
13. Instructions delivered by way of any agent (including retained consultants, staff members or other authorised persons) under your guidance, supervision or direction;
14. Instructions delivered by way of any agent (including retained consultants, staff members or other authorised persons) in your absence, which you later become aware of, and do not take action to withdraw those instructions; and
15. Confirmation of instructions in any way for me to action any matter on your behalf.
16. Failure to accept this offer within seven days may result in the immediate withdrawal of our offer to act for you in relation to this matter.
17. You may accept this offer to enter into the retainer agreement:
18. By writing to me to that effect; or
19. By your conduct in not writing to me immediately in response, notifying me that you do not accept these terms, thus causing me to embark upon the work required to be undertaken under the retainer agreement.

If you have any queries or objections with my offer contained above in this letter, please contact me in writing forthwith.

# Direct Access Brief Notice

1. As you are seeking to retain me on a direct-access basis, please note the following provisions of the *2011 Barristers’ Rules* pursuant to the *Legal Profession Act 2007 (Qld)*:

24B. A barrister who proposes to accept instructions directly from a person who is not a solicitor must:

1. Inform the prospective client in writing of:
2. The effect of Rules 15 and 17;
3. The fact that circumstances may require the client to retain an instructing solicitor at short notice, and possibly during the performance of the work;
4. Any other disadvantage which the barrister believes on reasonable grounds may, as a real possibility, be suffered by the client if the client does not retain an instructing solicitor;
5. The relative capacity of the barrister in performing barristers’ work to supply the requested facilities or services to the client compared to the capacity of the barrister together with an instructing solicitor to supply them; and
6. A fair description of the advocacy experience of the barrister; and
7. Obtain a written acknowledgement, signed by the prospective client, that he or she has been informed of the matters in (a) above.

# Your rights

1. In addition to the rights set out in this costs agreement you have the rights set out in the attached ‘*Legal costs – your right to know’* (issued by the Queensland Law Society).

# Your obligations

1. It is a condition of us agreeing and continuing to act for you that you:
2. Provide us with timely, accurate and proper instructions, including all documents and other records relevant to this matter;
3. Act reasonably and take reasonable care to protect your own interests in respect to the matters the subject of this costs agreement;
4. Satisfy yourself as to the commercial viability of transactions (if any);
5. Where relevant, investigate the bona fides of the other parties to the transaction, checking all financial matters and assessing the commercial soundness of the transactions; and
6. Otherwise comply with the terms of this costs agreement.
7. Failure to comply with your obligations could result in suspension or termination of this costs agreement and us refusing to act for you further.

# Schedule of Fees and Charges

## Commercial Legal Services

|  |  |  |
| --- | --- | --- |
| **Legal**  **(Retail Shop)** | **Item** | **Per event** |
| Prepare new lease agreement (standard shop) | $1,200 (plus GST) |
| Prepare new lease agreement (standard franchise) | $2,500 (plus GST) |
| Lease extension under option | $800 (plus GST) |
| Default Notice | $800 (plus GST) |
| Termination after default | $800 (plus GST) |
| Negotiation with opposing party re legal dispute | $450 / hr (plus GST) |
| Litigation (see Commercial Litigation below). | -- |
|  |  |  |

## Debt Recovery

|  |  |  |
| --- | --- | --- |
| **Commercial & Body Corporate** | Rate per hour | $450.00 (plus GST) |
| Preparation and filing of Claim and Statement of Claim in accordance with Magistrates Court scale: | |
| **Debt Amount** | **Per event:** |
| $751 to $1,500 | $269.00 (plus GST) |
| $1,501 to $2,500 | $352.00 (plus GST) |
| $2,501 to $5,000 | $665.00 (plus GST) |
| $5,001 to $10,000 | $825.00 (plus GST) |
| Over $10,000 | $1,154.00 (plus GST) |
|  |  |  |

## Mediation Services

|  |  |  |
| --- | --- | --- |
| **Mediation** | **Item** | **Per event:** |
| General | $450 / hr (plus GST) |
| Intake with Initiating Party (One hour or part thereof) | $450 (plus GST) |
| Invitation to Responding Party (per invitation) | $112.50 (plus GST) |
| Intake with Responding Party (One hour or part thereof) | $450 (plus GST) |
| Mediation Preparation (Two hours) | $900 (plus GST) |
| Mediation (Minimum of three hours or part thereof) | $1,350 (plus GST) |
| Additional Mediation Time (per hour or part thereof) | $450 (plus GST) |
| Mediation Agreement (One hour) | $450 (plus GST) |
| Amendments to Mediation Agreement (per request) | $450 (plus GST) |
| Section 60I Certificate (per certificate) – family law matters | $225 (plus GST) |
| Draft Consent Orders (Preparation fee) – family law matters | $2,800 (plus GST) |
| Boardroom Hire (per three-hour period) | $225 (plus GST) |
|  |  |  |

## Commercial Litigation (Common Law & Equitable Remedies)

|  |  |  |
| --- | --- | --- |
| **Court** | **Item** | **Per event:** |
| **Supreme Court** | Trial (Preparation fee & Appearance fee for Day One) | $6,900 (plus GST) |
| Trial (Appearance fee for each additional day) | $5,200 (plus GST) |
| Application (Preparation fee & Appearance fee) | $3,500 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $3,500 (plus GST) |
| Opinion & Advice on Liability, Quantum & Evidence | POA |
| Pleadings | POA |
| **District Court** | Trial (Preparation fee & Appearance fee for Day One) | $5,200 (plus GST) |
| Trial (Appearance fee for each additional day) | $4,600 (plus GST) |
| Application (Preparation fee & Appearance fee) | $2,800 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $2,800 (plus GST) |
| Opinion & Advice on Liability, Quantum & Evidence | POA |
| Pleadings | POA |
|  |  |  |

## Personal Injury Law (Medical Negligence, Motor Accidents & Public Liability)

|  |  |  |
| --- | --- | --- |
| **Court** | **Item** | **Per event:** |
| **Supreme Court** | Trial (Preparation fee & Appearance fee for Day One) | $6,900 (plus GST) |
| Trial (Appearance fee for each additional day) | $5,200 (plus GST) |
| Application (Preparation fee & Appearance fee) | $3,200 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $3,200 (plus GST) |
| Opinion & Advice on Liability, Quantum & Evidence | POA |
| Pleadings | POA |
| **District Court** | Trial (Preparation fee & Appearance fee for Day One) | $5,200 (plus GST) |
| Trial (Appearance fee for each additional day) | $4,600 (plus GST) |
| Application (Preparation fee & Appearance fee) | $2,200 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $2,200 (plus GST) |
| Opinion & Advice on Liability, Quantum & Evidence | POA |
| Pleadings | POA |
|  |  |  |

## Criminal Law (Indictable Offences & Non-Indictable Offences)

|  |  |  |
| --- | --- | --- |
| **Court** | **Item** | **Per event:** |
| **Court of Appeal** | Appeal Against Conviction (Preparation fee & Appearance fee) | $4,800 (plus GST) |
| Appeal Against Sentence (Preparation fee & Appearance fee) | $4,800 (plus GST) |
| **Supreme Court** | Trial (Preparation fee & Appearance fee for Day One) | $6,900 (plus GST) |
| Trial (Appearance fee for each additional day) | $5,200 (plus GST) |
| Section 590AA (Pre-Trial) Hearing (Preparation fee & Appearance fee) | $3,500 (plus GST) |
| Sentence & Breach Proceedings (Preparation fee & Appearance fee) | $3,500 (plus GST) |
| Bail Application (Preparation fee & Appearance fee) | $2,900 (plus GST) |
| **District Court** | Trial (Preparation fee & Appearance fee for Day One) | $5,200 (plus GST) |
| Trial (Appearance fee for each additional day) | $4,600 (plus GST) |
| Application (Preparation fee & Appearance fee) | $2,800 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $2,800 (plus GST) |
| Opinion & Advice on Liability, Quantum & Evidence | POA |
| Pleadings | POA |
| **Magistrates Court** | Committal Hearing (Preparation fee & Appearance fee for Day One) | $2,800 (plus GST) |
| Committal Hearing (Appearance fee for each additional day) | $2,200 (plus GST) |
|  |  |  |

## Family Law (Divorce, Property Division, Child Custody, & Relocation Matters)

|  |  |  |
| --- | --- | --- |
| **Court** | **Item** | **Per event:** |
| **Family Court** | Final Hearing (Preparation fee & Appearance fee for Day One) | $5,200 (plus GST) |
| Final Hearing (Appearance fee for each additional day) | $4,600 (plus GST) |
| Interim Hearing (Preparation fee & Appearance fee) | $2,800 (plus GST) |
| Draft Consent Orders (Preparation fee) | $2,400 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $2,800 (plus GST) |
| **Federal Circuit Court of Australia** | Final Hearing (Preparation fee & Appearance fee for Day One) | $5,200 (plus GST) |
| Final Hearing (Appearance fee for each additional day) | $4,600 (plus GST) |
| Interim Hearing (Preparation fee & Appearance fee) | $2,800 (plus GST) |
| Draft Consent Orders (Preparation fee) | $2,400 (plus GST) |
| Mediation (Preparation fee & Appearance fee for up to 5 hours) | $2,800 (plus GST) |
| **Magistrates Court** | Domestic Violence Order Application (Preparation fee & Appearance fee) | $2,800 (plus GST) |
|  |  |  |

## Outlays\*

|  |  |  |  |
| --- | --- | --- | --- |
| **Retail Shop** |  | |  |
| Background search (new tenant) | $250.00 | | Per event |
| Rent-free incentive deed | $400.00 | | Per event |
| Registration - DERM | Tenant | | n/a |
| Mortgagee consent fee | Tenant | | n/a |
| Survey Plan (for new / amended lease) | Tenant | | n/a |
| **Photocopying & Scanning** |  | |  |
| 1x single sided copy: | $0.49 cents | | Per A4 page |
| 1 x double sided / duplex | $0.98 cents | | Per A4 page |
| Photocopying – (A3 and other) | $0.98 cents | | Per page |
| **Postage** |  | |  |
| Postage – DL Envelopes / Reply Paid | Australia Post current charges apply + 30% | | Per envelope |
| Courier (Urgent/Standard) | Courier current charges apply+ 30% | | Per event |
| Envelopes + label – (DL / DLX / Window) | $0.39 | | Per envelope |
| Envelope + label – (C5) | $0.45 | | Per envelope |
| Envelopes + label –Plain - (C4) | $0.60 | | Per envelope |
| **Stationery** |  | |  |
| Ring Binder | $5.00 | | Per binder |
| Plastic sheet protectors – A4 | $0.10 | | Per sheet |
| Tab & Alpha dividers | $5.00 | | Per packet |
| **Government Statutory Fees (where applic.)** | | At cost + 30% | |

\* Disbursements shall be charged at the above rate (excl. GST) if/where applicable

# Litigation Booklet

This commercial litigation booklet is to be read in conjunction with our first letter to you. This booklet contains important information about the litigation process including the standard steps in the process, the expected timeframes, the risks and the costs of litigation. Please therefore take the time to read this information carefully. If you have any queries or questions about the information provided to you, please call us to discuss.

**Overview of the litigation process**

Commercial litigation is an adversarial process, usually determined before a judge sitting in open court without a jury. Typically, commercial litigation matters follow these procedural steps:

* Commencement pleadings (statement of claim and defence);
* Disclosure of documents;
* Gathering and exchange of evidence (including expert evidence);
* Trial;
* Judgment;
* Appeal(s).

In addition to these steps, there will commonly be a number of mentions and directions hearings before a judge along the way. If during the course of the litigation there are any disputes between the parties about the conduct of the litigation (an “interlocutory dispute”), one or other of the parties may also make an application to the court for specific orders, usually about the future conduct of the litigation. These applications typically add to the cost of the litigation, but may bring the dispute to trial more quickly.

1. **Pleadings**

Both parties are required to plead the case they intend to litigate at trial. This means the plaintiff who has started the litigation must set out in a statement of claim all the allegations it intends to make against the defendant. The defendant in turn is required to set out in its defence all the reasons it says it is not liable for the case pleaded against it. The intention is that both parties are prohibited from “keeping something up the sleeve” to surprise the other party with at trial.

Generally, pleadings are only allowed to contain statements of relevant facts on which the party relies, but not the evidence by which those facts will be proved. The pleadings are designed to narrow and define the issues for decision, set the boundaries for disclosure and define the scope of the relevant evidence.

1. **Disclosure**

Disclosure means the process of disclosing (sometimes called “discovering”) documents that are relevant to an issue in dispute in the litigation.

Disclosure requires each party to assemble, list, and disclose (by inspection or exchange of copies) any documents on which it intends to rely, or which are relevant to an issue in dispute between the parties. This means that a party cannot simply disclose those documents that adversely affect another party’s case. The parties are required to also disclose relevant documents that support another party’s case even if those documents may harm its own case. This is an important part of the litigation and will be covered in more detail in a letter to you.

1. **Evidence and examination of witnesses**

Generally witnesses will be called by the parties to give evidence at trial. They will then need to be available during the trial in case they are required for cross-examination or re-examination at trial. In some jurisdictions, the evidence is given prior to trial in the form of a statement or affidavit, and the witness will only need to attend court if required for cross- examination or re-examination. If a person knowingly gives false testimony touching on a material matter in any judicial proceeding, either orally or in writing, they may commit a crime punishable by imprisonment.

Expert evidence may also be part of this process. Expert witnesses are expected to only give evidence about matters within their area of expertise, although this does include allowing them to express an expert opinion about a matter. They are expected to be impartial and not act as an advocate for the party that engaged them when doing so.

In some jurisdictions (e.g. the Planning & Environment Court of Queensland) there is a tendency to order the parties in conflict to arrange for their respective experts to meet before trial and produce a joint expert report setting out the issues they agree on and those they still disagree about. The aim of these pre-trial joint conferences between experts is to narrow areas of disagreement which may in turn help to shorten the trial.

1. **Alternative dispute resolution (ADR)**

Depending on the type of matter in dispute and the jurisdiction, the parties may be required to take genuine steps to resolve the dispute before they are allowed to file proceedings in Court. In other types of matters, the court may order the parties to participate in an alternative dispute resolution process, such as a mediation or a case appraisal. While neither of those processes is binding on the parties in the same way as a judgment, it will give the parties an opportunity to get together to attempt to resolve the matter (or at least narrow the issues in dispute) with the assistance of an impartial third party. The parties generally share the cost of engaging the mediator. Typically, mediations are conducted on a “without prejudice” basis meaning nothing said in the mediation is able to be used against the party later. Of course, it is always open to the parties to get together at any stage for a without prejudice conference to attempt to settle the dispute, or to otherwise attempt to negotiate informally to resolve the dispute without the need for a fully contested adjudication.

1. **Trial and Judgment**

A trial will typically be conducted in open court before a judge. It is usual for the parties to engage the services of barristers for the trial, to take advantage of their particular skills in advocacy and presenting the case as well as for their knowledge of court procedure and the rules of evidence.

The judge will hear the case, examine the admissible evidence and decide the matter by delivering a written judgment setting out his or her reasons for judgment. This requires the judge to decide on all the matters in issue between the parties.

1. **Appeals**

If either party believes that there are grounds for appeal (e.g. the judge has made an error of law) they may be able to lodge an appeal against judgment. The appeal will then be determined by a higher court. Strict time limits apply to file an appeal, and the right to apply is not automatic in all jurisdictions. For example, if a party is unhappy with the judgment of the Court of Appeal and wishes to appeal to the High Court of Australia, it must first seek leave (ask for permission) and be granted it from the High Court before any such appeal will be heard.

1. **Timeframes**

Every case is different and it is difficult to state precisely how long a matter will take to resolve. Increasingly, the courts at all levels are becoming more pro-active in managing the lists of cases currently before them and will want to adopt an active case management approach. What this means in effect is that cases that may once have dragged on for many years if one or both parties to the dispute were slow to act are now being actively pushed along by a judge and may be concluded in much less time. To a large degree though, this is affected by the complexity of the dispute.

1. **Legal Costs**

After delivery of the judgment, the judge will make an order about payment of legal costs. Although orders about costs are at the discretion of the court, generally, “costs follow the event”. This means that the unsuccessful party will be ordered to pay the legal costs of the successful party, which includes lawyers’ professional fees as well as other expenses such as expert and barrister fees. Generally the court orders the costs paid on a standard (“party and party”) basis. In effect, this means that the successful party will only recover somewhere between half and two thirds of its actual expenses. It is therefore common that a party can be successful at trial and yet still be left out of pocket.

Sometimes a Court will order that the unsuccessful party pay the other sides’ costs on an “indemnity basis”. In theory, the successful party should recover all of the actual fees and expenses reasonably incurred during the litigation. In practice, the amount recovered will not be 100% of those costs but will be much closer to the actual costs incurred.

During the course of the litigation, it is likely that one or more parties will make offers to settle the dispute. Even if the offer is not accepted, it can still have an affect on the outcome by affecting the costs order made by the judge. For example, if during the litigation a plaintiff made an offer to settle for less than it was ultimately awarded at trial, one possible outcome is that the defendant will be ordered to pay the plaintiff’s costs on an indemnity basis, at least from the time the offer was rejected or not accepted.

1. **Vagaries of litigation and other considerations**

Litigation is inherently risky and uncertain because the result is not definite until judgment is given and any appeal rights are exhausted. Although it may be possible to give an opinion about prospects of success if it goes to trial, ultimately there is no certainty because of the adversarial nature of the process. A witness who has said one thing in his statement may change his position under cross- examination or contradict himself, making his testimony carry less weight.

Furthermore, although we have explained to you how litigation is conventionally run, you should be prepared for the unexpected as it is quite possible that the other party will take steps, raise issues or lead evidence that was not anticipated at the outset. For example, it is not uncommon for a party being sued to bring a counter-claim of its own against the party suing it. This will often increase the risks, the cost and the time it will take to resolve the dispute, and therefore increase the uncertainty of the outcome.

In addition to the direct legal costs and expenses associated with litigation, there are often significant disruptions to a party’s business interests or employment. Depending on the nature of the dispute, it may also attract unwanted publicity. Litigation is generally conducted in open court so the public and the media are free to sit in court and observe the trial. Increasingly, the pleadings themselves are often available for inspection and downloading from the Queensland Court’s website. This exposure and disruption is an unavoidable consequence of litigating.

Finally, you need to be aware that litigation can be an extremely stressful and emotionally draining process that should not be entered into lightly. Once litigation is started, you will lose some of the control you previously had – you will then be subject to the processes, procedures and timetables of the court. It is not necessarily an easy matter to stop litigation either if you should change your mind or decide it is all becoming too hard or too costly. You may for example be required to pay some or all of the other party’s legal costs to that point before the matter can be discontinued by the court.